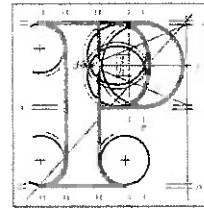


**Our Case Number:** ABP-317121-23

**Your Reference:** Nesta Ltd



An  
Bord  
Pleanála

Ken Kennedy Solicitors  
31 Heytesbury Lane  
Ballsbridge  
Dublin 4

**Date:** 15 February 2024

**Re:** BusConnects Swords to City Centre Bus Corridor Scheme  
Swords to Dublin City Centre

Dear Sir / Madam,

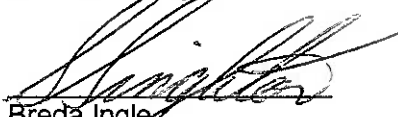
An Bord Pleanála has received your recent submission in relation to the above-mentioned proposed road development and will take it into consideration in its determination of the matter.

Please note that the proposed road development shall not be carried out unless the Board has approved it or approved it with modifications.

If you have any queries in the meantime, please contact the undersigned officer of the Board on at [laps@pleanala.ie](mailto:laps@pleanala.ie)

Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,



Breda Ingle  
Executive Officer  
Direct Line: 01-8737291

HA0

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64 Marlborough Street  
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**IK**  
**KEN KENNEDY**  
SOLICITORS

An Bord Pleanála (Strategic Infrastructure Division)  
64 Marlborough Street  
Dublin 1  
D01 V902  
**BY HAND**

<b>AN BORD PLEANÁLA</b>	
LDG-	_____
ABP-	<u>317121-23</u>
<b>07 FEB 2024</b>	
Fee: €	_____ Type: _____
Time: <u>14.48</u>	By: <u>hand</u>

**Our Ref:** DR/KEF001/0020  
**Your Ref:** ABP-317121-23

7<sup>th</sup> February 2024

Dear Sir/Madam

**Re: Submission on NTA RESPONSE: Swords to City Centre Core Bus Corridor Scheme Compulsory Purchase Order 2023. ABP Ref. 317164.**

**1.0 INTRODUCTION**

We<sup>1</sup> act on behalf of Nesta Ltd<sup>2</sup> ('Nesta') which operates a warehousing and ancillary office enterprise at Swords Road, Santry, Dublin ('Nesta Santry') and are writing to you further to an invitation received from the Board to make an observation on a Response document delivered to the Board by the NTA on or about 23<sup>rd</sup> November 2023.

The NTA's response includes specific commentary on Nesta's objection previously delivered to the Board (copy at Appendix 1) and states at pg 9-10<sup>3</sup>, inter alia, that:

- i) *"Access When roads and streets are being upgraded, there will be some temporary disruption / alterations to on-street and off-street parking provision, and access to premises in certain locations along the Proposed Scheme. Local arrangements will be made on a case-by-case basis to maintain continued access to homes and businesses affected by the works, at all times, where practicable. As described in Section 5.5.3.2 of Chapter 5 Construction of Volume 2 of the EIAR, 'details regarding temporary access provisions will be*

<sup>1</sup> Ken Kennedy Solicitors, 31 Heytesbury Lane, Ballsbridge, Dublin 4

<sup>2</sup> 53 Park West Road, Dublin 12, D12 F8RK.

<sup>3</sup> NTA Observations on the Proposed Scheme Submissions.

*discussed with residents and business owners prior to construction starting in the area. The duration of the works will vary from property to property, but access and egress will be maintained at all times'. Detailed accommodation works plans will be prepared in consultation with landowners in line with any formal agreements and in accordance with any embedded mitigations identified in the EIAR or conditions/modifications from An Bord Pleanála in relation to the CPO.*

- ii) Planning Context As outlined in point i) above, vehicular access to the premises will not be blocked or restricted as a result of the Proposed Scheme at the Construction Phase . During the Operational Phase, there will be no restrictions to the access, as indicated on Sheet 14, General Arrangement Drawings in the EIAR, Volume 3 Figures, Chapter 4 Proposed Scheme Description, 03. The extract of the General Arrangement drawing is shown in Figure 2.3.*
- iii) Impact to Business The Proposed Scheme has been designed to deliver upon the scheme objectives set out in Chapter 1 of the EIAR, which include enhancement of the potential for cycling by providing safe infrastructure for cycling. In some areas, land acquisition is required to deliver what has been determined to be the most appropriate design configuration that meets these objectives. All areas included in the CPO have been carefully considered and only included where deemed absolutely necessary to meet the scheme objectives and to construct the scheme with permanent and temporary acquisitions respectively. Chapter 10 (Population) in Volume 2 of the EIAR includes an assessment of the impact on commercial properties as a result of land take during both the Construction Phase (Section 10.4.3.2.2.1) and the Operational Phase (Section 10.4.4.2.2.1). The commercial properties which were assessed are listed in the Chapter's Appendix A10.1 (Schedule of Commercial Businesses) in Volume 4 Part 3 of the EIAR, of which the Nesta facility in Santry is entry number 41. The facility was not assessed as being significantly impacted by either the construction or operation phases of the Proposed Scheme as summarised in the aforementioned Sections. In this specific area, the proposed cross-section and subsequent land acquisition have been considered and deemed necessary to facilitate the optimum scheme as presented in EIAR Volume 3 Figures, Chapter 4 Proposed Scheme Description, General Arrangement drawings. If the CPO is confirmed by An Bord Pleanála, a Notice to Treat will be served on each landowner whose land is being acquired. Following service of the Notice to Treat, each landowner will be required to submit a claim for compensation and as part of this process, the NTA will pay the reasonable costs (as part of the claim) for the landowner to engage their own agent / valuer in preparing, negotiating, and advising on compensation."*

