

**J&E Workplan 2007: SEA infrastructure**  
**CASE STUDY**  
**Hungary - EMLA**

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November 2007

**1. Title of planning case**

Lay-out plan of Óbuda Island

**2. Matter of case**

Elaboration of the Óbuda Island's lay-out plan in connection with the preparation of "Dream Island" monumental project realization

**3. Country**

Hungary

**4. Location**

Budapest – Óbuda Island

**5. Geographic dimension: (local, regional, national, EU, international - (especially, is the plan (shall it be) part of Trans-European Transport Network?))**

Local

**6. Initiator of SEA/competent authority**

Municipality of Budapest 3<sup>rd</sup> District (hereinafter Budapest 3<sup>rd</sup> District mentioned as Óbuda)

**7. Participants involved**

Inhabitants of Óbuda (in way of local referendum)

**8. Other interested parties and/or stakeholders**

VEDEGYLET Protect the Future (NGO)

Clean Air Action Group (NGO)

Live Chain for Hungary (NGO)

S.O.S. for Békásmegyer Association (NGO)

Association for Óbuda-Békásmegyer (NGO)

Rodata SE (NGO)

Association for Island-protection (NGO)

Öko Co. Ltd. (preparer of SEA)

Dream Island Ltd. (Investor)

**9. Background facts**

### **9.1. Account of facts** (short summary of the planning case)

Óbuda Island is a part of Budapest 3<sup>rd</sup> District, namely Óbuda-Békásmegyer, and primarily famous for Sziget Festival in Europe. Municipality of Óbuda elaborated the lay-out plan of the Óbuda Island in connection with a monumental project preparation “Dream Island”. (The lay-out plan is a land use planning instrument in the Hungarian Law.) Óbuda Island had so far no lay-out plan and so the general lay-out plan and construction regulation of Óbuda-Békásmegyer was valid in this territory as well, but the adoption of a lay-out plan was an obligation based on law.

The Municipality of Óbuda elaborated the draft lay-out plan of the Óbuda Island and simultaneously project plans of the “Dream Island” had changed in favorable direction. Many NGOs issued opinions on the draft lay-out plan of the Óbuda Island and achieved that the Municipality of Óbuda had performed an SEA voluntarily, so in lack of legal obligation as well. In contrary, the suggestions of NGOs and the environmental report did not become part of the lay-out plan.

Finally, due to the intense participation of interested NGOs in the procedures the lay-out plan was adopted by local referendum in Óbuda.

### **9.2. Description of the project and its main environmental impacts**

#### **9.2.1. General description of the project**

*(kind of the plan, its main goal, basic proportions, land-use requirements, etc.)*

The concerned territory of the Óbuda Island was the property of the Hungarian State until 2003. Due to the privatization in 2003 among the others real estates of exclusive state property it became the property of the Dream Island Ltd. The objects of exclusive state property are archaeological values of the Roman Empire, e.g. ruins of the Hadrianus Palace. The National Audit Office stated that the sale of exclusive state property was illegal and the Hungarian State is not only entitled, but obliged to redeem these real estates within three years. The Hungarian State did not fulfill this obligation.

The “Dream Island” project plans are monumental. The planned investment consists of hotels (140.000 m<sup>2</sup>), apartment hotels (75.000 m<sup>2</sup>), casino (28.000 m<sup>2</sup>), conference hall and exhibition salons (600.000 m<sup>2</sup>), yacht dock with 300 spaces, theatre (for 3500 persons), restaurants, bars (for 3000 persons), museum (4.000 m<sup>2</sup>) etc. Altogether ca. 350.000 m<sup>2</sup> is planned to be built in on more floors. The estimated number of visitors is 24.000 per day. 4000 parking places are planned to establish under the ground floor. The estimated cost of the investment is Euro 1,6 billion. Furthermore there are complementary “public benefit” investments (most of them are public road developments) in amount of Euro 58 million, covered by the investor.

After the privatization of the above mentioned territory the owner of the south part of the Island obviously endeavors to maximize his profit. In contrary, the Municipality is obliged to validate the public interest. In this situation the lay-out plan is the tool, which is possible to ensure the optimal compromise between the interest of the investor and the public. The prepared (and finally adopted) lay-out plan has not achieved this optimal compromise.

