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To: An Bord Pleanála
64 Marlborough Street,
Dublin 1.

BB/COC 29th September 2022

Our Clients: John Conway of 91 St. Nicholas Avenue, Dundalk, Co. Louth; and the Louth Environmental Group of 91 St. Nicholas Avenue, Dundalk, Co. Louth.

Re: Proposed Strategic Housing Development (Case No. 314458)
North West corner of Omni Park Shopping Centre, Santry and Santry Hall Industrial Estate, Swords Road, Dublin 9.

Demolition of buildings on site, construction of 457 no. apartments, creche and associated site works.

Closing date for submissions: 30th September 2022

Dear Sirs,

On behalf of the above-named Clients, we wish to lodge the within written submissions/observations on the proposed Strategic Housing Development comprising the demolition of the existing building on site and construction of. 457 no. Apartments, crèche, and associated work at Omni Park Shopping Centre, Santry, Swords Road, Dublin9 pursuant to s.8 of the Planning and Development (Housing) and Residential Tenancies Act 2016.

The grounds and reasons for our submission/observations are detailed hereinafter.

Planning and Development Act 2000, Section 28 of the Planning and Development Act 2000 (as amended) & Guidelines

(i) The Board should refuse to consider and cannot grant permission for the proposed development in circumstances where such grant would have to be justified by reference to the Guidelines for Planning Authorities on Urban Development and Building Height 2018 and the Apartment Guidelines,

dated December 2020. These Guidelines and the specific planning policy requirements contained therein are *ultra vires* and not authorised by section 28(1C) of Planning and Development Act 2000 (as amended). In the alternative, insofar as section 28(1C)) purports to authorise these Guidelines, including the specific planning policy requirements, such provision is unconstitutional/repugnant to the Constitution. The said Guidelines are also contrary to the SEA Directive, insofar as they purport to authorise contraventions of the development plan/local area plan, without an SEA being conducted, or a screening for SEA being conducted, on the variations being brought about to the development plan/local area plan as a result of same.

(ii) The proposed development materially contravenes the requirements of the Development Plan in relation to unit mix and floor areas, which cannot be justified by reference to the Apartment Guidelines, SPPR 1 and SPPR 8 set out therein.

(iii) The proposed development materially contravenes the requirements of the Development Plan in relation to building height. The proposed development and documentation presented does not comply with the requirements of the Guidelines for Planning Authorities on Urban Development and Building Height 2018 ('*the Height Guidelines*'), including the SPPR's set out therein and the Criteria and Specific Assessments identified therein. The Board cannot grant permission for the proposed development in circumstances where the relevant criterion under the Height Guidelines, which are mandatory in nature, cannot be satisfied. In this regard, reliance on SPPR1 of the Height Guidelines is misplaced (pg.13 of the Developer's Material Contravention Statement). The Developer's purported implementation of SPPR3 and the Specific Assessments detailed therein is flawed – in this regard it is noted that no assessment of bird impacts has been assessed.

(iv) The Board cannot grant planning permission for this development under Section 37(2)(b) of the Planning and Development Act 2000. The proposed development is not of strategic or national importance – the Developer has not adduced any objective basis for asserting that the proposed development is of strategic or national importance. Purported reliance in the definition of "*strategic housing development*" under the 2016 Act as a basis for asserting that the proposed development is of strategic or national is erroneous.

(v) Inadequate communal open space is provided having regard to the requirements of the Development Plan. The results of the Shadow/Sunlight Amenity submitted indicate that a significant portion of those areas of genuine communal open space are below the 2-hour requirement (2 hours of sunlight on the 21st March) in accordance with BRE Guidelines. The proposal is not in compliance with the said Guidelines.

(vi) Inadequate consideration has been given to infrastructure to support the development.

Environmental Impact Assessment Report (EIAR)

Article 2(1) of Directive 2011/92 (as amended by Directive 2014/52/EU) governs the relationship between giving consent and the assessment of the environmental effects:

> "Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment...."

(i) The process provided for under the 2016 Act contravenes the requirements of the EIA Directive and the public participation requirements set out at Art.6 in circumstances where the public concerned are deprived of the opportunity to view and consider relevant statutory reports and advices obtained by the Board, such as the report from the Planning Authority/Chief Executive (a statutory consultee under the 2016 Act), prior to the making of observations/submissions on the proposed development – which such reports contain relevant information in relation to EIAR.

