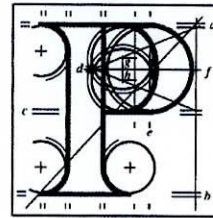


Our Case Number: ABP-314942-22

Your Reference: Trustees of Hermitage Golf Club



**An
Bord
Pleanála**

Kieran O'Malley and Company Ltd.
Town Planning Consultants
2 Priory Office Park
Stillorgan Road
Blackrock
Co. Dublin
A94 P281

Date: 12th July 2023

Re: BusConnects Lucan to City Centre Core Bus Corridor Scheme
Lucan to Dublin City Centre

Dear Sir / Madam,

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

Please note that the proposed development shall not be carried out unless the Board has approved it with or without modifications.

If you have any queries in relation to the matter, please contact the undersigned officer of the Board.

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

Yours faithfully,

Sarah Caulfield
Executive Officer
Direct Line: 01-8737287

AA02

Tell	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhride	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

The Chairperson
An Bord Pleanála
64 Marlborough Street
Dublin 1

AN BORD PLEANÁLA	
LDG-	_____
ABP-	_____
10 JUL 2023	
Fee: €	_____ Type: _____
Time:	17:15 By: <i>H. O'Malley</i>

10 July 2023

RE: **Our client: Trustees of Hermitage Golf Club ("Hermitage" or "our client")**
An Bord Pleanála reference: 314942-22
Bus Connects Lucan to City Centre Core Bus Corridor Scheme (the "Scheme")

A Chara,

We act for Hermitage, and we make this submission in respect of the application to approve the Scheme. We refer to our previous correspondence which we attach at appendix A, together with Reports prepared for Hermitage to support this submission, which we attach at Appendix B.

1. We are informed that An Bord Pleanála (the "Board") intends to consider the Scheme Approval application at the same time and together with the application for Lucan to City Centre Core Bus Corridor Scheme (Compulsory Purchase Order) 2022 under An Bord Pleanála reference 314988-22 (the "Proposed CPO").
2. While we disagree with the Proposed CPO being considered at the same time and do not consider it possible to properly address the effects upon our client's lands, we note that

the two submissions will be read together and therefore any submissions made in respect of the Proposed CPO can equally apply to this submission.

3. We draw the Board's attention to our concerns regarding its refusal to hold an oral hearing in respect of either the Scheme or the Proposed CPO. While we understand that the Board has a discretion in respect of whether to hold an oral hearing, it is grossly unfair and prejudicial to our client not to hold an oral hearing given the complexity of the issues as they affect our client. We respectfully urge the Board to reconsider its decision not to hold an oral hearing in the light of these submissions.
4. We continue to await a response from the Board with documentation evidencing the basis upon which it decided not to hold an oral hearing, as previously requested by way of phone and attendance at the offices of the Board on 13 June 2023 and by way of letter dated 21 June 2023.

Ownership and occupation of Hermitage lands

5. We are deeply concerned by the absence of any appropriate investigation as to the identity of Hermitage lands, the nature of the impacts of the Scheme on those lands, or even the extent of ownership of the lands that is required to be considered.
6. In our separate submission on the Proposed CPO, we note the confusion contained in the schedules as to who the owners of the land are. There are references to persons both owners and occupying the land that Hermitage is entirely unaware of and dispute any interest of such persons named in the lands. Even the most cursory of examinations would have identified that many of the persons listed are not appropriate and the schedules could only have been prepared on the basis of no or no adequate investigation of title.
7. This absence of investigation is symptomatic of the complete lack of investigation as to the profound negative impact of the Scheme on Hermitage and it would behove the NTA to engage in a detailed analysis so as to properly inform the Board of the true impacts of the Scheme. It is respectfully submitted that no such investigation has been carried out.

8. We have referred to these defects in the submission on the Proposed CPO, but we reiterate again the absence of any proper identification of the boundaries of Hermitage's land.
9. The inaccuracy in the manner in which the golf course land boundaries have been identified.
10. The complete omission of the dwelling house (the original gate lodge).
11. The lack of any analysis of the impacts on a number of protected structures which lie within the curtilage of Hermitage including the estate wall which is to be demolished.
12. The removal of at least 700, perhaps up to 1,000 trees within the curtilage of a protected structure which ought to have been assessed. We are further concerned by the complete dismissal and lack of any investigation of the impacts on the dwelling house beside the sure weld site which comprises the old entrance/gate lodge into Hermitage House. The NTA has failed to consider the impact on this dwelling house as a protected structure. Clearly, the Scheme could not be approved when there is a complete absence of any analysis of the impacts of the Scheme on the property in this respect.
13. We are equally concerned by the absence of identification of the property rights to be extinguished. Again, these rights have not even been identified by the NTA and there clearly has been no analysis as to the rights Hermitage has. Rather, the NTA merely mentions a general extinguishment of rights in the schedule, which falls far below the standard that is required and as such, is entirely insufficient.
14. The NTA's assessment of material impacts on a material asset, therefore, is entirely lacking and accordingly there are no mitigation measures contained in the proposal to deal with the significant adverse impacts on Hermitage and it is impossible for the Board to consider the impacts on Hermitage in these circumstances.

Boundary Wall/Netting

15. The proposed boundary wall will replace the original estate wall, part of which exists within Hermitage grounds and which, as the boundary of the curtilage of the protected structure, is itself a protected structure.
16. This appears never to have been addressed in the documentation lodged by the NTA.
17. The removal of the existing estate wall, the trees and the construction of the proposed boundary wall will profoundly affect the character and amenity of Hermitage golf course by, among other matters, changes in the groundwater regime, vibration, extraordinary high levels of noise generated by the excavation, processing and removal of rock, and the removal of the 700 to 1,000 trees (when changes in hydrology are considered). The NTA has failed to consider or address these significant negative impacts.
18. The NTA proposes installing netting which is to be 15 metres in height. However, it is respectfully submitted that this proposed height has not been properly considered. The height and extent of the proposed netting is totally inadequate for a golf course, where golf balls are hit to heights far exceeding the height of the proposed netting. The proposal to install netting also ignores the fact that the 16th hole will be unplayable if the Scheme goes ahead and is therefore irrelevant.
19. Moreover, it appears from the drawings submitted by the NTA that the netting, which is proposed as permanent fencing, is located outside the extent of the permanent land take. This means that this element of the Scheme cannot be considered as no part of the Scheme which proposes permanent works can be considered on lands which are not intended to be acquired permanently.
20. The entire Scheme therefore in this regard is completely misconceived.

Protected Road/Section 51 Roads Act

21. It is respectfully submitted that the NTA has adopted a completely inappropriate procedure and is seeking to suggest that the Scheme entitled 'Bus Connects: Lucan to City Centre Bus Corridor Scheme' is not a busway.
22. It is inconceivable that, having regard to the primary purpose of the Scheme (namely the provision of a bus corridor, which is the primary element of the Scheme) that the NTA suggests that it should not be considered a busway for the purposes of Section 51 of the Roads Acts.
23. As a busway, it falls within a different consent procedure.
24. In response to the earlier submission made, the NTA sought to characterise the Scheme not as a busway but a bus lane. It is submitted that the plain language of the legislation requires that this approach which the NTA seeks to avoid the application the necessary statutory procedures cannot be allowed.
25. Accordingly, the manner in which the Scheme is entitled, and to which the public are required to engage with in these public notices, must be construed as requiring the Scheme to be characterised as a busway and not in the manner which the NTA now seeks, without any basis in terms of the plain language of the legislation, would require to be applied.

GDA Strategy

26. It is submitted that there is no evidence that a strategic environment assessment ("SEA") has been carried out in respect of the GDA strategy, or if it has that it has been in any sense relied upon or incorporated into the Scheme.

27. It is simply unacceptable therefore that procedure and decision notwithstanding a requirement to give some purpose and meaning to this SEA that the NTA should adopt the approach that they do in the submission made, and the approach in the strategy upon which reliance is placed never contemplated nor could ever contemplate by virtue of the requirements of the SEA Directive the type of impacts that the Scheme is now proposed to create on Hermitage lands.

28. Accordingly, we respectfully submit that the Board must reject this approach and require that the scope of the works be provided on lands outside those of Hermitage.

Climate Action Plan

29. We are further concerned that the provisions of the Climate Action Plan have not been incorporated into the Scheme. The entire documentation is based on a plan that was the subject matter of a Supreme Court order quashing its provisions as being inappropriate and inadequate.

30. This required the NTA to reconsider the basis of its application and to incorporate the provisions of the current and only valid Climate Action Plan into its proposal. This is also what the Board is required to do and the Board has been given no information, no analysis, or no basis upon which to address this proposal relative to the current and legal Climate Action Plan that is now in force.

31. It is extraordinary that a public authority has decided to ignore the current Climate Action Plan and instead rely on a plan which at the date of the consideration of the application has no legal validity.

32. This of course is critical from Hermitage's point of view because if the provisions of the existing Climate Action Plan were adhered to, it would result in a significant reduction of car traffic and consequently the type of increase in such traffic that is relied upon by the NTA to attempt to address the alternative submitted by Hermitage would have no basis. Accordingly, it is critical that the requirements of the current Climate Action Plan be

addressed not just because the Board is required to have this level of information to allow is to consider whether it is consistent with that plan, but also because of the clear prejudice to Hermitage if the current plan is not incorporated into the documentation lodged.

Alternative Design Submitted by Hermitage

33. By virtue of the failure to hold an oral hearing, Hermitage is prejudiced in terms of its presentation of the alternative proposal.
34. Hermitage contends that the objectives of the Scheme can be accommodated within the existing public road, that is the area between the road boundaries, and while some technical amendments are required (for example speed limit reduction and a reduction in lane widths), this is entirely appropriate when one considers the impact of the alternative, namely the destruction to Hermitage Golf Club, the removal of at least 700 perhaps up to 1,000 trees, the removal of protected structures, and the destruction of a major amenity with very significant public cost implications which will arise from the impact of the NTA Scheme on the course.
35. The response of the NTA lacks all conviction and is set out primarily at page 191 of its response.
36. There is a perplexing reference to TII as if this is the body which determines such matters. It is respectfully submitted that these issues are a matter for the Board and not TII whose agenda is primarily one of road building and is not an appropriate body to determine matters of a type which must be considered by the Board and where the submissions made by Hermitage are critical to the type of issues that the Board must consider, and cannot qua Board be the subject of a veto by TII who have not, as far as we are aware, commented.
37. The issue of this being a major artery must consider its location now having regard to the Scheme within an existing built up area and which forms part of a road scheme where, for

example, speed limits change along that section of Scheme road from the Royal Hospital Kilmainham from 60kmph to 80kmph and back to 60kmph which is exactly the speed limits suggested by Hermitage. The speed limits proposed therefore are already in existence along the road which is suggested by Hermitage and would be consistent with the general speed limits that apply elsewhere along the full extent of the Bus Connects site. If these speed limits are appropriate for significant sections of the road where the Bus Connects route is already proposed for then it must be acceptable here.

38. With regard to the enforcement there is no basis for this objection and the existing speed limits of 60 kmph are easily and effectively enforced by speed cameras.

39. It is a matter exclusively for the Board to consider if the alternative submitted is reasonable and this decision taken thereafter must be reflected and complied with in the approach adopted by other State and Local Authorities. This is always the case with matters where the Board has to decide on issues of this type.

40. There is simply no credibility in relying upon a difficulty accommodating the Scheme within the existing road network on the basis of speed limits when the very speed limits already occur on sections of the Scheme road and when the reduction in car volumes is a fundamental part of the Climate Action Plan, 2023 and indeed required on the various parts of the Scheme to which this proposal relates.

41. There is no engagement with the existing Climate Action Plan as has been set out earlier in this submission and the wrong plan has been assessed. In the submission made this is acknowledged where the submission states that the Climate Action Plan 2021 has been "updated" by the Climate Act Plan 2023.

42. This is inaccurate and misleading. It is a new Climate Action Plan and has not been incorporated into the EIA. The Scheme is inconsistent with the 2023 Plan and there is no basis upon which the Board can implement the Scheme on the basis that it has no information as to the extent to which it is consistent with or in compliance with the said 2023 Plan.

43. However the position must be that because sector emission ceilings and the implementation of carbon budgets are now much higher and stricter than those in the quashed 2021 Plan, Hermitage's proposals are far more consistent with the 2023 Plan than with the quashed 2021 Plan which has been submitted to the Board. The Hermitage proposal could achieve the 20% reduction in total vehicle kms, the reduction of fuel usage and the significant increases to public transport trips and motor share which is precisely the opposite of what the Scheme sought to be approved seeks to achieve.

Impact on Hermitage Golf Club

44. The submission on the compulsory acquisition sets out the impact on Hermitage and will render the golf course unplayable.

45. It is impossible to run a golf course where one can only play 17 holes and that is the insurmountable effect of the proposal on Hermitage. The 16th hole will not be playable and to suggest that the land take which extends over and into the fairway and excludes all the rough between the fairway and the site boundary in terms of playability. This is tantamount to taking the entirety of the hole. It simply cannot be played given the land take alone.

46. When one adds to that the removal of the trees, the levels of noise and vibration, the removal of the screening and the absence of any replacement protection, and the impact on the amenity of the course, the golf course simply cannot function as a golf course. Accordingly, the golf course will not be viable, membership will leave and the land will be left as there is insufficient land available to reconfigure the course.