#### **9.2.2. Description of the affected area**

*- general characteristics (scope, character of land, density and kind of settlement...)*

- *most important environmental characteristics, e.g. quality of air, water resources, protected areas, fauna, flora, important cultural sites... ; if possible, map of the area or sketch map of the project)*

- *overall evaluation of quality of environment in the affected area before realization of the project, extent of its “environmental burden”*

The Óbuda Island is a 2,5 km long and 118 hectare surface island in the Danube between North Railway-Bridge and Árpád Bridge. Its territory was used as agricultural area for centuries, the industrial utilization began in 1836 and finished in 1992 (it was a ship factory), but it limited to the south part of the Island. After the end of the industrial activity about half of the old buildings were broken down and half of them renewed. This formerly industrial territory is the planned place of the “Dream Island” investment. The north part of the Óbuda Island is a traditional park area and protected in Budapest as public park, the “Dream Island” project does not expand to this area.



B) Public park

C) Recreation area

The formerly industrial territory (A) divided up to four parts with regard to the limitations of archaeological values and national monuments.

1. Top of the small Island – project area
2. National cultural heritage protection area with restricted use
3. National archaeological protection area with restricted use
4. East side of the big Island – main project area

The general environmental state of the Island is good, it plays an important role in Budapest as green surface. It is the third biggest public park in the Capital and therefore it is primarily a recreation area and its habitat role is secondary. The air quality and noise pollution depends basically on the vehicular traffic of the Árpád Bridge and the riverside road on Buda side. There are not any soil and groundwater polluting activities, but the remains of the former industrial activities can be found.

### **9.2.3. Description of the main impacts of the project**

*according to the kind of the plan - mainly climate change, emissions, noise, nuisances, conflicts with special protection areas, changing characteristic of the landscape... )*

- possible **cumulative effects with other projects**

The project first of all would entail with cutting of several trees. Under the regulation of Municipality Óbuda on the replacement of cutout trees, 150% of the diameter of cutout tree must be replaced, which is in this case impossible in the territory of the Island. Therefore the project involves significant loss of green-surface.

On the former industrial territory there is significant soil pollution. The components of the pollution are only partly known. The elimination of the polluted soil (probably mostly as hazardous waste) should be arranged by this investment.

With regard to the several services of the project it would effect the vehicular traffic in negative direction. In the practice it means that the inhabitants of Óbuda would have to bear and tolerate this traffic load, and presumably not they would enjoy the advantages of the project. Another impact of the investment would be a further deterioration of the view of the Island. The risks and effects of floods would also be changed by the project realization. The preservation of the cultural, archeological heritage must be as well ensured.

### **9.3. Important interrelated aspects - transboundary impacts of the plan, relation to national and EU infrastructure (transport) development plans, EU funds etc.**

- *TEN-T?*

- *National transport programme*

- *EIB-funded?*

There are not any transboundary impacts of the plan.

## 10. Applicable articles of SEA Directive, relationship to EIA Directive, habitats and bird-Directives

SEA Directive, in particular its Article 3.3

## 11. Applicable national laws

Government Decree No. 2 of 2005 on the Environmental Assessment of Certain Plans and Programmes (SEA Decree)

Municipality Decree of the Municipality of Budapest 3<sup>rd</sup> District No. 35/2006. (VI.30.) on the amendment of the Municipality Decree No. 32/2001 (XI.30.) on the lay-out plan and construction regulation of Óbuda-Békásmegyer and on the approval of the lay-out plan of the Óbuda Island

Act No. 65 of 1990 on the local municipalities

## 12. Legal framework of SEA-proceeding

- *Position in legal system*
- *Administrative proceeding?*
- *particular planning proceeding?*
- *legal form of decision*
- *legal form of plan*
- *possibility to appeal against SEA decision and plan?*

According to the Hungarian SEA Decree, the environmental assessment is part of the elaboration, conciliation and adoption procedure of plans and programmes. The environmental report is a single part of the project-documentation. As the environmental report of the lay-out plan of the Óbuda Island emphasizes, “one of the main characteristics of the SEA is, that it is not in confrontation, but it is to be prepared with the plan together and in this way it can underway enforce the environmental aspects.”

