

Appendix 4a

[crowned eagle]
REGIONAL DIRECTOR
FOR ENVIRONMENTAL
PROTECTION
IN WROCLAW

82 TADEUSZA KOŚCIUSZKI STREET
50-441 WROCLAW

WOOŚ.420.202.2018.KK.1

Wrocław, 25 January 2010.

DECISION

Pursuant to Article 61a Paragraph 1 of *the Act dated 14 June 1960 - the Code of Administrative Procedure (i.e. Journal of Laws of 2018, item 2096)*, in connection with Article 75 Clause 1 Item 1 Letter I of *the Act dated 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (i.e. Journal of Laws of 2018, item 2081 as amended)*, having considered the application dated 17 December 2018 submitted on behalf of the Municipality of Wrocław by the Road Management and City Maintenance Authority represented by Ms. Dorota Wolińska-Janosz

I refuse to initiate proceedings to issue a decision on environmental conditions for the project consisting in extension of Ślężoujście Street from Rędzińska Street to Potokowa Street in Wrocław.

Justification

The Municipality of Wrocław represented by the Road Management and City Maintenance Authority (hereinafter referred to as the RMCMA) by Ms. Dorota Wolińska-Janosz, M.Sc. Eng. (the power of attorney granted by the Director of the RMCMA to be found in the case files), with the application dated 17 December 2018, applied for the issuance of a decision on environmental conditions for the project consisting in extension of Ślężoujście Street from Rędzińska Street to Potokowa Street in Wrocław.

Pursuant to Article 75 Clause 1 Item 1 Letter I of *the Act dated 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (hereinafter referred to as the EIA Act)*, the regional director for environmental protection (hereinafter referred to as *the RDEP*) is the competent authority to issue a decision on environmental conditions for projects for which a head of commune, mayor (of a town), president (of a city) would be the competent authority, for which a local government unit is the applicant, for which the above authority being competent to issue a decision on environmental conditions, i.e. head of commune, mayor or president is the executive body. In the present case, the Municipality of Wrocław is the applicant, for which the President of Wrocław is the executive body. This body would also be competent to consider the case for the issuance of a decision on environmental conditions for the project which is covered by the application under consideration.

Taking the above into account, pursuant to Article 75 Clause 1 Item 1 Letter 1 of *the EIA Act*, the RDEP in Wrocław is the competent body to consider the case.

The project will be implemented under *the Act dated 10 April 2003 on the special principles of preparation and implementation of investments in the field of public roads (Journal of Laws of 2018, item 1474, as consolidated)*. Under the investment, it is planned to extend Ślężoujście Street within from the existing buildings, from Rędzińska Street, to Potokowa Street, to construct intersections of Potokowa Street and the 5KDW internal road and to build a stand for portable pumps. The total length of the reconstructed roads is approximately 617 m. The project also covers:

- reconstruction of the inclusion of the Maślice II embankment into Ślężoujście Street together with its sealing,
- reconstruction of the existing culvert on the Ługowina river at the intersection with the designed road,
- reconstruction of a section of the water distribution pipeline at Potokowa Street, 150 mm in diameter, together with a hydrant and connections to buildings, 70 m in length,
- adjustment of gas boxes at connections to buildings in Ślężoujście Street,
- height adjustment of existing sanitary sewerage manholes (i.e. adjusting to the new grade line of Ślężoujście Street),
- construction of stormwater drainage system with its diameter sized 300 - 500 mm together with street inlets, connection pipes and outlet to the Ługowina river; a flow regulator and settling tank for suspended solids are planned to be installed upstream of the outlet; the length of the planned stormwater drainage system will be approx. 550 m,
- construction of new road lighting,
- reconstruction of telecommunication networks and construction of the Municipal Technology Duct network.

Pursuant to Article 72 Clause 1 of *the EIA Act*, a decision on environmental conditions will be issued prior to obtaining all the decisions listed in an enumerative manner in this clause, including - in line with Article 72 Clause 1 Item 10 - prior to obtaining a decision on permission to implement road investment issued under *the Act of 10 April 2003 on the special principles of preparation and implementation of investments in the field of public roads*.