47. In addition the 7th and 17th holes where the t-boxes are located close to the working area cannot also operate because of this proximity, because of the levels of noise, dust which will on occasions extend to late 80dB or early 90dB levels and to the risk of wayward shots extending into this area with a threat to life, to equipment and to peoples health and safety as well as traffic on the adjoining road where the existing protection of the trees

once removed are such that it will now inevitable that the course cannot operate because of this risk or with any level of comfort, security or amenity for players. These matters have been set out in the submission as well as the impact on the amenity and the visual quality of the course which is the very thing that gives it its status as a championship course.

48. While the 16th will be unplayable because of the impact on the 7th and 17th it is not possible to redesign the course and even if the course could be redesigned, the period of time which it would take to redesign it would mean that for the period of the construction works, the period following completion, for which consent will then be required for these redesigns and the period of implementation would create such an extended period for the non-operation of a golf course is likely to extend over a decade at least that it renders it inoperable as a golf course in practical terms.

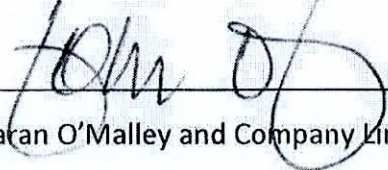
49. The most concerning part of the approach of the NTA whereby none of these matters are considered. We invite the Board to consider the documentation lodged to determine whether other than generalised considerations of noise which extend to the broad study area with no specific reference to a noise and dust sensitive location like Hermitage, to the dust emissions – again where no specific analysis of Hermitage golf course, to the protected structures – again no specific reference to Hermitage, to the impact on the dwelling house – again no specific reference to Hermitage, to a description of the extent of the lands owned by Hermitage – again inaccurate and no correct analysis in that regard, to the ownership of Hermitage – again confusion and error replete throughout the documents, in terms of access to Hermitage – again no identification or consideration of the right of access and how that right of access will be affected nor even knowledge as to what rights in fact exist. When all of these factors are considered, it cannot be said that there has been any or any appropriate consideration of the impact on Hermitage. The only section where Hermitage is considered is under ecology but again with the omission of the River Liffey from its lands this is also incomplete and inaccurate.

50. Accordingly, we respectfully request that the application be rejected on the basis of a failure to comply with the obligations under the EIA Directive, the Habitats Directive, the

SEA Directive but above all the failure to consider the impact on a material asset, namely Hermitage Golf Club. The procedure adopted is contrary to the Scheme for approval of a busway.

51. It is of the deepest concern that the Scheme should be prepared by a public authority in the manner that it has without any consideration and based on inaccurate documentation across a spectrum of issues vital to any adequate consideration of the impacts on Hermitage and seeks to suggest that approval could be given in all the circumstances would be to treat the procedure of assessment of impacts merely as a rubber stamp exercise. We trust the Board will refuse to approve the said Scheme.

Yours faithfully,



Kieran O'Malley and Company Limited

From: David Foy <dfoy@MHC.ie>
Sent: Monday, July 10, 2023 5:25 PM
To: Bord <bord@pleanala.ie>
Cc: Elaine Keating <elainekeating@MHC.ie>
Subject: ABP 314942-22 and ABP 314988-22 [MHC-MHCDMS.FID4845788]

A Chara

Please see attached submissions in respect of the above two related matters. Hardcopies of the submissions were hand delivered to your offices this afternoon.

Yours faithfully

David Foy
Associate
dfoy@mhc.ie | +353 86 167 3086

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The Chairperson
An Bord Pleanála
64 Marlborough Street
Dublin 1

BY HAND AND BY EMAIL

10 July 2023

Your ref:

Our ref: MHC/HERM01.24

MHC-31940200-1

Matter 1: Bus Connects: Lucan to City Centre Core Bus Corridor Scheme Compulsory Purchase Order 2022 (the "Proposed CPO")

ABP Reference: 314988-22

Matter 2: Bus Connects: Lucan to City Centre Core Bus Corridor Scheme (the "Scheme")

ABP Reference: 314942-22

A Chara

We act on behalf of the trustees of Hermitage Golf Club. We refer to the above two matters and to the Board's two letters dated 6 June 2023 inviting further submissions from our clients in respect of each matter.

Enclosed are copies of our client's submissions in respect of each matter.

You will note from our client's submissions that we respectfully request the Board to reconsider its decision not to hold oral hearings in relation to these two matters. We also wrote to the Board in this regard by letter dated 21 June 2023. In the light of our client's submissions, which raise genuine concerns as to the validity of the NTA's assessment of the Scheme and Proposed CPO, and of our letter dated 21 June 2023, we would be grateful if the Board would revisit its decision and confirm that oral hearings will now be facilitated.

Yours sincerely

MASON HAYES & CURRAN LLP

Dublin London New York San Francisco

MHC.ie
Partners - William Cormack (*Managing*) | Christine O'Donovan (*Chair*) | Catherine Allen | Julie Austin | Paul Bassett | Declan Black | Ron Boucher | Liam Brazil | Domhnall Breatnach | Sonya Bruen
Susan Bryson | Alan Burns | Nicola Byrne | Vanessa Byrne | Janet Caffrey | Niamh Caffrey | Niamh Callaghan | Nell Campbell | Gearóid Carey | Rachel Carney | Eoin Cassidy | Sarah Cloonan | Gemma Coady
Tonya Colbert | Ger Connolly | Cara Cooke | Keelin Cowhey | Melanie Crowley | Tom Davy | Ciara Deasy | Muireann Dennehy | Hannah Devoy | Robert Dickson | William Dillon-Leetch | Shane Dolan
Michael Doran | Conor Durkin | Laura Durning | Colm Farrell | James Fenelon | Helen Ferguson | Oliver FitzGerald | Rowena Fitzgerald | Jamie Fitzmaurice | Frank Flanagan | Liam Flynn | Karol Fox | Mark Fry
James Gallagher | Conall Geraghty | Stephen Gillick | Edward Gleeson | Michéál Grace | Cathy Grant | Liam Guidera | David Gunn | Anne Harkin | Jason Harte | Wendy Hederman | Jennifer Henry
Muireann Hernon | Michaela Herron | Liam Heylin | Brian Horkan | Margaret Hughes | Brian Johnston | Peter Johnston | Lisa Joyce | Rachel Kavanagh | Martin Kelleher | Catherine Kelly | Gerard Kelly | Tara Kelly
Marcus Kennedy | Rory Kirrane SC | Claire Lord | Eimear Lyons | Michael Madden | Kevin Mangon | Mark McCabe | Doris McCann | Robert McDonagh | Hazel McDwyer | Brian McElligott | Dermot McGirr
David McGovern | Justin McKenna | Peter McLay | Nicholas Metcalfe | Niall Michel | Colin Monaghan | Aoife Moran | James Murrin | Deirdre Munnely | Alice Murphy | Deirdre Nagle | Jevan Neilan
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Áine Quirke | Shane Reynolds | Judith Riordan | Liam Riordan | Robert Rooney | Elizabeth Ryan | Joy Saffin | Emer Shelly | Caisín Tobin | John Trout | *Of Counsel* - Una Burke | Paul Egan SC | Judith Curran

THE CHAIRPERSON
AN BORD PLEANÁLA
64 MARLBOROUGH STREET
DUBLIN 1
BY HAND
10 JULY 2023

HERM01.24
MHC-31940671-1

Re: **Our Client: Trustees of Hermitage Golf Club, Lucan, Co. Dublin (“Hermitage” or “our client”)**

An Bord Pleanála Reference 314988-22

Lucan to City Centre Core Bus Corridor Scheme (Compulsory Purchase Order) 2022 (the “Proposed CPO”)

Related Matter:

An Bord Pleanála Reference 314942-22

Bus Connects Lucan to City Centre Core Bus Corridor Scheme (the “Scheme”)

A Chara,

We refer to the above matter in which we act on behalf of Hermitage in relation to the Proposed CPO of lands comprising part of Hermitage Golf Club, Lucan, County Dublin (the “**Golf Course**”). We refer to previous correspondence, resting with the Board’s two letters dated 6 June 2023, and to the submissions previously made on behalf of our client and by the NTA, which we attach at appendix A, together with Reports prepared for Hermitage to support this submission, which we attach at Appendix B.

We refer to our Submission in respect of the Scheme Approval and request both submissions be considered in the consideration of whether to confirm the CPO.

Oral Hearing

We note with dismay your decision not to hold an oral hearing in respect of either the Proposed CPO or the Scheme application made by the NTA. We are deeply concerned by the lack of

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*Partners - William Carmody (Managing) | Christine O'Donovan (Chair) | Catherine Allen | Julie Austin | Paul Bassett | Declan Black | Ron Boucher | Liam Brazil | Domhnall Breatnach | Sonya Bruen
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Aine Quirke | Shane Reynolds | Judith Riordan | Liam Riordan | Robert Rooney | Elizabeth Ryan | Jay Sattin | Emer Shelly | Oisín Tobin | John Trout | Of Counsel - Una Burke | Paul Egan SC | Judith Curran*

engagement by An Bord Pleanála (the "**Board**") regarding those issues raised in our submission, which we find completely unacceptable.

The letter received from the Board appears a standard letter and does not engage with or address the position of Hermitage which had it been considered properly or at all would justify the holding of an oral hearing.

Following receipt of the Board's letters dated 6 June 2023, we immediately requested by way of phone and attendance at the offices of the Board on 13 June 2023 and wrote to the Board by letter dated 21 June 2023 seeking a copy of the documentation and correspondence grounding the decision not to hold an oral hearing. We followed this up with a telephone call and by attending the Board's office in person. Notwithstanding the clear urgency of the matter, we have still not received a response.

When we contacted the Board by telephone in June 2023 and requested that the reports and other documentation grounding the decision not to hold an oral hearing be made available. We were informed that there is a report by an inspector to the effect that there was no requirement to hold an oral hearing and that it was on foot of that report that the Board made its decision. We requested sight of this report as well as the minutes of the Board meeting so that we could consider the matter. However, we were informed that these would not be made available. We raised an issue regarding the time limit to challenge such a decision and the need to deal with these matters in the light of the prejudice that would occur. This is clearly unsatisfactory and should be avoided. This issue can only be pursued following the determination of the Board.

As of the date of this submission, we have still not received a response to our letter dated 21 June 2023. It has long been a custom that oral hearings are an inevitable and important part of the CPO process, and it is completely unacceptable and inappropriate that our client is not provided with even the most basic information regarding the basis of Board's decision not to hold an oral hearing in respect of the proposed CPO.

The Board's letters dated 6 June 2023 do not contain any reasons to ground the decision not to hold an oral hearing. In all administrative decisions there is an obligation to give reasons. This obligation is heightened in the case of the compulsory acquisition of constitutionally protected lands, as has been emphasised by the Courts in *Clinton v. An Bord Pleanála*, *Gormley v. ESB* and *Blascoid More v Commissioners of Public Works*.

In the present case, the Board falls far short of meeting this obligation. The Board's letters dated 6 June 2023 merely state that the Board has "*considered the case*". It is not known what this refers to. The letters do not state whether it refers to the Proposed CPO or Scheme application in its (whether the approval of the scheme or the confirmation of the CPO) totality, or the submissions made by Hermitage. The letter goes on to state that the Board "*has decided to determine the [application/compulsory purchase order] without an oral hearing*". No reasons have been provided and it is not possible to ascertain any reasoning from the scant information provided. The letters go

on to state that "*the Board has absolute discretion to hold an oral hearing and has concluded that this case can be dealt with adequately through written procedure*". The absence of any engagement as to the reasoning or basis of the decision is of extreme concern.

It is respectfully submitted that the Board's decision that the Proposed CPO and the Scheme application can be determined adequately through written procedure is premature and is fundamentally flawed. The decision fails to consider the issues that must be considered when arriving at such a decision, such as an assessment of the nature and type issues raised by the parties in their submissions to the Board. The Board's failure in this regard is evidenced by the third paragraph of each letter dated 6 June 2023, which invite further submissions.

The approach of the Board in this regard is extraordinary, it can only be concluded that the Board has anticipated that, regardless of what issues are raised in that submission, it will not hold an oral hearing. It is respectfully submitted that the decision on whether to hold an oral hearing should not have been made until all submissions invited in the letter of the 6th June have been considered are received.

The approach of the Board in this regard is contrary to fair procedures, contrary to natural and constitutional justice, and in breach of the heightened scrutiny required of the CPO process as set out in *Gormley v. ESB*. It is also unreasonable in the sense of which that term is defined in the judgment in *O'Keeffe v An Bord Pleanala*. Where a conclusion has been reached that a matter in respect of which a submission is yet to be made can nonetheless be determined by way of written submission and therefore the determination made particularly in the context of a hearing relating to a CPO be confirmed is ultra vires the powers of the Board, invalid and void. Our clients expressly reserve their position in respect of this issue.

We understand that the decision not to hold an oral hearing in respect of the Proposed CPO is the first time that such an oral hearing (or previously a public inquiry) has not been afforded to a party engaged in a CPO process. Our client's lands enjoy constitutional protection under Articles 40.3 and 43 of the Constitution and part of the lands enjoy further protection under Article 40.5 of the Constitution. The general principles of heightened scrutiny have been emphasised by the courts in many judgments, including in *Lord Ballyedmond v The Commission for Energy Regulation & Anor* and *Clinton v An Bord Pleanala*. It is acknowledged by the NTA that the Scheme will have a significant negative effect on the Golf Course, which is the highest level of impact that it is possible to ascribe. The Board's decision at this stage of the process that an oral hearing is not required is contrary to those principles.