The lay-out plan of the Óbuda Island was prepared by the Municipality of Óbuda. The legal form of the plan is municipality decree. The municipality decrees are adopted by the Municipality Council.

The legality of municipality decrees can be reviewed from two different points of view, according to two different procedures:

- a) The procedural legality of municipality decrees (i.e. whether they were adopted in a properly administered procedure) can be reviewed by the Constitutional Court but the exclusive right to initiate such a review process at the Constitutional Court belongs to the regional Administrative Offices. Although any individual or legal person can request the Administrative Office to initiate such a review process, the Administrative Offices are in no case under any legal obligation to do so. The submission of such a request by an individual or a legal person does not constitute a formal administrative procedure and consequently there is no legal standing therein. There are cases of the Constitutional Court where the Court has abolished a municipality decree on spatial planning solely because of infringement of rules of due procedure, including public participation.
- b) The material legality of municipality decrees (i.e. whether they are constitutional and in line with other laws of the legal system) can also be reviewed by the Constitutional Court but

such review can be initiated by anybody. The process before the Constitutional Court is a special process in which the classical rules of standing do not prevail, however, the applicant receives the decision of the Court by mail.

There is another type of municipality decision, the resolution. These are applied for deciding single cases and matters by the municipality. The review of the legality of such municipality resolutions can only be initiated by the regional Administrative Offices before a regular court of law.

### **13. SEA/planning procedural history/timeline:**

- *information on formal proceeding (initiation of SEA, PP, decision etc)*
- *information on other relevant planning (political decision for the plan, start of internal planning, scheduled construction start)*
- *information on time between SEA and formal adoption of the plan*
- *information on scheduled timeframe between adoption of plan and (EIA)-permit proceeding and scheduled construction start*

*March 13, 2006: publication of the draft lay-out plan of the Óbuda Island*

*April 27, 2006: approval of the Capital Council to the draft lay-out plan of the Óbuda Island (The lay-out plan of a district, or a part of a district have to be in accordance with the the lay-out plan of the Capital.)*

*Mai 17, 2006: the head architect of Óbuda and the preparers inform the public (first of inhabitants of the 3<sup>rd</sup> District) on the lay-out plan of Óbuda (70 participants)*

*Mai 24, 2006: publication of the joint preliminary opinion of the concerned NGOs on the draft lay-out plan of Óbuda*

*Mai, 2006: publication of the environmental report (The SEA was performed within one month.)*

*June 9, 2006: publication of the joint opinion of the concerned NGOs on the draft lay-out plan of Óbuda and on the environmental report*

*June 30, 2006: the Municipality of Óbuda, namely the Municipality Council adopts the Municipality Decree of the Municipality of Budapest 3<sup>rd</sup> District No. 35/2006. (VI.30.) on the amendment of the Municipality Decree No. 32/2001 (XI.30.) on the lay-out plan and construction regulation of Óbuda-Békásmegyér and on the approval of the lay-out plan of the Óbuda Island – which enters into force on 23 Sept, 2006*

*Sept 10, 2006: confirmative local referendum on the Municipality Decree of the Municipality of Budapest 3<sup>rd</sup> District No. 35/2006. (VI.30.) on the amendment of the Municipality Decree No. 32/2001 (XI.30.) on the lay-out plan and construction regulation of Óbuda-Békásmegyér and on the approval of the lay-out plan of the Óbuda Island*

### **14. Relationship to EIA**

*Please explain the relationship of EIA and SEA in the legal system and planning/project practice in particular with problems indicated in J&E Workplan 2006 on EIA/infrastructure*

According to Art. 1.2 Point ba) of the Hungarian SEA Decree those plans and programmes must compulsorily undergo an environmental assessment that “*are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications,*

*tourism, town and country planning or land use and which set the framework for future development consent of projects listed in the annex of the respective law on EIA but without any restrictions relating to the size or the location of the projects.”* The cited provision of the SEA Decree is in accordance with Recitals No. 10 and Art. 3.2 of the SEA Directive.