Moreover, pursuant to Article 71 Clause 2 of *the EIA Act*, a decision on environmental conditions is required for planned projects which can significantly affect the environment, listed in Paragraph 2 and Paragraph 3 of *the Regulation of the Council of Ministers dated 9 November 2010 on projects which can significantly affect the environment (i.e. Journal of Laws of 2016, item 71 hereinafter: the Regulation on projects)*.

Article 3 Clause 1 Item 13 of *the EIA Act* provides a definition of the term "project" - it stands for intended construction works or other interference with the environment involving a transformation or change in the use of land. Also extension, reconstruction or assembly of any implemented or completed project, listed in Paragraph 2 or Paragraph 3 of the above-mentioned regulation may require an EIA if the conditions specified in Paragraph 2 Clause 2 and Paragraph 3 Clause 2 of the said regulation are fulfilled, including among others in case when such intended construction works cover extension, reconstruction or assembly of any implemented or completed project which can significantly impact the environment, apart from cases, when a part of such implemented or completed project, which undergoes changes or arises as a result of extension, reconstruction or assembly, does not reach the thresholds specified in the above-mentioned regulation, if such thresholds were specified.

Taking the above into account, it should be pointed out that in order to obtain a decision on environmental conditions it is necessary for such planned works to be qualified as a project which can significantly impact the environment, in line with *the EIA Act* and *the Regulation on projects*. Only the fulfilment of the above-mentioned condition provides material and legal grounds for the competent authority to issue a decision on environmental conditions.

The investment under consideration may be considered as a project in line with Article 3 Clause 1 Item 13 of *the EIA Act*. However, due to its characteristics, i.e. the planned hard-surfaced road with a length of less than 1 km (approx. 626 m), reconstruction of distribution water pipelines only, construction of the stormwater drainage system with a total length of less than 1 km (approx. 550 m), reconstruction of the inclusion of the Maślice II embankment into Ślężoujście Street only together with its sealing, which is exempted under *the Regulation on projects*, and reconstruction of the existing culvert on the Ługowina river, it cannot be qualified as a project which can significantly impact the environment, as specified in *the Regulation on projects which can significantly impact the environment*.

Pursuant to Article 61a Paragraph 1 of *the Code of Administrative Procedure*, when a request was filed by a person who is not a party or when, for other justified reasons, proceedings cannot be initiated, the public administration body issues a decision on refusal to initiate proceedings.

In line with the judgment of the Provincial Administrative Court in Poznań dated 13 April 2017, ref. no. II SA/Po 60/17: "*other legitimate reasons*" preventing the initiation of administrative proceedings should be understood as situations which evidently make an obstacle to the initiation of such proceedings, for example, when administrative proceedings have already been held on the same case or a decision has already been made on such a case, or when there is no substantive legal grounds for considering a request under an administrative regime." In the case under consideration, it can be concluded just "taking a first glance" that there are no grounds to conduct such proceedings due to their lack of purpose, which was also stated by the Applicant emphasising in the application that the project cannot be qualified under *the EIA Act*.

In view of the foregoing, it has been decided as set forth in the settlement of this decision.

Notice

The parties are entitled to lodge an appeal against this decision to the General Director for Environmental Protection through the Regional Director for Environmental Protection in Wrocław within 7 days from the date of its receipt.

[round seal with the image of the crowned eagle in the middle and an inscription around it:
REGIONAL DIRECTOR FOR
ENVIRONMENTAL PROTECTION IN
WROCLAW]

[stamp]
Regional Director for Environmental
Protection
in Wrocław
Wojciech Rejman
[illegible signature]

To be received by:

1. Road Management and City Maintenance Authority
49 Długa Street, 53-633 Wrocław

Represented by the proxy:

Ms. Dorota Wolińska-Janosz
"BBKS-Projekt" Ltd. Co.
10/1 Ojca Beyzyma Street, 53-204 Wrocław