Moreover, the Board's discretion must be exercised reasonably. Therefore, its discretion cannot be properly described as absolute because if a decision offends against the principles of natural or constitutional justice, or the principle of *audi alteram partem*, or fails insofar as practicable to vindicate the property rights of the landowner, or offends against the provisions of Article 40.3, Article 43 and/or Article 40.5 of the Constitution, then the absolute discretion framed in the letter "to

hold” which is different from “not to hold” an oral hearing has not been exercised in accordance with law.

It is not at all clear how the decision not to hold an oral hearing could have been made in the middle of the Proposed CPO process when the submissions have not closed and when at the same time as the decision not to hold an oral hearing was made, an invitation for further submissions was also made. Accordingly, the decision not to hold an oral hearing is fundamentally flawed and must be reconsidered. We respectfully request the Board to confirm on foot of this submission that the issue of whether to hold an oral hearing regarding the Proposed CPO and the Scheme application will be reconsidered.

The Board will be aware from Hermitage’s first submission that it expressly sought an oral hearing. An oral hearing is necessary having regard to the nature of the Proposed CPO and Scheme application and the documentation grounding the submission. In particular, the submission noted that there was significant conflict of evidence as between Hermitage and the NTA and between the documentation lodged, which cannot be resolved by way of written procedure. The caselaw supports our client’s view that this conflict of evidence can only be resolved by way of an oral hearing. We are concerned that the basis upon which the oral hearing was sought has not been engaged with by the Board, as evidenced by the letters dated 6 June 2023, or how the concerns raised therein can be resolved.

The Board will be aware that Hermitage has also sought an oral hearing in the submission made pursuant to section 51 of the Roads Act 1993 (as amended) i.e., that the Scheme comprises a busway and requires the procedure provided for in this regard. It is unclear as to whether the decision made was based on the same reasons for both procedures and the issues that the Board had regard to in arriving at the decision.

We do not know, nor have we been given any guidance as to how, if the decision not to hold an oral hearing is to be upheld, the consideration of the Proposed CPO and the Scheme application in the future will be conducted by the Board, whether this submission is the last submission, or whether the NTA will be allowed to reply to this submission and the extent to which Hermitage will be entitled to engage with any such response. This level of uncertainty and confusion is contrary to the Board’s obligations and to the heavy burden and high standard that the case law places upon it in the consideration and determination as to whether to confirm a CPO.

In summary, therefore, we require and would be grateful to receive confirmation that:

1. The final decision in respect of whether or not to hold an oral hearing regarding both the Proposed CPO and the Scheme application has not been made and will not be made until the submissions requested by letters dated 6 June 2023, as well as any further submissions that might be made in reply thereto, have been considered by the Board in full; and

2. That all documentation grounding or evidencing the decision not to hold an oral hearing, including any inspector's report, Board directions or the minutes of any meetings recording consideration by the Board, as well as the formal Board decision, will be made available forthwith.

NTA Response to Hermitage Submission

On 19 April 2023, the NTA made written submissions to the Board which address Hermitage's first submissions. Paragraph 2.4.2.1 of the NTA submission purports to justify the Proposed CPO on the basis it will provide a two-way cycle lane as part of a proposed segregated scheme, the primary purpose of which is to provide a bus-way.

The NTA's response does not address in any real or substantive way the submission made by Hermitage that there is adequate space in the existing public road, taken as being the area between the fences on either side of the road (which is the definition of a public road), to accommodate the proposed infrastructure. The Hermitage submission sets out relatively minor modifications (reduction in speed limits and accordingly lane widths which occur already on sections of the road) which would obviate and negate the need for any lands to be acquired from Hermitage and avoid the devastating impacts on the Golf Course and indeed the golf club generally and yet achieve fully the objectives of the scheme.

The submission made by Hermitage has regard to the cycle way on the opposite side of the road, a factor which does not appear to have ever been addressed or considered by the NTA given that a cycle way is already established at this location it would appear to be a decisive factor in addressing alternatives to be taken into account.

The NTA submission fails to engage with the proposals made in the Hermitage submission but relies instead upon previous conclusions reached by the NTA before the submissions of Hermitage was made to the Board. This is completely unacceptable. For example, it considers that the provision of a bus lane with a two way cycle lane and reducing the existing traffic lane was discounted on the grounds of road traffic demand and associated road safety. It is clear, therefore, that the NTA has not engaged with the submission made by Hermitage in respect of the alternative which would avoid any impact on the Golf Course achieve the objectives of the scheme which would result in a very significant cost saving and yet provide all the essential elements of the Scheme. It is entirely unsatisfactory and inappropriate that the NTA's submission has not engaged with the detailed submission submitted on behalf of Hermitage in respect of this alternative.

Hermitage had intended to produce design drawings at the oral hearing and, through the process of an oral hearing, engage with the Scheme designers to demonstrate that there was no need to acquire any land from Hermitage. Hermitage is confident that there would be an acceptance that its proposals would accommodate the essential elements of the Scheme without the need for land

and the consequent extent of damage to the environment that the NTA accepts is going to occur. All the land required as part of Hermitage's proposal is already within the NTA's ownership or control. The proposal is perfectly rational and indeed a version of this option was previously accepted by the NTA as being appropriate in earlier drafts. The basis relied upon by the NTA in its response reverting to the subsequent revisions of the Scheme is not credible and cannot be justified.

It appears the basis that is now relied upon relates to the prediction of increased traffic volumes. This is contrary to a subsequent submission at paragraph C on page 192 of the NTA submission which predicts significant reduction in traffic volumes. Paragraph 2.3.3.10 states "*Bus Connects is referenced as a major transport project that would have to deliver the 500,000 additional sustainable journeys*". The entire basis of the Scheme is to reduce car traffic. The reduction in capacity for car trips and transferring this to public transport and cycle ways is required to be adopted if the Scheme is to comply with the broad objectives underlining the Scheme. This is at the heart of the scheme objective which was sought to be developed by Hermitage in the scheme formulated by it to be addressed at the oral hearing

Hermitage has proposed an alternative which would avoid impacts on the environment and the amenities of the Golf Course and has proposed the cycle lane to be accommodated within the existing public road. The Board in considering whether to confirm the Proposed CPO and the Scheme must be satisfied that what is proposed is the least worst option, in accordance with the judgment of Clarke J in *Lord Ballyedmond* and the Supreme Court in *Clinton*. This will simply not be achieved if the Scheme proposed by the NTA is adopted, and it is impossible for the Board to conclude the issue of proportionality without an appropriate engagement on this issue.

The NTA acknowledges at section 10.4.3.1.1 that the effect of the Scheme on the Golf Club, (as detailed at paragraph 17.4.3.1) will be negative and very significant. While we profoundly disagree with the manner in which the impacts were considered and the information upon which this is based (even on the most superficial analyses conducted by the NTA, and without understanding or analysing the full extent of the impact, it is acknowledged that the Scheme will have a significant negative impact on the Golf Course and on the operation of the golf club.

It is critical therefore that the Board engages with the alternative proposed by Hermitage and allows for the type of engagement that has been sought by Hermitage to determine properly and appropriately whether the test laid down by the Superior Courts in respect of the consideration of a CPO has been met. That is, that the alternative proposal was more sufficient to meet the objective of the scheme. See Budd J. in *Blascoid Mor v. Commissioners of Public Works*.

The response of the NTA lacks all conviction and is set out primarily at page 191 of its response.

There is a perplexing reference to TII as if this is the body which determines such matters. It is respectfully submitted that these issues are a matter for the Board and not TII whose agenda is primarily one of road building and is not an appropriate body to determine matters of a type which must be considered by the Board and where the submissions made by Hermitage are critical to the

type of issues that the Board must consider, and cannot qua Board be the subject of a veto by TII who have not , as far as we are aware, commented.

The issue of this being a major artery must consider its location now having regard to the Scheme within an existing built-up area and which forms part of a road scheme where, for example, speed limits change along that section of Scheme Road from the Royal Hospital Kilmainham from 60kmph to 80kmph and back to 60kmph which is exactly the speed limits suggested by Hermitage. The speed limits proposed therefore are already in existence along the road which is suggested by Hermitage and would be consistent with the general speed limits that apply elsewhere along the full extent of the Bus Connects site. If these speed limits are appropriate for significant sections of the road where the Bus Connects route is already proposed for then it must be acceptable here.

With regard to the enforcement there is no basis for this objection and the existing speed limits of 60 kmph are easily and effectively enforced by speed cameras.

It is a matter exclusively for the Board to consider if the alternative submitted is reasonable and this decision taken thereafter must be reflected and complied with in the approach adopted by other State and Local Authorities. This is always the case with matters where the Board has to decide on issues of this type.

There is simply no credibility in relying upon a difficulty accommodating the Scheme within the existing road network on the basis of speed limits when the very speed limits already occur on sections of the Scheme Road and when the reduction in car volumes is a fundamental part of the Climate Action Plan, 2023 and indeed required on the various parts of the Scheme to which this proposal relates.

There is no engagement with the existing Climate Action Plan as has been set out earlier in this submission and the wrong plan has been assessed. In the submission made this is acknowledged where the submission states that the Climate Action Plan 2021 has been "updated" by the Climate Act Plan 2023.

This is inaccurate and misleading. It is a new Climate Action Plan and has not been incorporated into the EIA. The Scheme is inconsistent with the 2023 Plan and there is no basis upon which the Board can implement the Scheme on the basis that it has no information as to the extent to which it is consistent with or in compliance with the said 2023 Plan.

The Board must consider the primary purpose of the Scheme which is to provide a bus lane and cycle way reduce the number of car trips and provide for infrastructure within the Scheme that will achieve this objective. It is well established that the extent to which capacity in the road system will increase, there will be an increase in trip generation by private cars with the contrary also being the case and the balance between providing increased and efficient public transport facilities together with a reduction in the capacity for private car use is essential if the objectives of the Scheme are to be achieved.

This is precisely what is being proposed by Hermitage and can be accommodated within the existing road corridor. It is important in respect of the test which the Board must apply that this proposed option is thoroughly examined and considered. It is only in the course of an oral hearing that these issues can be thoroughly considered and resolved.

There is a further onus on the Board to engage with the NTA and require it to address the alternative proposed by Hermitage and be such as to satisfy itself as to whether this proposed alternative is or is not appropriate. The NTA's submission to date falls far short of addressing why the Scheme cannot be accommodated within the existing road corridor and fails to address at all the Hermitage submission.

Instead, the NTA relies on previous proposals that do not address specifically the approach proposed by Hermitage in its submission. Furthermore, it is respectfully submitted that the Board must have the necessary technical expertise directly available to it to engage with this issue, and cannot be bound by the submissions made by the NTA, which is intent on promoting its own Scheme. The Scheme must be independently audited by the Board so as to be satisfied that the extent of the impact on the Golf Club can be justified, in accordance with the judgment in *Lord Ballyedmond*.

This is a matter that the Board must independently verify and be satisfied itself that the Scheme is justified.

It is unrealistic and unfair to request that this matter be dealt with by Hermitage exclusively by way of a written submission. The Board cannot at this stage predetermine an issue and decide not to allow the requested oral engagement in the light of the complexity of this issue, the importance to the legal test that must be applied in respect of the Proposed CPO, and the approach of the NTA which refuses to engage in the submissions by Hermitage in that regard.

The Transport Strategy for the Greater Dublin Area 2016 to 2035

At paragraph 2.4.2.3 the NTA responds to the concerns raised by Hermitage in respect of the Transport Strategy for the Greater Dublin Area 2016 to 2035 (the "**Transport Strategy**"). The NTA accepts that it is a "*statutory strategy required under Section 12 of the Dublin Transport Authority Act, 2008...to provide a long-term strategic planning framework for the integrated development of transport infrastructure and service in the Greater Dublin Area*".

There is no evidence that the strategic environmental assessment ("**SEA**") in accordance with Council Directive 2001/43/EEC (the "**SEA Directive**"), was incorporated into the considerations grounding the Scheme notwithstanding that such an assessment is required. This must form the basis of the subsequent assessment contained and provided for in the Environmental Impact Assessment (EIA) and thereby there is environmental assessment in respect of the overall plan as well as in respect of the overall works. It appears that no such strategic assessment has been

carried out in respect of the Scheme and integrated into the NTA's proposal. This it is a matter that must critically be determined as to the extent to which the requirements of the SEA Directive have been complied with. The SEA, if carried out, did not engage with Hermitage and certainly did not envisage the type of impact that will result from the scheme.

The oral hearing sought by Hermitage is critical to clarify the extent to which the SEA of the Transport Strategy has been incorporated into the Scheme. The failure to allow Hermitage to properly engage with this issue is seriously prejudicial, unfair and is contrary to its rights to have all of these issues properly considered as part of the process relating to whether the compulsory acquisition is lawful.

It appears from the NTA submission that the NTA conflates the EIA with the SEA and in its response at paragraph 2.4.2.3 does not mention anywhere the requirements in respect of the SEA Directive which is the only applicable Directive to this strategy/design/overall plan for the Scheme. The assertion by the NTA that an EIA was not required is unstable. The scheme proposes a bus way and the scheme is such as all the elements are designed as part of this bus way. The submission acknowledges that an EIA is mandatory for a busway and even if subthreshold, the effects on the environment are so significant that a mandatory EIA is required. If the scheme is subthreshold the information to determine significant effects has not been provided.