(ii) The Board lacks ecological and scientific expertise and/or does not appear (in light of the information available on the Board's website) to have access to such ecological/scientific expertise in order to examine the EIA Screening Report as required under Article 5(3)(b) of the EIA Directive, which states that in order to ensure the completeness and quality of the

environmental impact assessment report, *inter alia*, "*the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report.*"

(iii) The Proposed Development, and documentation submitted, including the Planning Report, does not comply with the requirements of the Planning and Development Act 2000, the Planning and Development Regulations 2001, or the EIA Directive. The information submitted by the developer is insufficient and contrary to the requirements of the EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) and the provisions of national law, including the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

(iv) Inadequate assessment has been carried out in relation to the potential hydrological connection between Santry Demesne pNHA, North Dublin Bay pNHA and the site via the Santry River.

Screening for and/or Appropriate Assessment

By way of general summary, the information presented by the Developer is insufficient, contains lacunae and is not based on appropriate scientific expertise – as such the Board cannot comply with the requirements of the Habitats Directive and relevant provisions of national law under the Planning and Development Act 2000. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment of the implications of a plan or project for the site concerned implies that, before the plan or project is approved, all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is so when there is no reasonable scientific doubt as to the absence of such effects (see Case C-461/17, *Holohan & Ors v. An Bord Pleanála, Preliminary Reference*, 7 November 2018, para.33; see also Case C-243/15, *Lesoochranárske zoskupenie VLK*, 8 November 2016, para.42; *Commission v. Spain*, Cace C-404/09, 24 November 2011, para. 99; and *Grüne Liga Sachsen and Others*, Case C-399/14, 14 January 2016, paras. 49 and 50). An Appropriate Assessment carried out under Article 6(3) may not have lacunae and must contain

complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned.

(i) The Proposed Development does not comply with the requirements of the Planning and Development Act 2000 (as amended) (*under Part XAB of the 2000 Act (ss.177R-177AE)*) and the Habitats Directive. Due to inadequacies and lacunae in the AA Screening Report and NIS prepared by the Developer the Board does not have sufficient and/or adequate information before it to carry out a complete AA Screening and AA in relation to the proposed development.

(ii) Inadequate information has been provided in the NIS to screen out the potential impact of the proposed development on birds – reference to generic statements is not a substitute for expert scientific opinion as to the potential impact of the proposed development, during both construction and operational phases on birds, including bird flight lines and collision risks.

(iii) The AA Screening assessment, included in the NIS, does not provide sufficient reasons or findings, as required under Art.6(3) of the Habitats Directive and national law, to the requisite standard – the conclusions/statements made therein do not identify any clear methodology and no analysis is offered in respect of the AA Screening conclusions in respect of the protected sites "screened out" at the said AA Screening stage.

(iv) The "Zone-of-Influence" referred to in the NIS is not reasoned or explained – it is unclear how such a zone was so determined – the criteria for determining a "zone-of-influence" has no basis in law. Furthermore, the limitation of the consideration of protected sites to a 15km radius is not explained and it is unclear how such a limitation was determined.

(v) No regard and/or inadequate regard has been given to the cumulative effects of the proposed development, in combination with other development in the vicinity, on the protected sites.

(vi) The Santry River is approximately 675m to the north of the Site and flows in a south-east direction into North Dublin Bay. The Santry River was assigned a Q-value of 2-3 (Poor Status) in the most recent EPA monitoring

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survey carried out (2019, station code: RS09S010300). This river is At Risk of not meeting its Water Framework Directive (WFD) status objectives

(vii) Reliance on the Ringsend WWTP is flawed given the precarious status of same.

(viii) It is impermissible to rely on mitigation measures/measures designed to negate the impact of a proposed development on the conservation status of a protected site – see AA Screening Report consideration of the is a potential hydrological connection between the Site of the Proposed Development and North Dublin Bay SAC and North Bull Island SPA.

We also enclose herewith fee in the sum of €20.00.

Yours faithfully,

BKC Solicitors