A copy of Nesta's previous submission is at Appendix 1 to which the Board is referred.

Our Client (Nesta) notes the content of NTA's response. However, having reviewed the response it is considered that it does not address Nesta's key concerns in that:

Access: Nesta's initial submission specifically took issue with the vagueness of language used in the application documentation which referred to, inter alia, access being maintained "*where practicable*". Nesta's submission also stated that it is critical, given the nature of its business, that vehicular access be maintained at all times. The NTA's response repeats the phrase that access will be maintained "*where practicable*". It however then also separately states that access will be provided "*at all times*". This appears contradictory and this issue was previously pointed out in Nesta's original submission. Either access will be provided '*at all times*' or it will not be provided at all times and is unclear what '*where practicable*' means in this context. The response is also silent on whether vehicular access will be maintained. Access and in particular vehicular access 24/7 is a critical issue for Nesta. Nesta's property and business cannot be accessed from any other road. Given the nature of the business (self-storage warehousing and ancillary office) any impediment to the existing vehicular access point, whether it be on a permanent or temporary basis, would be devastating to Nesta's business and would also adversely impact customers whose goods are stored on site.

Planning Context: The NTA's response states that the question of access had been clarified in point i) of its response: "*As outlined in point i) above, vehicular access to the premises will not be blocked or restricted as a result of the Proposed Scheme at the Construction Phase*". With respect, as outlined above "i)" of the response does not expressly state that vehicular access will be maintained at all times and also separately refers to access being provided "*where practicable*", which is ambiguous. Vehicular access is a key issue for Nesta. Insofar as the site is zoned 'GE', the purpose of which is to facilitate warehousing and logistics, Nesta considers that interference with vehicular access for an unknown period/duration would be contrary to proper planning and sustainable development in that it would undermine the purpose of the zoning in the recently adopted Development Plan.

Impact to Business: The impact of closing vehicular access to the site, even on a temporary basis, would, for the reasons already set out in Nesta's initial submission (Appendix 1) have a significant impact on the viability of the business. Given the ambiguity of whether vehicular access will actually be maintained at all times, and the nature of Nesta's business model (self-storage warehousing and ancillary office), it is not accepted, absent clarity on the matter of vehicular access, that the business would not be significantly impacted, where access is required 24/7.

Nesta therefore, and notwithstanding the NTA's response, considers that the Order, if confirmed by the Board, would disproportionately impact on its property rights, will diminish the value of its property and business and is contrary to proper planning and sustainable development. Nesta objects to the Order and calls on the Board to refuse to confirm the Order.

In the event that the Board is minded, notwithstanding Nesta's sustained objections, to approve the Compulsory Purchase Order we understand that s.49 of the Roads Act

1993 empowers the Board<sup>4</sup> to require the authority to provide a means of access during the course of construction:

*"(4) The Minister may, in any case where he considers it reasonable to do so, direct the road authority to provide for any person who, by reason of the implementation of a motorway, busway, protected road or service area scheme—*

*(a) is permanently deprived of reasonable access to or from his property or to or from one part of his property to another — a suitable alternative means of access,*

*(b) is, during construction, temporarily deprived of reasonable access to or from his property or to or from one part of his property to another — a temporary means of access during the course of such construction, and the road authority shall comply with any such direction."* [Emphasis added]

Nesta therefore urges the Board to direct that vehicular access to Nesta Santry be provided at all times.

Alternatively, the Board might consider amending the Order such that it will not require the acquisition of Nesta's lands.

Yours faithfully,

*Danny Ryan*

**Ken Kennedy Solicitors**

Encl. [fee]  
Appendix 1

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<sup>4</sup> See section 215 of the Planning and Development Act, 2000 (as amended).