Assessment of the Receiving Environment

Standard of assessment required

The NTA's response at page 184 of its submission in respect of the assessment of the receiving environment demonstrates that the NTA does not understand the distinct processes that are required in respect of the confirmation of a CPO and the separate and distinct procedure for the approval of the Scheme under section 51 of the Roads Act. This fundamental misunderstanding is fatal to the capacity of the Board to confirm the Proposed CPO as it simply does not have the information to properly conduct the type of assessment required for the purposes of section 49 which is wholly different to that under section 51.

The approach required to be adopted under the procedure for confirmation of the scheme is to focus on the land holder and to ensure that the onus of identifying the least worst option capable of achieving the objective is met. This requires the NTA to show that this is the case in respect of Hermitage's lands and requires full and detailed knowledge of this impact of the scheme on the lands.

No information of a type that would allow this type of assessment to be carried out has been provided by the NTA. The required information ought to consider each of the alternatives in respect of Hermitage's lands and include a thorough analysis of the impact of each of these alternatives, and must thereafter provide a reasoned conclusion that the option chosen amounts to the least bad alternative or means of achieving the objectives of the Scheme carried out by the acquiring

Authority is with the heightened scrutiny required in *Gormley v. ESB*. This is a high test but is necessitated by the constitutional protection that is afforded to property under Articles 40.3 and 43 and focuses primarily on the effect of the Scheme on the lands.

Full extent of Hermitage lands

The most fundamental requirement of this test is that the extent of the lands within the ownership of Hermitage is identified.

It is impossible to consider the effect on Hermitage unless, as the most primary and fundamental matter, the NTA demonstrates its knowledge of the full extent of Hermitage's lands.

Ownership – Schedule Part I / Part II

The NTA appear to have conducted no, or no adequate, investigation of the ownership of Hermitage lands notwithstanding that the primary test that the Board has to address in considering whether or not to confirm the CPO is the effect on the owner. The manner in which ownership is described in Schedule Part 1 is not to a standard required to ground an application for the compulsory acquisition of the lands referred to therein.

In Schedule Part I to the CPO there is a requirement to list owners / reputed owners. That list, as it related to the Hermitage lands, contains the names of persons many of whom are strangers to Hermitage or who are individuals who, as a matter of fact and law have no legal interest in the lands. This is the case for example in Plot 1006(1)(1f) and Plot 1007(1)(1f) which contains the name of persons whose addresses are given as c/o Hermitage Golf Club, and who as a matter of fact have no interest in the lands.

There is, in addition, in respect of occupation / occupiers' significant lacunae and omissions and it would appear that there has been no, or no adequate investigation of ownership and / or occupation sufficient to ground an application for the compulsory acquisition of the lands.

The manner in which the rights to and over the Hermitage lands are described in Schedule Part II are so vague and so imprecise as not to form a sufficient basis for the purposes of the extinguishment of these rights by way of compulsion. The nature and extent of these rights are not described and therefore their identification is not in the manner required to ground an application for their extinguishment.

In circumstances where there has been no consideration of ownership or occupation or the rights to be extinguished it follows that the impacts on such categories of persons or rights have neither been considered. In the absence of this information, it is impossible for any consideration of impact on the owners and the manner in which the information is presented is not only inaccurate but misleading and confusing and does not permit any consideration to the standard required by the

Board which is the most fundamental obligation in the consideration of the compulsory acquisition application.

Failure to consider the extent of Hermitage lands

The map at figure 2.2.4.15 on page 198 of the NTA's submission purports to show the full extent of the Hermitage lands as being outlined in yellow thereon.

This map is inaccurate and is extremely prejudicial to, and completely undermines, the assessment of the Hermitage lands.

Virtually all the yellow line boundaries on the map are incorrect. The extent of the Hermitage lands, as outlined on the map, excludes the entire of the River Liffey which flows along the northern and eastern boundaries of the Golf Course.

Hermitage owns to the centre of this section of the River Liffey. It is a central and indeed probably the most important natural feature of the Golf Course together with the trees, and yet the assessment of the impact on the Golf Course has proceeded on the misapprehension that Hermitage does not own to the centre of this section of the river, which extends to over a kilometre along the northern and eastern boundaries of the Golf Course. This is an extraordinary omission and no assessment of the Hermitage lands could be undertaken where such a fundamental mistake has been made.

Furthermore, at the southern boundary, the yellow line appears to exclude the Hermitage owned dwelling house (which is occupied) located close to the Sure Weld facility, notwithstanding that the front garden of the house is proposed to be compulsorily acquired from Hermitage. Therefore, the most important property interest, namely a dwelling house which is protected under Article 40.5 of the Constitution, appears to have been excluded from the consideration of the Hermitage lands. This could not be more serious.

It is clear from the documentation that this dwelling house was either not considered or was assumed not to have been part of the Hermitage lands. Therefore, the Board could never proceed to consider as adequate the impact on the Hermitage lands if this dwelling house has not been included and the full impact on it addressed as part of the obligation to satisfy the Board that the least intrusive alternative has been achieved.

This dwelling house, by virtue of its proximity to the proposed works, will be incapable of further use and yet this has not been considered in the NTA's assessment. These omissions could not be more serious, undermine the integrity of the analysis and confirm that the Board do not have the information capable of grounding the assessment of the impact on Hermitage for the purposes of confirming the CPO.

These are matters that need to be clarified at an oral hearing and it would be critical for the Board to understand why these types of mistakes have been made, which go to the heart of the matters that must be addressed - namely, why the effect on the lands subject of the Proposed CPO was not considered properly or at all by the NTA. The failure to afford an oral hearing deprives Hermitage of the opportunity to have these issues raised and the Board to have a view as to whether it can rely on anything that is stated in the documentation given the high test that is required. The result is that the Board must refuse to confirm the CPO.

Protected Structures

Hermitage house is a protected structure for the purposes of the South Dublin County Development plan. Hermitage House and demesne is identified as part of an important series of demesnes extending west along the Liffey and is not only important in terms of its architectural heritage but is an important historical, ecological and amenity landscape which is identified in the South Dublin County Development plan for preservation.

The existing golf course is coterminous with and identical to the nature and extent of the original demesne and is bounded at one end by the river Liffey, which forms part of the Hermitage Lands and for the remainder by an estate wall, part of which now is to be demolished as part of the proposed Scheme works. The said stone wall was constructed in its present form to reflect the importance of the character of this landscape and is faced with stone on both the road side and the Hermitage golf course side. At the location close to the overbridge is the remains of the one of the original entrances to Hermitage, where the old gate lodge has now been improved and refurbished and lies within the curtilage of the protected structure.

All structures within the curtilage of a protected structure are themselves protected and this includes both the estate wall / boundary wall and the dwelling house at the pedestrian overbridge. Equally, many of the trees within the grounds formed part of the original Hermitage demesne with many of the recent trees planted now being well in excess of 50 years old, these are important features of the protected landscape.

It is now proposed to demolish the boundary / estate wall, a protected structure, to demolish part of the structures related to the dwelling beside the overbridge, again a protected structure, and to remove at least 700 trees (and perhaps even more depending on changes to the hydrology of the area) and these proposals will have a devastating effect on the character, amenity and landscape quality of the protected landscape.

None of these issues appear to have been identified, much less addressed, in the assessment conducted by the NTA and while the importance of Hermitage as a protected landscape is identified, there did not appear to be a recognition or understanding of the extent of the area to which the protection applies and to the obligation to address these impacts in an appropriate manner. The Board will look in vain for any consideration of these issues in the documentation submitted.

Even more fundamentally the proposed development amounts to a material contravention of the South Dublin County Development Plan. It is now well established that a fundamental requirement and a condition precedent to the confirmation of a CPO is that the development not amount to a material contravention of the plan (see *Galligan and McGrath, The Law of Compulsory Purchase in Ireland, 2nd Edition*).

Accordingly, the Board has no jurisdiction to confirm the CPO in those circumstances.

Environmental assessment

On page 184 the NTA's submission, it states that the:

"Environmental Impact Assessment Report for the proposed scheme includes full and complete information and the likelihood of significant effects on the environment of the proposed scheme... to enable and assist the Board to carry an Environmental Impact Assessment".

While this is a matter for the approach under section 51, in the case of the Proposed CPO it cannot and does not have the information required to carry out an assessment of the effects of the Scheme on Hermitage. This is fatal to the application to have the CPO confirmed.

Lack of information

Further on page 184, there is what can only be described as name-checking where the NTA seeks to assert that there has been a description and an assessment of the impacts of the proposed Scheme on the Golf Course. In the subsequent paragraphs, including 4.5.1.1, 4.5.3.1.4, 5.5.4.3, there is no information but merely the name checking of Hermitage Golf Club is included. That, in essence, is the extent of the information provided.

Failure to consider the importance of Hermitage Golf Club

Insofar as we have been able to ascertain, there is no indication as to the status and importance of Hermitage Golf Club, and the significance of maintaining the integrity of the lands as presenting land. This is one of Ireland's premier golf clubs. It was founded in 1905 and is situated in a unique setting in the Liffey valley. Despite its proximity to Dublin city centre, it is in a spectacularly beautiful, tranquil, and sylvan setting, with over 12,000 trees over 120 acres. The Golf Course is nationally and indeed internationally recognised and it is an extremely important course in an Irish context, having been rated one of the best parkland golf courses in Ireland and voted best parkland golf course in Leinster in successive years. Moreover, it is a championship standard course which has hosted some of the most prestigious golf tournaments, including:

- The Irish PGA Championship (x4)

- The European Ladies Team Championship
- The European Youth Teams Championship
- The Christy O'Connor Pro Am (the largest and leading Pro Am tournament in Europe which has featured such luminaries as Bing Crosby, Seve Ballesteros, Greg Norman, Bob Charles, and Ian Woosnam, among others.
- The Irish Amateur Open Championship (x2)

It is the only Irish golf course to have been honoured to host the European Golf Association's Senior Championships on multiple occasions. On an individual level, members of Hermitage Golf Club have represented Ireland on the international golf stage. None of the foregoing would have been possible without such a valuable and important golf facility. Hermitage Gold Club is a national treasure with a proud and storied history.

The Chief Executive Officer of Golf Ireland (the single governing body for golf in Ireland), has provided a letter dated 30 June 2023 setting out the importance of Hermitage Golf Course and the economic and social benefits of golf generally. The letter confirms that Hermitage Golf Club *"has been an invaluable asset to the local community for over 100 years with an active membership of over 1,000 people from Under 18s to Over 80s."* It goes on to confirm the recent achievements of Hermitage Golf Club and the use of the Golf Course in championship competitions. It states:

***"International Events:** Hermitage Golf Club delivered an excellent Senior Irish Open Amateur Championship in 2023 to huge praise from all involved. The club has also been added to the list of potential venues for future international and domestic events which will build on a long history of the club delivering championships that positively impact golf and the local economy. Some high-profile championships the club has delivered in the past include, The Irish PGA Championship, The European Ladies Team Championship and the European Youth Teams Championship.*

As outlined in this letter, Hermitage Golf Club is a valuable asset for the local community that provides significant, economic, social and health benefits. Disturbance to the facility will impact negatively on these benefits and will make the club ineligible to host any further domestic or international events." (Bold text is original.)

The Proposed CPO, if confirmed, will be catastrophic for the Golf Course, the golf club and its members, as well as the wider community. It will result in irreversible damage being done to the unique natural setting, meaning the Golf Course will no longer be capable of achieving championship standard and its unique status will be lost.

The Golf Course is of national and international significance.

The NTA submission fails to consider any of these impacts.

Inaccurate assessment of effect on Golf Course

Indeed, it is apparent that the NTA has not engaged any specialist golf expertise and there is no evidence of any such expert analysis in the surveys or analysis insofar as they relate to the Golf Course. The section referred to at 4.5.1.1 simply describes the Scheme but does not describe the Golf Course.

The matters at 5.3.1.4 are the same. Neither of those paragraphs provide a description or assessment of the receiving environment. Rather, they are simply a description of the Scheme works to be carried out at that location. This illustrates the complete lack of consideration by the NTA of the significant effects of the Scheme on the receiving environment and its refusal to disclose information. Had it properly engaged with these issues, the significant negative effect of the Scheme on the Golf Course would have been immediately obvious to it.

At paragraph 5.5.4.3, the NTA submits that the works area will be accessed directly from the N4 and that *"golf will continue to be playable on the holes adjacent to the temporary land acquisition during the construction works"*. This is an incredible statement. It is disingenuous, inaccurate and simply untrue. It is proposed to acquire approximately 50% of the land area comprising the 16th hole of the Golf Course. The documentation indicates that the land proposed to be acquired includes all of the 'rough' between the fairway and the existing road. This acquisition alone renders the hole unplayable and will require the use of the 16th hole to be discontinued.

The works area will immediately adjoin the fairway. In effect, these works will include the creation of a quarry along the area where the bedrock is to be excavated and a fenced off area which will render any golf activity in this area on this basis alone practically impossible.

Therefore, it is indisputable that no golf will be able to be played in this area either during the period of construction or the period thereafter. It is untenable that one would be expected to play golf in an adjoining construction area. Not only would this be unreasonable on the person trying to enjoy the game of golf, but it would also pose a serious risk of injury and damage to persons and equipment in the construction area, and to traffic on the site and using the public road owing to the removal of a large number of existing trees and vegetation further exacerbate the risks which are insurable and will be considered later. Therefore, from a health and safety perspective, it will not be possible to play golf for the duration of the works or afterwards.