Under the Hungarian EIA Decree, the project developer must first of all submit an application for a screening process, attaching thereto a so-called screening documentation. It is to be presented in this documentation among the others how the planned place of the project is at this moment in the practice and according to the lay-out plan used. In the EIA screening procedure the competent environmental authority, namely the Environmental Inspectorate, consults with the so called co-authorities during the decision making. It is the municipality clerk in first instance, who is obliged to make sure of the accordance with the project and the local lay-out plan and construction regulation. In lack of the consent of the clerk, it is not allowed to issue an environmental permit.

In the practice it means, that if a project must undergo an SEA and EIA as well, then SEA foregoes the EIA procedure. The project developer tries at first to ensure accordance with his goals and the local lay-out plans. In that case, if it requires the modification of the lay-out plan, then it has to get through at first and so SEA foregoes the EIA procedure. The elaboration or modification of the lay-out plan is the first step, which goes parallel with the SEA procedure and then follows the EIA procedure.

Unfortunately, it has occurred that they (SEA and EIA) went parallel. If the lay-out plan modification procedure is going, then the clerk approves the project plan and the environmental inspectorate issues the environmental permit. Finally, it is the construction permission procedure, where the accordance must be entirely fulfilled. In the Hungarian law the environmental permit is a compulsory attachment of the construction permit application, so environmental permission procedure must be finished before the submission of the construction permit application.

The SEA Decree determines that the use of small areas at local level should be subject to SEA only where the preparer of the plan or programme determines that they are likely to have significant effects on the environment. The preparer of the plan or programme in order to determine the concrete content and details of environmental report is obliged to collect non-formal administrative opinions by competent authorities under the SEA Decree Art. 7.1. The decision of the preparer whether there is a necessity to perform an SEA and on the content of the environmental report must be reasoned and published. There are not any other legal remedy possibilities. With regard to the fact, that to perform an SEA was obligatory only in cases, when the plan or programme was adopted after 20 July 2006 under the miscellaneous and implementing provisions of the SEA Decree, in the case of the lay-out plan of the Óbuda Island (adopted on 30 June 2006) there was no legal obligation to perform an SEA. However, the Decree allows the designers to prepare SEAs in cases that were finished earlier, too.

Accordingly, the environmental report emphasizes, that SEA was performed due to the environmental problems raised by NGOs and the willingness of the Municipality Óbuda. At the same time the environmental report calls the attention, that the project falls into the scope of the EIA Decree and according to the decision of the Environmental Inspectorate must undergo an EIA.

#### **15. Description of “significant effects” in environmental report (Article 5/1, Annex I (f))**

*- How does the environmental report deal with “significant effects” as compared to other parts of the report (Does elaboration of “significant effects” have a high priority in environmental report)?*



- *Does the report and to what extent analyze the issues mentioned in Annex I f (biodiversity, climate, air, soil, interrelationships..)?*
- *Does and to what extent the environmental report cover with regard to significant effects*
  - *cumulative, secondary and synergetic effects?*
  - *short-term, long-term, permanent and temporary effects?*
  - *positive and negative effects related to environment?*

In the case of the lay-out plan of the Óbuda Island the preparer did not collect administrative opinions of competent authorities in order to determine the concrete content and details of environmental report. It was explained, that there was no legal obligation to perform an SEA.

It was the preparer, who decided on the concrete content of the environmental report, though it would have been compulsory under the SEA Decree to collect opinions of competent authorities.

The compilation of the environmental report corresponds to the usual methodology, as introductory part, presentation of the current environmental status, introduction and assessment of the effects, conclusions and suggestions to the lay-out plan.

The preparer lays down in the introductory part that the assessment of the lay-out plan was carried out under the principles of the sustainable development and that is why it covers primarily the concrete expected effects. (Let us add that this explanation is not logical in our opinion, as just sustainable development demands the exposition of cumulative, secondary and synergetic effects.)

The environmental report presents in a table the affecting factors, direct and indirect effects, but it emphasizes that the factual effects can be revealed only in the EIA procedure, where the concrete planned activity is presented.

To sum up, we have to say that in the environmental report the elaboration of “significant effects” in the sense of the SEA Directive did not have high priority. The preparer explains it on the one hand with the one month time limit to perform an SEA, and on the other hand with the characteristics of the lay-out plan, namely it determines only the frames of the potential activities, but the effective impacts of a project can be only later (in an EIA procedure) revealed. We can not agree with this latter explanation (let alone the previous one), it is not in accordance with the Hungarian SEA Decree.