Given that these works will likely extend over a three-to-five-year period, and that the area would be fenced off for an extended period both before and after that period, the 16th hole of the Golf Course will not be playable. Data analysis has been prepared of the location of where shots land from the 16th tee box. This shows that at least 50% of golf balls struck from the 16th tee box land in the area marked for acquisition. It is impossible therefore that this hole could continue to be used as part of the Golf Course, thereby reducing the Golf Course to a 17 hole course, unsuitable for competition and would, in all likelihood, be commercially unviable.

Hermitage has prepared a financial impact assessment which provides detailed modelling which forecasts the impact of the Proposed CPO on the Hermitage Golf Club. The key revenue drivers of Hermitage Golf Club are annual subscriptions (used to cover operating costs), entrance fees (used towards capital expenditure projects), green fees (used for maintenance costs), and revenue generated by the clubhouse bar and restaurant which provides an important added value to the golfing experience. As a result of the Proposed CPO diminishing the Golf Course to a 17 hole course, it is anticipated that membership will contract by 40%, with virtually no recruitment of new members. This will adversely impact the amount of income generated by annual subscriptions and entrance fees to a significant degree. Moreover, the loss of the Golf Course's championship status will mean that visiting golfers (i.e., non-members) will contract by 56%, meaning there will be a significant loss in green fees. This loss of members and non-members will inevitably lead to the clubhouse bar and restaurant becoming commercially unviable. The level of financial loss poses an existential threat to Hermitage Golf Club and it is predicted will lead to the closure of the Golf Course within just two years.

Therefore, it is simply extraordinary and without any merit for the NTA to assert that the Golf Course will continue to be playable at the holes adjacent to the temporary land acquisition.

What is even more extraordinary however is that this statement is made without any basis or analysis of a type that is required and without any understanding it would appear of the obligations on the NTA to demonstrate that it meets the test set out in *Lord Ballyedmond*.

It appears that the single sentence in section 5.5.4.3 is all that the NTA can rely upon and it has been demonstrated that this is simply untenable and simply could never form a basis upon which the Scheme in respect of the Proposed CPO might be confirmed. The type of approach where unsupported statement included without any evidence and where the contrary position can be conclusively shown was the basis of the judgment in the Supreme Court in *Baltz v. An Bord Pleanala* where even at the lower standard of appeal consideration the decision was quashed.

Air Quality

The NTA refers at section 7.2.1 to air quality and to sensitive receptors adjacent to the proposed works but in the extract quoted there is no reference to Hermitage and indeed there is a single sentence that indicates in respect of paragraph 7.2.1 that "*Hermitage Golf Club falls within the study area assessed*".

That study does not specify or consider specifically:

- the nature of the works and the lands,
- the levels of dust that are predicted to be emitted from the works, including from rock excavation,
- how rock extraction will be carried out (for example, whether by blasting or by rock grabber)

- whether rock will be processed on site (which inevitably it will require to be processed in order for it be removed from the excavated area)
- the likely flow and levels of dust and its impact on sensitive landscape (for example the Golf Course greens which require levels of sunlight and maintenance)
- the amenity of persons using the golf course, including health and safety impacts
- whether any of the land at that location is likely to be contaminated arising from the high traffic volumes and lead deposition that would have occurred over the years from the flows of traffic in these areas.

None of the above issues are addressed in the NTA's submission and there is no consideration specifically of the impact of dust and air emissions generally on the Golf Course.

In the context of the Board considering whether to confirm the Proposed CPO, and in that regard consider the extent of the negative effects on Hermitage, the NTA's approach is totally unacceptable and could never form the basis of a confirmation by the Board in respect of Hermitage lands.

The paragraph quoted is completely inappropriate in the context of Hermitage as it extraordinarily assumes that the same standard applies to 350 metres from a specific area of construction work and appear to industrial site communal properties as well on the Golf Course. This is an extraordinarily inappropriate approach that requires the lands of Hermitage be specifically addressed. During the construction phase (which may well last three to five years), seriously injurious direct construction impacts will affect the entire Golf Course. These serious effects will include:

- noise and dust from extensive tree felling,
- pile driving,
- rock grabbers,
- filling of trucks with rock, timber and other materials required to be removed from the site,
- noise and vibration effects from explosives likely to be required to remove sub soil rock; and
- serious air quality effects from dust generation.

However, the most serious construction effect of all will be that the entire Golf Course will be unplayable during the construction phase in the event that a decision is made confirming the Proposed CPO and the Scheme. This is because a golf course with less than 18 holes is, in essence, unplayable. No member will continue to play 17 holes, no competitions can be run, etc for the members or between courses and the Golf Course simply will not survive. Notwithstanding this, there is no analysis of the specifics of the impacts on Hermitage as a landowner in the context of an application to confirm the CPO, notwithstanding the constitutional and statutory imperative to do so.

Equally, there is no consideration of the fact that the area of excavation is immediately adjacent to the Golf Course and no analysis as to the intensity of noise emissions or vibrations starting from the point of construction and extending across the entire Golf Course, which would be required to conduct a qualitative analysis of impacts. It appears that the paragraphs quoted at the top of paragraph 185 is the extent of the analysis of the impact of dust emissions on the Golf Course. The inadequacy of the NTA's analysis in this regard is fatal to its application to confirm the Proposed CPO.

Noise and Vibration Assessment

At paragraph 9.2.1 (on page 185), the NTA states that this represents an assessment of the impacts of noise on the Golf Course. Again, it is extraordinary that there appears to be no specific analysis of the impacts of noise on the Golf Course. Rather, a general noise analysis has been conducted along the entire length of the proposed Scheme, which stretches some 10kms from the M4's Junction 3 to the Frank Sherwin Bridge in the city centre. We are unable to identify any evidence in the NTA's submission as any specific consideration of the noise environment in Hermitage or the noise effects either during construction or operation or any consideration in any of the documentation as to the impacts of noise on the Golf Course. The absence of any such information on the impact of noise and indeed vibrations on the Golf Course is of the deepest concern and is such as to prevent the Board's confirmation of the scheme.

Rock excavation

The proposed Scheme includes the excavation of a significant area of rock but does not specify whether this excavation is going to be achieved by blasting, by rock grabber, by a combination of these, or by some other method. It is respectfully submitted on behalf of Hermitage that it can be reasonably anticipated that levels of noise, and in particular LA_{max} , will exceed 90dB over extended periods during the construction phase. Notwithstanding these anticipated noise levels, which will be carried out immediately adjacent to the Golf Course, the NTA blithely asserts that golf will be able to continue to be played. We respectfully submit that this is hopelessly incorrect because it is simply not practically possible to play golf with these levels of noise.

Noise sensitive location

It is unclear whether the golf course has been characterised as a noise sensitive location by the NTA. The NTA has not addressed this issue and has only engaged in the most general terms and superficial manner, as is evident from the matters set out at section 9.2.1.

It appears the NTA's EIA Report fails to identify the Golf Course as a noise sensitive location. This is extraordinary considering that the noise study area identifies amenity areas as being noise sensitive locations. Therefore, the necessity to include Golf Course in such a classification is self-evident.

At the very least, there is ambiguity, but all the evidence suggests that the Golf Course was not included within such a noise sensitive location and accordingly it appears that no consideration was given to the Golf Course specifically. Rather, it seems that a rather simple, generalised noise assessment was conducted which could never form the basis of an appropriate analysis. The reason for doubt arises from the absence to specific information in the documentation relating to Hermitage.

Hermitage has conducted its own noise assessments to describe the existing noise environment within the Golf Course, which is the basis of any consideration in terms of impact. The impact of noise is measured relative to the existing noise environment and the scale of impact is different in terms of the levels of noise that will be generated before the activity and subsequent to the activity. The review concludes that Hermitage is a noise sensitive environment and requires to be addressed as such. It characterises the environment as a recreational green space and there is a huge public benefit as well as an environmental benefit in protecting it from increased noise exposure. None of these criteria appear to have been addressed in any of the documentation produced by the NTA. It appears from the NTA's analysis that no specific noise measurements have been conducted within the Golf Course, including at the occupied house within the Hermitage landholding (located adjacent to the Sure Weld premises). The NTA's nearest monitoring point to the Golf Course is a residential garden to the south of the N4 which does not provide a basis for considering the impact of noise on the Golf Course.

The noise impacts within the Golf Course will vary from high noise levels close to the road but where the levels of noise are significantly attenuated by the profile of the land, by the lower level of the road at this location and by the trees which significantly attenuate the noise and visually separate the source of noise from the line of sight. At present within almost the entire Golf Course, one is completely unaware of the N4 roadway and its high traffic noise levels. This is because of, *inter alia*, the noise protection provided by the fine belt of mature trees along and adjacent to the roadside boundary of the Golf Course. Another important factor is that there is no visibility of the road from the Golf Course because of the visual screening provided at present by the fine tree belt (which the NTA proposes to remove). The total absence at present of a view of the highly noisy road adds to the perception currently that the noise levels are lower at locations on the Golf Course near the N4.

Effect of removal of trees

The Scheme entails the removal of a significant number of trees and Hermitage is advised the effect of the proposed Scheme will be to fatally injure the entire treeline along the full extent of the boundary of the Golf Course, due to the alteration in groundwater levels that will lead to the trees which are not removed as part of the works ultimately struggling and failing, and then having to be removed. This will have the effect of creating a direct line of sight from the Golf Course out onto the road, which will create significantly higher perceived levels of noise within the Golf Course during the operational phase of the Scheme, particularly by the increased levels of bus movements.

The proposal is in the scheme to remove up to 700 trees and we are advised that changes in groundwater and soil conditions as well as wind throw will increase this figure to over 1,000. This is at the end of the course with the highest public profile and is a major amenity not just for the course but for the public. The effect in amenity terms, in golf terms and environmental terms is profound.

The NTA's noise survey does not include any noise measurements from within the Golf Course and does not appear to be consider the particular profile of the Golf Course land, the extent of the attenuation of the trees proposed to be removed, nor has it measured how noise will be distributed in the new profile that is sought to be created by the proposed works. Accordingly, there is no scientific basis for any of the conclusions in respect of operational noise as set out in the NTA's EIA Report and therefore there is no basis upon which the Board can consider the effect in terms of proportionality on Hermitage Golf Club, nor can it meet the test set out in both *Clinton* and in *Lord Ballyedmond*, both of which place the onus of satisfying the test on the NTA by the provision of information that the Board is required to consider and be satisfied that it meets the high standard necessary to enable the Board to confirm the scheme.

Increase in noise during operational phase of the Scheme

Hermitage's consultants estimate that the levels of noise during the operational stage of the Scheme will increase by the order of 10dB within the Golf Course. This is a very significant negative effect on the receiving environment as a 10dB increase is, in effect, a doubling of the volume of noise. It is significant that no noise attenuation measures are proposed during the operational phase of the Scheme. Given that operational noise is capable of being attenuated, the Scheme as submitted cannot be considered to be the best option or the least bad option because no consideration has been given to noise impacts or noise attenuation measures.

Increase in noise during construction phase of the Scheme

Increased noise during the construction phase will have an even greater impact on the operation of the Golf Course. The NTA's submission includes little or no consideration of the impacts of construction noise on the Golf Course, notwithstanding that major construction works are proposed to be carried out. The Scheme proposes that largescale rock excavation and quarrying will be carried out. This is likely to consist of, given the nature and density of the rock, a combination of the use of a ripper as well as explosives. Such works will also require cordon sanitaire to be established well outside the area of land required while these works are carried out. The levels of noise generated during this period are likely to be very significant.

The levels of noise that one would expect from the type of construction required in rock extraction is of the order of 90dB LAeq with an LA_{max} significantly in excess of this figure during specific construction activities. Given the nature of the proposed works, which will entail the removal of trees and rock excavation, the levels of noise in and around the site will extend directly into the

Golf Course and render any reasonable use of the Golf Course impossible due to excessive noise levels.

The NTA's submission does not include any such information specifically relative to Hermitage or the various noise elements which will include tree felling (which will give rise to very high levels of noise), rock blasting, rock rippers, the breaking and loading of rock into dumper trucks (again, a very noisy operation), as well as the noise from excavators, dump trucks, road planers, among other types of construction equipment and activity. It will also be necessary to drill using rotary drillers which again will cause significant levels of noise. However, the NTA's submission contains no information as to the particular equipment to be used or any measures to be adopted to attenuate the levels of noise on the Golf Course. The noise consultants conclude that it will be impossible for large parts of the Golf Course to be used in any way whatsoever during the construction period because of the levels of noise that would be generated.

The construction of the perimeter wall, which we understand is to be secant pile retaining wall, will also create significant levels of noise as will the drilling relating to the 15-foot-high golf netting that is proposed to be installed, it appears, behind the retaining wall. Again, this is likely to cause significant levels of noise and render a significant part of the Golf Course extending to at least 350 metres from the edge of the compulsory acquisition area impossible to play on with any degree of comfort during the construction phase.

Vibration

The NTA's submission does not include any analysis of the type of rock at the proposed site nor does it include any hydrological or hydrogeological analysis of the lands. Nevertheless, it is evident that major excavation works will be required and that these will create high levels of vibration through the Golf Course which will render any reasonable use of the Golf Course impossible. Even in an area of the Golf Course where the vibration levels are not at a dangerous level, it will be uncomfortable and unattractive to play with such levels of vibration occurring.

The absence of any analysis in respect of vibration, notwithstanding that it is accepted that major rock excavation will be required within the Golf Course, means that there is no basis upon which the NTA can satisfy the Board of the test required in order to confirm the Proposed CPO.

The proposed permanent land take within the Golf Course appears to extend to 10 metres from the existing Golf Course boundary along the existing road corridor. Our client estimates that within this area there are approximately 400 mature hardwood deciduous trees, all of which are over 50 years old and some considerably older, all in good health, and all of which are an essential amenity both to the visual appearance of the Golf Course as well as attenuating noise, creating a visual barrier, and providing shelter and shade. The tree landscape was specifically designed to both enhance the visual amenity of the Golf Course as well as its playing characteristics.

The extent of trees proposed to be removed as part of the Scheme is unacceptable. This is especially so in an era of climate change. The balance between the removal of trees with the loss of amenity, and the loss of carbon reduction and facilitating increased traffic capacity is fundamentally in breach of every public policy that is currently adopted and is expressly contrary to the statutory requirements on climate change pursuant to the Climate Change and Low Carbon Development (Amendment) Act 2021. In terms of the impact on the Golf Course, the removal of the trees cannot be overestimated. Reference has already been made to the extent to which the trees shelter the various holes and indeed the Golf Course as a whole as well as attenuating noise and creating a barrier which protects the adjoining roadway from errant golf shots as they create an impenetrable barrier with the result that it rarely if ever occurs that a golf ball will extend beyond or through this tree cover.

All of that protection will be lost with the removal of the 400 trees and the effect on the house and its playability will be devastating.

However, the 400 trees that are identified for removal are only part of the impact. The largescale excavation works will change the hydrogeological balance of the lands and will change the water table. Many of the trees that are proposed to remain in situ are particularly sensitive to changes in groundwater, have a shallow root system, and will be adversely affected by changes in ground conditions such that we have been advised that there is a significant risk of death to all the trees close to the proposed site (as their roots will be damaged), and also to trees far beyond that where the water environment of the land will change significantly. It appears that this has not been considered by the NTA in its submissions to the Board.

The amenity of the Golf Course which has developed over 120 years or more will be completely undermined by the tree removal and it will be rendered unplayable as a result of the proposed removal of trees. In particular, the holes along the section of the Golf Course adjacent to the proposed works will never be able to be used again because of the absence of protection which these trees provide along the full length of the existing boundary with the N4.

It is simply not safe for any of these holes to be used if the tree cover is removed in the manner proposed. The level of protection which these trees provide is a result of a very sophisticated design using trees as a physical barrier, as well as a sound barrier. Accordingly, the effect of this tree removal, apart from devastating the environmental quality, will render the golf course unplayable. It would in any event be the most unattractive area to play golf and a significant part of the attraction of this course is the quality of the environment within which the golf is played, which is the mark of a championship standard golf course.

By way of reference, Augusta golf course, which is arguably the most famous golf course in the world and where the US Masters is played, derives its status almost exclusively from the quality of the landscape in which the golf is played. The timing of the significant championships played at Augusta coincides with when the landscape of the golf course is at its best, when the rhododendrons and azaleas are in bloom and where the quality of the golf course is a function of

the character of the landscape. Hermitage is similar to Augusta in that it has heritage buildings (the Hermitage clubhouse is an 18th century manor house) and a landscape which is in effect the demesne of that house laid out in the 18th century and which has been sensitively managed to create a world class championship standard course, and is acknowledged as such throughout the golfing world.

The effect of the proposed removal of the entire eastern boundary along the N4, sheered of its trees and replaced by a 15 metre high industrial type fencing, is such as to render the Golf Course completely undesirable in terms of the amenity it provides and will be completely unattractive for anybody to play. It will lose no longer be a championship standard course and will lose a significant number of members who have a range of other courses in the locality to choose to play, which presently are much less attractive courses, but if the Scheme proceeds will be far more attractive. Therefore, Hermitage will lose a large number of members if the Proposed CPO is confirmed and the Scheme, as currently proposed, is allowed to proceed. Moreover, the loss of members could render Hermitage Golf Club financially unviable.

None of these issues have been addressed by the NTA and it appears that the NTA is either not prepared to engage with these issues or has not had available to it the appropriate expertise that would enable it to do so. Indeed, it appears that the NTA has had no specific golf course expertise of a type that has been engaged by Hermitage and there is, insofar as we can ascertain, no specific golf specialist report on the impact on Hermitage, which is the minimum that is required and which the Board is required to consider in accordance with the *Lord Ballyedmond* decision.

Instead, the NTA's submission contains platitudes that golf can continue to be played and the works extend into the fairway of the 16th hole but only marginally, as if they are any answer to the significant negative effects that the development will have on the Golf Course. On the contrary, the NTA's submissions highlight its absence of any specialist knowledge or any experience or understanding as to the effect of the Scheme on Hermitage. The Golf Course simply cannot continue to operate if the Scheme is approved.

Reference has already been made to golf not being capable of being played on the 16th hole because of the extent of the impact on that part of the Golf Course. The other holes in the vicinity of the 16th hole also rely to some extent on the trees to give protection and to prevent the escape of errant balls out onto the public road, and this protection will be removed during the course of construction over an extended period and therefore many of these holes will not be playable. Assuming that the construction phase will extend between three and five years, the Golf Course will remain inoperative during this period, and it is inconceivable that members who would wish to play their chosen sport will remain within Hermitage Golf Club. Instead, they will join other clubs where no such restrictions will apply. It is impossible to play a complete game of golf on a course with less than 18 holes and the removal of even one hole is such as to prevent the Golf Course from operating.

In addition, if the Proposed CPO is confirmed, then the golf course will have to be completely redesigned and will require changes to most of the holes and the acquisition of additional land to provide for addition/redesign of the holes the yardage which is required of any golf course much less a championship course. Such redesign will take a number of years and cannot be commenced until the end of the construction period, and therefore the period in which the golf course will not operate can reasonably be concluded to extend over a ten-year period. The works in this regard are extensive and given that the area is zoned high amenity, there will be planning issues in respect of Dublin City Council and the extent to which any changes would materially affect the character of the area and its zoning as high amenity, and it may be that planning permission may be difficult to obtain for the re-design of the golf course. It will certainly require both an EIA Report and an Appropriate Assessment and the costs involved will be very significant. Moreover, it is not certain that Hermitage will be able to secure such a redesign or acquire additional lands to achieve the yardage required of a championship standard golf course.

All of these issues are required to be addressed by the NTA and a sufficient level of detailed information provided to identify the full extent of the impacts on the Golf Course. However, such level of detail is entirely absent. Indeed, it appears that the NTA is unaware of the obligation to satisfy the Board that it meets the test in *Lord Ballyedmond*, which we summarise as the least bad option. The NTA appears to believe that this can be dealt with simply by name checking Hermitage in the EIS, which provides the most general statements of effects without any engagement in the detail or without any information that would allow for any analysis of the full extent of the impacts. It is demonstrated in this submission that not even the extent of the golf course is known to the NTA and none of the elements affecting the operation of the Golf Course have been considered. Accordingly, there is no analysis that could ground a determination that it is appropriate to confirm the Proposed CPO.

In the Supreme Court's judgment in *Baltz v An Bord Pleanala*, the Chief Justice held that it is not sufficient simply to name check issues and thereafter indicate that they have been addressed. Rather, there must be a thorough analysis of the impact of the Scheme and the level of detail must be such as to enable the Board to meet the very high standard that is required to be met when it considers whether it is appropriate to confirm a compulsory purchase of land.

It is respectfully submitted that this is not and cannot be met by information contained in the EIA Report, which is wholly different in character and in content to that which is required under section 49. It appears that the NTA has misinterpreted and is unaware of the obligations required of it in respect of section 49.

Hermitage raised this in its submission and specifically referenced the judgment in *Lord Ballyedmond*. The response from the NTA was simply to refer to the EIS. We respectfully submit that approach is simply not appropriate in the circumstances.

Section 51(7)(b)

Section 51(7)(b)(iii) of the Roads Act 1993 (as amended) requires that the Board to make its decision on application for approval of the Scheme at the same time as it makes its decision on the application for confirmation of the Proposed CPO.

We have stated in this submission that the two processes are very different and that the procedure under section 51 is an analysis and assessment of the likely significant effects of the proposed development on the environment by reference to a number of specific elements identified in Council Directive 2011/92/EU. The test when one is considering confirming a CPO is different and relates to the impact of the Scheme on the particular land holding and whether the Scheme can be considered to be proportionate.

The emphasis that is required therefore in respect of the procedure the subject matter of this submission. i.e., the CPO confirmation relates to an analysis directed solely to the lands the subject matter of the application, and each landowner affected by the Scheme. The case law makes clear that the onus is on the NTA to provide a level of detail that can allow the Board as a matter of certainty to say, having considered the effects on the lands to be acquired,, both direct and indirect, long term, short term, and cumulative, that there is no better option available in respect of those lands. It is only after all that information is available and properly presented that any such determination can be made.

The test, as one would expect for constitutionally protected property rights (and in this case rights which relate to a dwelling house under Article 40.5) as well as the protection provided by the European Convention on Human Rights and to which the Aarhus Convention applies, requires an entirely different set of documentation and analysis which may be derived from documentation produced as part of the procedure under section 51 but which must be specifically provided to the landowner in question.

The EIA Directive does not deal specifically with individual lands to the same extent as a general impact on the environment, which is what is provided by the NTA. There is a complete absence of information regarding the Golf Course, such as the impact of the Scheme on the Golf Course by way of dust, noise, vibrations, loss of trees, change in hydrological conditions, impact on the playing area, impact on the dwelling house, impact on health and safety of adjoining landowners, the risk of nuisance from erring golf balls, the destruction of the amenity, and the practical consequences of being unable to retain members or indeed to function for a very long extended period as a golf course. None of these issues are addressed. On the contrary, the information provided by the NTA includes platitudes without any basis or any analysis and these simply cannot be accepted.

It is respectfully submitted that the Board has two choices in this instance. It can either reject the application simpliciter or it can convene an oral hearing in respect of the compulsory acquisition and afford the NTA an opportunity to attend an oral hearing and deal with issues and demonstrate to the standard required for the confirmation of a CPO that the impact of the Scheme on Hermitage has been demonstrated to be such as to comply with the very high standard that the Board has to

apply, and that it has provided all the information specific to Hermitage to allow this decision.. If that information is not available, then the Board cannot exercise its function and must reject the application, given in particular the comments of the Supreme Court in *Clinton*, Clarke J. in *Lord Ballyedmond* and Budd J. in the Commissioners of Public Works case.

This submission is made without prejudice to the rights of Hermitage in respect of the decisions already made and the absence of any information grounding those decisions and/or to take judicial review proceedings in respect of any determination if the Scheme is approved based on the approach adopted which is such as to render the type of engagement contemplated by the case law and the legislation impossible owing to the absence of information.

We await hearing from you.

Yours faithfully,

A handwritten signature in cursive script, appearing to read "Mason Hayes & Curran".

MASON HAYES & CURRAN LLP

30/06/2023

To whom it concerns,

Hermitage Golf Club is a valued affiliated club of Golf Ireland – the National Governing Body for the sport of golf on the island of Ireland. Prior to Golf Ireland's establishment, the club were affiliated to the legacy organisations – the Golfing Union of Ireland and Irish Ladies Golf Union. The club has been an invaluable asset to the local community for over 100 years with an active membership of over 1000 people from Under 18s to Over 80s.

For context, Golf clubs play a significant role in the local community with some examples highlighted below:

Recreational Opportunities: Golf clubs offer a recreational outlet for community members of all ages and skill levels. They provide a space for individuals and families to engage in physical activity, enjoy the outdoors, and socialize with others who share similar interests. Golf is a sport that can be played by people of various fitness levels, making it accessible to a wide range of community members.

Economic Impact: Golf clubs can have a positive economic impact on the local community. They create job opportunities, both directly within the club and indirectly by attracting visitors who spend money on accommodation, dining, and other local businesses.

Social Interaction and Community Building: Golf clubs provide a platform for regular social interaction and community building. Members can develop friendships and build a sense of belonging. Many golf clubs organise events, leagues, and tournaments that foster camaraderie among participants. The social aspects of golf can contribute to community cohesion and a sense of community pride.

Health and Well-being: Golf is a sport that encourages physical activity and promotes overall health and well-being. Golf clubs often have well-maintained greenspaces that provide a peaceful and scenic environment, contributing to stress reduction and mental relaxation for players.

Environmental Conservation: Many golf clubs prioritise environmental conservation and sustainability. They maintain green spaces and preserve natural habitats. These efforts contribute to the local ecosystem and promote

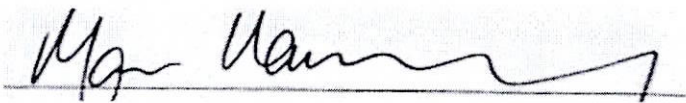
environmental awareness within the community. Hermitage Golf Club provides a unique contribution to environmental conservation with nearly 12,000 trees on or bordering the 120-acre property.

Charity: Golf clubs frequently engage in charitable activities, hosting fundraising events and supporting local causes. They can serve as a gathering place for community members to rally around important issues and make a positive impact on the lives of others.

International Events: Hermitage Golf Club delivered an excellent Senior Irish Open Amateur Championship in 2023 to huge praise from all involved. The club has also been added to the list of potential venues for future international and domestic events which will build on a long history of the club delivering championships that positively impact golf and the local economy. Some high-profile championships the club has delivered in the past include, The Irish PGA Championship, The European Ladies Team Championship and the European Youth Teams Championship.

As outlined in this letter, Hermitage Golf Club is a valuable asset for the local community that provides significant, economic, social and health benefits. Disturbance to the facility will impact negatively on these benefits and will make the club ineligible to host any further domestic or international events.