On the other hand it is important to remark that the environmental report frequently refers to the comments of the environmental NGOs giving joint preliminary opinion on the draft lay-out plan of Óbuda.

#### **16. Assessment of “reasonable alternatives” (Article 5/1, Annex I (h))**

- *what kind of alternatives are covered, for example different locations, different means of transport (like railways, motorways, water-ways)*
- *Are respective alternatives analyzed in a “reasonable” and serious way?*
- *Does and to what extent the report cover the significant effects of alternatives?*

In this concrete case the draft lay-out plan was completed, when the Municipality of Óbuda under the pressure of the civil sector and public in general decided to perform an SEA. The preparer of the

SEA that is why examined almost alone the draft plan. Accordingly, the environmental report contains only suggestions to the plan, but does not analyze entirely reasonable alternatives.

There are alternatives in several contexts (extent of building, group of cutout trees and their replacement, development of public transport, etc.) flashed, but these are not analyzed in a “reasonable” and serious way and so their effects are not revealed. Due to it, it is not possible to compare the remarked alternatives and their effects to each other. Most of the suggestions can be realized only in later permitting procedures, not in the lay-out plan. Finally, we have to mention that many of the suggestions stem from the joint preliminary opinion of the concerned NGOs on the draft lay-out plan of Óbuda.

### **17. Early and effective public participation (Article 6 and 7)**

- *How was the public informed on SEA?*
- *At what stage in planning procedure does PP take place?*
- *At what stage in SEA procedure does PP take place?*
- *Did the SEA provide for early and effective PP at a planning stage when all options are open (in theory and effectively)?*
- *Has the SEA provided for sufficient time frame and arrangements to guarantee fair and effective PP?*
- *Is the information provided for consultation sufficient to assess the plan?*
- *In case of transboundary SEA*
  - *When and how was the public of the other country informed on SEA?*
  - *What information was provided for consultations?*
  - *Where SEA documents translated?*

The plan of the “Dream Island” was published first via press in March 2006. The NGOs surveyed the draft lay-out plan and from this time on they followed continuously the way of the plan. First of all they published a joint preliminary opinion with comments, critics and suggestions. Due to it, the municipality of Óbuda decided to perform an SEA, which contains and reflects the remarks of the NGOs.

In view of the environmental report the NGOs prepared a revised joint opinion on the environmental report and the lay-out plan. They participated in informal public hearings and finally could reach that the final decision on the lay-out plan was made by referendum.

Taking into account that in this case the SEA procedure was not carried out, only an environmental report was made, the PP was ensured early and effectively, when all options were open. There was all important information available. As it was mentioned above, the environmental report also reflects the remarks of the NGOs.

Regarding the timeframes, the conditions of the fair and effective PP were not ensured. In fact the whole procedure was carried out within three months, the environmental report had to be prepared within one month, which really does not allow a well-grounded analysis.

To sum up, on the one hand this way of the decision making is the most effective way of PP, on the other hand the Municipality of Óbuda carried on an unfair campaign before the referendum with

false information and warnings. The Municipality stated that if the draft lay-out plan did not enter into force, then the lay-out plan of the Capital (Budapest Plans) should be followed with less strict provisions concerning the extent of the built in area. This statement is false. In case of dismissive decision on the referendum, the Municipality would have prepared a new draft of the lay-out plan.

## 18. Consideration of SEA in planning decision (Article 8, Article 9)

### 18.1. Information and form of decision

- *In what form is the plan adopted?*
- *How was the public informed on the adoption and results of SEA?*

The plan was adopted by the *Municipality Decree of the Municipality of Budapest 3<sup>rd</sup> District No. 35/2006. (VI.30.) on the amendment of the Municipality Decree No. 32/2001 (XI.30.) on the lay-out plan and construction regulation of Óbuda-Békásmegyer and on the approval of the lay-out plan of the Óbuda Island.*

This decree was affirmed by a local referendum.