Kindest Regards,

A handwritten signature in black ink, appearing to read "Mark Kennelly", written over a horizontal line.

Mark Kennelly

Chief Executive Officer

Golf Ireland



Hermitage Golf Club Hole 16, CPO Site Analysis

18/06/2023

Compile by REGOLF Design 18/06/20





Mr. Greg Bowden,
Greens Chairman,
Hermitage Golf Club,
Lucan ,
Co.Dublin.

Dear Creg,

We have compiled our site analysis of the compulsory & temporary land take at the Hermitage Golf Club, Lucan, Co. Dublin.

Please find outlined below an explanation of the criteria used to analyse the 16th hole's current & future safety situation in relation to golf balls exiting the golf corridor

In order to make comment or indeed suggest any remedial works we first need to establish how the hole "stacks up" when critically analysed using the following safety processes;

1. **The European Institute of Golf Course Architects (EIGCA)** "*Indicative Working Design Considerations for the Laying Out of Golf Course*" – Feb., 2002,
2. **Dr. Mark Broadie's, University of Columbia, USA** - "*Assessing Golfer Performance Using Golfmetrics*" presented at the Proceedings of the 2008 World Scientific Congress of Golf,
3. **Dr. Steve Otto's of the R&A,** "*Amateur Playing Statistics*" - 1996/2008 and
4. **PGA Consulting Ltd.,** "*Golf Course Design Safety Guidelines*" - Feb., 2003.





European Institute of Golf Course Architects (EIGCA) “Indicative Working Design Considerations for the Laying Out of Golf Course” – Feb., 2002:

This document was compiled by the EIGCA for circulation within the organisations members **ONLY**. The document is used in the EIGCA’s “Golf Course Architecture Diploma” Education Course which is attended by budding architects and employees of golf course architectural firms.

It is also circulated to new & existing members of the Institute for their reference should they require it.

It is not for general public circulation as it is a guideline as to what architects should be mindful of when laying out a golf course close to roads, housing units, pathways etc or when designing a course on undulating / flat pieces of property.

The document states that *“Golf course architecture is an inexact science. There are no rules, no rights or wrongs and there are, as those involved with golf know, many anomalies in the field of golf course layout which contradict widely used safety margins, what is a safe margin on one site may be considered unsafe on another”*.

It suggests that *“There are many situations on golf courses where golf holes appear to contradict even the most basic of safety margins and yet have proved, over time, to have played generally well. This is often put down to specific situations found on the site that for some psychological reason render what appears to be a dangerous golf hole generally safe”*.





It also mentions that *“Equally margins, which may on plan appear to be appropriate, prove to be completely unacceptable on site for a number of reasons – not the least of which is the strange psychology of the game and how golfers react to it”*.

This report accepts that one of the most crucial elements in the successful laying out of golf courses is the experience and judgement of the architect. It is precisely for these reasons that a combination of experience as well as an understanding of design is so crucial to the successful laying out of a golf course.

It believes that *“Statistics can only partly help to solve the complicated issues involved and that..... players themselves have an important responsibility where safety on a golf course is concerned as outlined in The Rules of Golf Section 1 – Etiquette”*.

Whilst preservation of safety must be uppermost in any architect’s design, without due regard to courtesy and etiquette no golf course can be labelled entirely safe. The EIGCA report goes on and attempts to suggest *“some basic framework for the laying out of a golf course and to provide some principles for good design practice. As each hole has specific criteria, which are relevant only to that hole, it cannot and does not attempt to provide “hard and fast” guidelines”*.

It states, *“The complexities of laying out a golf course are far too complicated and diverse for such simplistic treatment”*.

In a series of graphical examples the report attempts to highlight the most commonly found situations on golf courses and to first suggest broad bands in which a golf hole, under very typical conditions (i.e. flat site, no tree cover, no wind etc) might be laid out and then to suggest variable site factors which would have an impact on these margins.





It also describes the relationship between preceding greens and proceeding tees all the while mindful of:

- Topographical variables i.e. elevation changes, cross slopes, valleys, uphill & downhill shots
- Visibility of Boundaries here the psychology of the golfer is crucial
- Prevailing Wind Conditions – is it against, behind or coming from the left or right. How will it affect the ball flight?
- Tee orientation – where are they pointed? How does their orientation affect a golfer's stance, set-up and psychology?
- Golf Course Features – where are the hazards positioned and how do they affect a golfer's stance, set-up and psychology?
- Footpaths / Bridle-paths / Roads / Out of Bounds / Adjacent Housing Units – where are they located and how do they affect a golfer's stance, set-up and psychology?
- Tree Planting – do they hinder or encourage player to a certain way?

In our analysis of the 16th hole with the proposed compulsory & temporary land take at Hermitage Golf Club we will use the Broadie Dispersion graphs and The EIGCA Safety Guidelines to highlight the possible extents of the ball dispersion that is possible from the Tee.

It should be noted that data used to collect these graphs did not have netting or other artificial retention aids such as netting close to or adjacent to the tees. Neither can it be assumed that there were housing units or other boundary sensitive issues in play.

The use of the graphics is to ONLY demonstrate the possible spread and dispersion of tee-shots using a scientifically acquired dataset of tee-shots.





Conclusion:

The 16th hole currently is on the limit of the safety margins as demonstrated on the analysis plan below, the reasoning the hole stacks up at the moment is the prevailing wind from the Southwest assisting golf shots in a northerly direction but more importantly, the dense mature woodland helps protect the boundary towards the motorway. The compulsory & temporary land take would render the 16th hole corridor unsafe for normal play, the natural tree protection would be non-existent and the playing corridor would be significantly narrower.

The Hermitage golf club dates 100 years old and has connections to the legendary golf course architect Harry Colt. It is a championship golf course and iconic golfing layout of international fame. Golf courses of this vintage usually inhabit a small land footprint and The Hermitage is no different.

Unfortunately, if the 16th hole corridor is lost to the land take, there are no alternatives within the current land footprint to mitigate its loss. This would reduce the course to 17 holes and would render the entire golf course inadequate as a championship standard.

Yours Sincerely,

Jeff Lynch
Director & Senior Architect.
EIGCA Senior Member
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EIGCA



EIGCA
EUROPEAN INSTITUTE OF
GOLF COURSE ARCHITECTS



REGOLF
regolfdesign.com





REGOLF

No	Y.	Y.	Y.	Par	No	Y.	Y.	Y.	Par
1	290	266	248	4	10	151	146	142	3
2	398	391	379	4	11	520	505	414	5
3	343	331	279	4	12	376	369	360	4/5
4	157	151	135	3	13	173	171	156	3
5	341	324	307	4	14	339	326	320	4
6	299	287	281	4	15	455	430	385	5
7	201	194	185	3	16	369	362	324	4
8	394	372	358	4	17	378	360	290	4
9	464	490	441	5	18	402	377	314	4
Out	2,892	2,776	2,613	18	In	3,168	3,046	2,705	18/3

General Comments:

Dr. Mark Broadie's, University of Columbia, USA - "Assessing Golfer Performance Using Golfmetrics" presented at the Proceedings of the 2008 World Scientific Congress of Golf:

-Golfmetrics Ball Dispersion Am & Pro

----- EIGCA Safety Guidelines

———— Existing Boundary

■ Hole 16 Fairway

—— Hole 16 Centreline

—— CPO

■ Temp Land Take



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GOLF COURSE ARCHITECTS

PROJECT NO.

Hermitage 2021.03

DRAWING NO.

2023.06.18 Hermitage GC
Hole 16 Ball Dispersion Data

DESIGN, CHECKED
& APPROVED

FILE TYPE

Ball Dispersion Data

J. Lynch

SCALE

1:1,250 @ A3

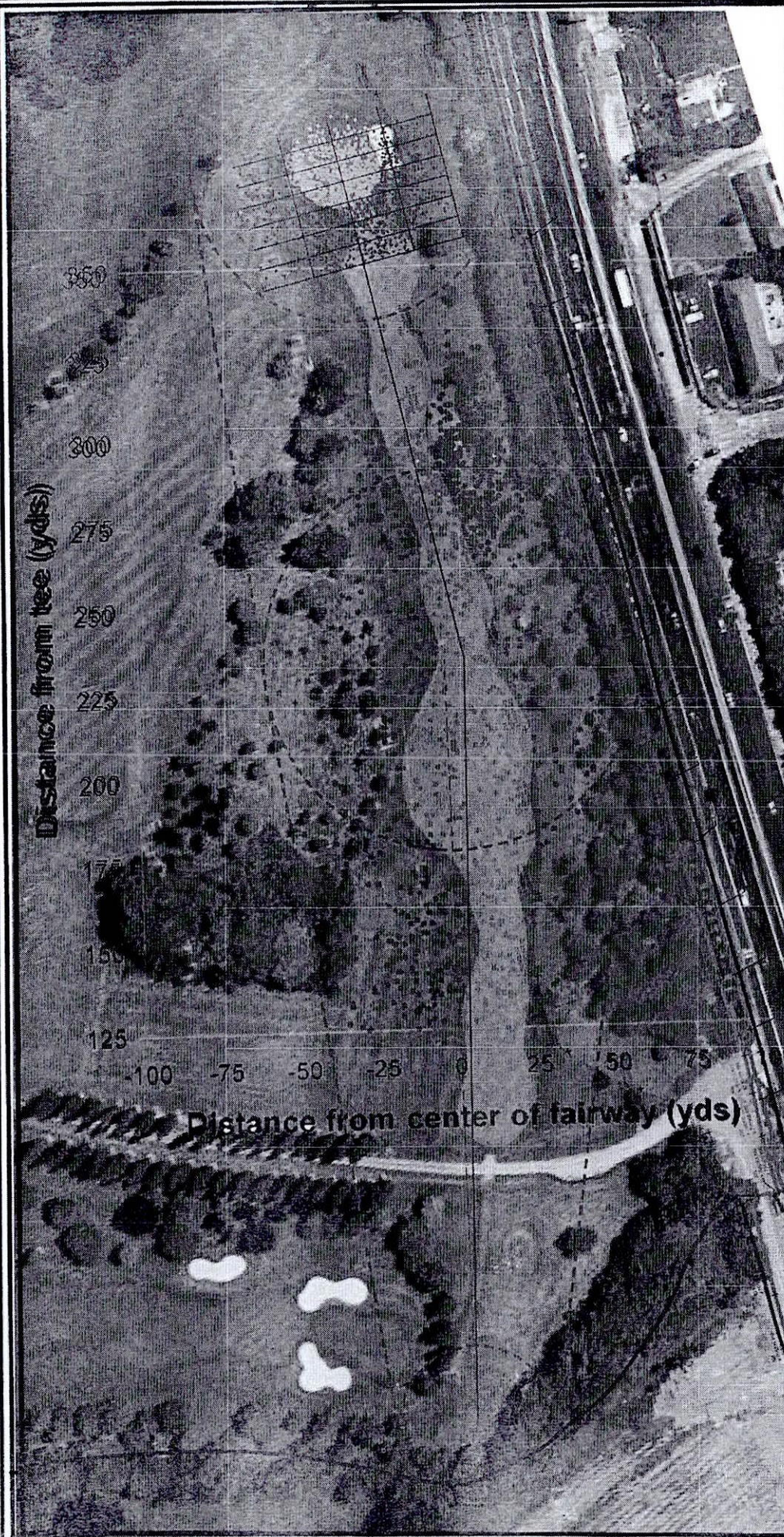
DATE

18.06.2023



DRAWING TITLE

Hermitage GC Hole 16 Ball Dispersion Data





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The Secretary
 An Bord Pleanála
 64 Marlborough Street
 Dublin 1
BY HAND

11 January 2023

Your ref: KA29N.314988

Our ref: EK/HERM01.24

MHC-30348244-1

Matter: Objection to Application for approval of a Compulsory Purchase Order
Landowner: The Trustees of Hermitage Golf Club
ABP Reference: KA29N.314988

Dear Sirs

TAKE NOTICE that we act for the Trustees of Hermitage Golf Club Lucan Road Lucan, Co. Dublin (hereinafter referred to as "**Hermitage**").

We are instructed to make this submission as an objection to the proposed compulsory acquisition of lands within the ownership of and occupation by the said Hermitage Golf Club at Lucan Road, Lucan, Co. Dublin and the basis of that objection is set out hereunder.

At the outset, without prejudice to our below request to the Board to deal with the preliminary issues raised within this submission as a matter of priority, we formally request an Oral Hearing for the Board to adequately consider an acquisition of the scale, extent and impact which is sought as part of this application. In this regard, we reserve the right to make whatever further or other submissions as may be required and to elaborate on these submissions at any such oral hearing.

We would be grateful for an early confirmation that such an oral hearing will be facilitated as it will be necessary to call a number of specialist experts to deal with the issues which arise from the proposed compulsory acquisition and will require an adequate period of time in which to facilitate such attendance and to prepare the submissions that are intended to be made.

In those circumstances this submission is made without prejudice to whatever submissions will be made at the oral hearing in respect of the proposed compulsory acquisition.