### 18.2. Integration and consideration of SEA in decision

- *Did (and to what extent) the published statement summarizing SEA (Article 9/1/b) explain how **environmental considerations** have been integrated into the plan, in particular how*
  - *the environmental report with regard to “significant effects” and*
  - *the opinions of the public were **taken into account** in accordance with Article 8?*
- *Was SEA taken into account effectively?*

In this case in lack of SEA procedure there was no statement summarizing SEA. In fact, the lay-out plan does not take into account the results and suggestions of the environmental report, it means that the draft plan did not change in any points during the procedure. Neither the remarks of the NGOs, nor the considerations of the environmental report were integrated into the lay-out plan of the Óbuda Island.

### 18.3. Reasoning for alternative chosen

- *Did the decision statement clearly state the reasons for choosing the plan adopted, by the light of other reasonable alternatives dealt with?*
- *Is the reasoning understandable and clear with regard to environmental impacts?*

The decision on the plan does not contain reasoning for alternative chosen.

### 18.4. Arrangement of Monitoring

- *Did the decision statement name the decided measures concerning monitoring of significant environmental effects in order to identify early stage unforeseen adverse effects in accordance with Article 10?*

In lack of decision statement there are not any arrangements for monitoring. The environmental report refers under the title Suggestions to the importance of monitoring, but does not contain real instructions. These suggestions are rather aspects to be taken into account in later permission procedures.

### **18.5. Was there any other particular problem with regard to decision making?**

Formally the decision making process was correct. In the fact, the campaign of the Municipality was entirely incorrect and it has also influenced the result of the local referendum. (See details Point 17.)

### **19. Remedies taken**

*Is there a legal possibility to appeal against SEA decision?*

There were no legal remedies taken in this case. On the legal possibility to appeal against SEA decision see point 12.

### **20. Judicial procedural history/timeline (if relevant)**

There was no judicial procedure in this case.

### **21. Outcome of the actions**

The Municipality Council adopted the decree on the lay-out plan, but finally due to the pressure of the NGOs and the public the Council gave the right of the final decision into inhabitants of Óbuda. Through this confirmative referendum the citizens had the right to impede the implementation of the lay-out plan. The referendum was invalid (14,4% participation) and the majority of participants supported the implementation of the lay-out plan.

### **22. Current status of planning case**

The planning procedure is completed. The lay-out plan of the Óbuda Island is adopted. Project implementation, the construction activity has not yet begun. Currently the archeological explorations are carrying out.

### **23. Follow-up actions planned and their timeline**

After the SEA the project must undergo as well the EIA procedure. The concerned NGOs have already indicated that they intend to participate in that procedure.

### **24. Conclusions**

We may conclude that the environmental report gives a good overview of the possible environmental effects and problems. On the other hand due to the lack of data and background surveys, the report shows sometimes only the subjective opinion of the preparer. The environmental report assesses the plan as neutral from sustainable point of view, namely the advantages on the whole compensate the disadvantages.

Unfortunately, we may assume that it is not real, because the scientific background information misses in several aspects. The report relies on accomplished studies and not on own measures and models. In our opinion the disadvantages overwhelm the advantages.

As aforementioned this lay-out plan can not ensure an optimal compromise between the private and public interests.

Finally, we find it important to emphasize, that if the preparer decides to enter into the SEA procedure also in lack of legal obligation, then the provisions of the SEA Decree should be followed. In this concrete case there was only an environmental report, but any important guarantees of the SEA Decree could not have been enforced. The Municipality got through the draft

without any modifications, however there were suggestions from NGOs and in the environmental report.

## **25. Lawyer and organization**

There was no legal representation in the case.<sup>1</sup>

## **26. Contact information**

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<sup>1</sup> Opinion on the lay-out plan of the Óbuda Island based on the environmental report prepared by ÖKO Rt. (VEDEGYLET – Protect the future, Benedek Jávör and Tibor Várady)

Opinion on the lay-out plan of the Óbuda Island

(Live Chain for Hungary: Péter Kajner, Clean Air Action Group: András Lukács, S.O.S. for Békásmegyer: Tibor Richvalski, Association for Óbuda-Békásmegyer: János Kozma, Rodata SE: László Köteles, Association for Island-protection: Gáspár Hegedűs)

The mentioned opinions helped us in compilation of this case study.