The documentation which has been served upon the Hermitage by the National Transport Authority, (the "**NTA**") (the "**Acquiring Authority**") and to which we have had access does not demonstrate the basis of or the considerations relating to the making of the compulsory purchase order ("**CPO**") nor the manner in which the nature and extent of the lands sought to be compulsorily acquired was determined. While it appears that the lands are required in respect of a scheme entitled "The Lucan to City Centre Core Bus Corridor Scheme" (hereinafter referred to as

Dublin London New York San Francisco

MHC.ie

Partners - Declan Black (Managing) | Christine O'Donovan (Chair) | Catherine Allen | Julie Austin | Paul Bassett | Ron Boucher | Lizzy Brazil | Dornaioli Breatnach | Sonya Bruen | Susan Bryson | Nicola Byrne | Vanessa Byrne | Janet Coffey | Niamh Coffey | Niamh Colquhoun | Neil Campbell | William Carmody | Rachel Corney | Gearóid Conry | Erin Cassidy | Sarah Cleaton | Gemma Cooney | Tanya Collier | Ger Connolly | Cara Cooke | Keelin Cowley | Melanie Crowley | Tom Davy | Maireann Dineen | Hannah Devoy | Robert Dickson | William Dillon | Leitch | Shane Dolan | Michael Duran | Corey Durkin | Laura Dunning | Colin Farrell | James Fenelon | Helen Ferguson | Oliver FitzGerald | Rowenna Fitzgerald | Jamie Fitzmaurice | Frank Flanagan | Liam Flynn | Carol Fox | Mark Fry | James Gallagher | Conall Garrahy | Stephen Gidduk | Edward Gleeson | Michael Grace | Cathy Grant | Liam Guidera | David Gunn | Anne Harlin | Jason Harter | Wendy Hederman | Jennifer Henry | Maireann Henson | Michaela Herron | Liam Haylin | Brian Harlan | Margaret Hughes | Brian Johnston | Peter Johnston | Lisa Joyce | Rachel Kavanagh | Marian Keenan | Catherine Kelly | Gerard Kelly | Tara Kelly | Noreen Kennedy | Niamh Keogh | Roz Ryan | Claire Lord | Eimear Lyons | Michael Madden | David Mangion | Robert McDonagh | Hazel McDwyer | Dermot McElin | Justin McKenna | Peter McLay | Nicholas Metcalfe | Niall Michel | Colin Monaghan | James Moran | Deirdre Munnely | Alice Murphy | Deirdre Nagin | Jevon Nelson | Ronan Newell | Philip Nolan | David O'Donnell | Eoin O'Herlihy | Sara O'Reilly | Doreagh O'Shea | Maurice Phelan | Kevin Power | Aine Quigley | Elizabeth Quinn | Shane Reynolds | Judith Riordan | Liam Riordan | Elizabeth Ryan | Orlin Tobin | John Traute
 GP Counsel - Una Burke | Paul Egan SC

the "Scheme"), it is both improper and inappropriate that the lands identified and sought to be compulsorily acquired have been so identified and the relevant notices served in advance of that Scheme being approved. The application made, that is the application to approve the Scheme under Section 51 of the Roads Act 1993, as amended (the "Roads Act") under application reference no. 314942, must be determined in advance of any application in respect of the compulsory acquisition of land in circumstances where it cannot be determined at this stage whether the land is either necessary or suitable. In those circumstances, we raise a fundamental preliminary objection namely that this application is premature pending the approval of the Scheme under Section 51 of the Roads Act.

The absence of any basis for the justification of the extent of the land required and the nature of the acquisitions sought arises directly from the failure to have approval granted for the Scheme in advance of the CPO. The Acquiring Authority cannot show any basis to justify the acquisition of the lands within the ownership of Hermitage in the absence of the Scheme having been approved, and accordingly the proposed compulsory acquisition cannot be considered unless and until the Scheme is approved and is approved in a manner which would justify the intrusion into Hermitage lands. Accordingly, as a preliminary matter, the Board must reject the application for the compulsory acquisition of the land, refuse to deal with the application on the basis that the Acquiring Authority cannot justify in any way whatsoever a proposal to acquire any of the Hermitage lands in advance of the approval of the Scheme nor seek to anticipate that the Scheme will be approved in the manner proposed, and it is submitted, disrespectful of the process that the Acquiring Authority should anticipate that the Board will simply approve the Scheme and approve the compulsory acquisition of the land, and that the two processes can be held in parallel.

The above submission relates not just to the extent of land that is required and whether the extent and the type of land sought can ever be justified in the absence of the Scheme having been approved under Section 51, but it also raises a further difficulty in respect of the procedure to be adopted by the Board within this approval of the Scheme under Section 51, the carrying out of an Environmental Impact Assessment ("EIA") and the carrying out of an Appropriate Assessment ("AA") namely that where such considerations are conducted under Section 51. Where there are significant adverse effects identified, the Board, as competent authority, is required to consider the mitigation measures, and, as appropriate impose additional mitigation measures. It is therefore not possible to anticipate what the approach of the Board might be in respect of additional land that might be required in order to give effect to its obligations under Council Directive 2011/92/EU or under Council Directive 92/43/EEC (the "EIA Directive"). In such circumstances therefore the extent of land across the entire Scheme that may be required is impossible to determine until the Board consider the application under Section 51, and in such circumstances therefore cannot determine what land is necessary or suitable and there may be a fundamental constraint on the Board in terms of imposing mitigation measures in respect of land which is not included in the Scheme. In such circumstances the application for the compulsory acquisition of Hermitage lands is fundamentally premature.

We formally request the Board to determine, as a preliminary issue, whether it is appropriate to proceed with an application whereby there are at least four separate consent procedures being conducted in a single unitary application, that is whether to approve the compulsory acquisition of the land and within this procedure alone the Board has a power to refuse to confirm the compulsory acquisition, to omit certain elements of lands from the Scheme and to impose certain limitations in the manner in which the acquisition is to be acquired. There is the further requirement to carry out an EIA whereby the Scheme can be modified, there can be mitigation

measures required and the Scheme can be significantly modified and indeed requires to be modified as part of any EIA. Further, there is an AA required which again can require the Scheme to be modified and altered so as to give effect to the obligations under Council Directive 92/43/EEC (the "**Habitats Directive**") and both of these processes can require significant additional landholding to be required, and that cannot be accommodated within the Scheme. Finally, there is the approval under Section 51 of the Roads Act.

It is impossible to reconcile an appropriate application of the principles underlying the compulsory acquisition of land with the approach that has been adopted in this case whereby Hermitage will not be aware of the final form of the Scheme at the date when its final submissions are made in respect of the compulsory acquisition of land, and indeed it may very well be the case that the Scheme is modified in respect of the lands belonging to Hermitage. This puts Hermitage in an invidious position whereby it cannot properly engage with the formalised Scheme and that is a crucial factor that the Board must be aware of when it seeks to have considered the effect and appropriateness of the Scheme and whether it should or should not be confirmed.

Accordingly, we require that the Board determine that it will have two separate distinct inquiries. The first, whether it is appropriate to approve the Scheme under Section 51, which will complete both the process in respect of that approval under domestic law as well as conducting the EIA and the AA. At that stage, if the Scheme is approved, then the Acquiring Authority may proceed to make an application for the compulsory acquisition of lands identified in that approval. It would be untenable and contrary to law and to constitutional justice to require Hermitage to anticipate the likely outcome of any procedure under Section 51 and be required to deal with this as part of its submissions in respect of the application for the compulsory acquisition of land.

Consequently, we would request that the Board refuse to confirm the compulsory acquisition application of the Acquiring Authority unless and until the Scheme is approved under Section 51 of the Roads Act. It is intended to make a separate submission in respect of the appropriateness of that Scheme which requires to be determined separately and before any determination is made in respect of the lands required. It would be Hermitage's position that having regard to the considerations that are required to be applied in respect of the procedures incorporated within Section 51 that no part of the Scheme should trespass onto or effect Hermitage's lands which is one of the few amenities that is located within this area, and where it is simply not appropriate to approve the Scheme in those circumstances.

Accordingly, if the Board were to adopt the general position that is set out in the separate submission being made, then it may not be necessary to engage at all with the compulsory acquisition application as this would of course fall by the wayside in the event that the submission made were to be accepted, and no determination can be made in respect of that until that process is concluded.

It is vital however that this matter be determined at this stage, that is before any oral hearing is convened because the experience in attending hearings of this type is to the effect that the approach adopted is to take the submissions and bring them before the Board, but the hearing will proceed, and the Board ultimately will make a decision. If this approach were adopted in this case, it would intolerable because a golf club with limited resources will have to deal with an entirely theoretical basis where a Scheme which has not been approved forms the basis of an application for the compulsory acquisition of the lands of the club. Also, if, notwithstanding the objections made, a Scheme or part of the Scheme is ultimately approved, the nature of the submissions made



in respect of the compulsory acquisition of the lands will be entirely different to this theoretical exercise that Hermitage is required to engage in.

In those circumstances therefore we would ask the Board to make a preliminary determination as to whether they will proceed with having both applications, that is the application for the compulsory acquisition and for the approval of the Scheme, conducted simultaneously or whether they will accede to Hermitage's submission and have the Scheme under Section 51 of the Roads Act determined first. Following that determination, if it is still the position of the Acquiring Authority that they want to proceed with the Scheme and compulsorily acquire the lands, then they may do so but at least all parties will be aware of the nature and purpose of the acquisition. Again, we would request that the Board would communicate the determination in this regard at the first available opportunity.

Without prejudice to the matters that are set out above it is clear that the extent of the land that is required, particularly having regard to the EIA that is required to be conducted, cannot be determined at this stage. The EIA report itself contains various mitigation measures which appear to lie in many instances outside the lands, the subject of the acquisition. It is not possible for a Scheme to be proposed which requires mitigation measures which are required to be carried out in respect of the Scheme unless the Acquiring Authority has control of those lands and that those lands are included within the application under Section 51. It is not appropriate where mitigation measures cannot be limited to the lands identified in the Scheme that these lands are not identified within the compulsory acquisition and as a consequence therefore the Scheme in the manner in which it has been formulated is fundamentally invalid and void. Accordingly, the Board cannot consider a scheme where it is proposed that works or mitigation measures or monitoring or other such interventions will occur on lands not included within the scheme. This would be the equivalent of including third party lands within a planning application and this as a matter of both constitutional law, having regard to the provisions of Article 40.3 and Article 43 of the Constitution, as well as the European Convention on Human Rights, as well as fair procedures. Natural and/or constitutional justice requires that all of the lands which may be affected by the Scheme, that is either directly or indirectly, be identified and included within the Scheme lands. Accordingly, in respect of the lands, the basis upon which these lands have been included is misconceived and should not be further considered unless and until they align with the proposal made and where there can be a prospect at least of the lands affected by the Scheme being included within the application before the Board.

For the avoidance of doubt, it is Hermitage's position that these lands are neither necessary nor suitable in respect of the Scheme. The Board will appreciate however that a major consideration in this regard is the application under Section 51 and the approval of such a Scheme must be the starting point for identification of the lands, the subject matter of the compulsory acquisition. We refer to those parts of the submission outlined above and make the submission that the lands are not suitable in circumstances where this Scheme has not been approved and therefore the Board are not in a position to facilitate objections on the part of the landowner which engage with the suitability of the lands in the absence of the Scheme having been approved.

Furthermore, until the Scheme is approved it is not possible to determine whether Hermitage lands are necessary and again the application for compulsory acquisition of Hermitage lands must be rejected until this issue is definitively determined by the conclusion of the process for approving the Scheme, if ultimately the Board, contrary to our submissions, decides to do so. Only at that stage in the event that the Scheme is approved would it be possible to identify the full extent of the lands,

not just in respect of Hermitage if such is included ultimately within the Scheme approved under Section 51, but for the full extent of the Scheme having regard to the obligations under the EIA Directive and the Habitats Directive, and again it is impossible for the Hermitage to engage in the process at this stage.

Hermitage lands are zoned high amenity in the current South County Dublin Development Plan 2022 – 2028 which was adopted in August 2022 (the “**Development Plan**”). This precludes a major scheme of a type which by virtue of its size and scale requires approval under Section 51, requires a mandatory EIA under the provisions of the Roads Act and the EIA Directive, requires an AA by virtue of the likelihood of effects on the conservation objectives of certain European Sites. Accordingly, the Scheme in and of itself cannot be reconciled with the zoning objective in respect of high amenity, which is the highest classification both of landscape and of landscape sensitivity that is possible to include within the Development Plan. It is inconceivable that given the zoning objective involved that it is possible to reconcile this Scheme with the conservation objectives and the zoning status of these lands and the Scheme amounts to a material contravention of the Development Plan.

It is well established in the authorities and leading textbooks on the subject that in order for a major development to proceed it must be specifically provided for in the statutory development plan. Indeed, in *Roughan V Clare County Council (unreported, High Court, 18 December 1996)* Barron J held that all major development contemplated within the life of the plan must be provided for in the plan. This Scheme has no such status and to proceed to determine the matter and approve the Scheme under section 51 would be ultra vires the Board. However, in this case the position is much more serious as it appears that in identifying cycleways this route, that is the route proposed, has not been identified in the Development Plan and therefore to permit a cycleway, which is a fundamental part of the Scheme, in those circumstances would amount to a Material Contravention of the Development Plan, in accordance with the principles set out by the Supreme Court in the *AG (McGarry) V Sligo County Council [1989] I.L.R.M. 768*.

A Road Authority may not proceed with a development either by way of an application for approval under Section 51 but more particularly seek to compulsorily acquire the land unless that proposal can be manifestly considered to be consistent with the Development Plan. In this case in circumstances of this application, high amenity lands specified for protection in the Development Plan are to be compromised beyond remediation by a Scheme of development which is not provided for in any context on or around these designated high amenity lands.

In addition, there is a lack of particularity in the Development Plan to justify the Scheme. The land use zoning map no. 2 in the Development Plan does not show an indicative alignment for either the busconnects or cycleway at Hermitage’s southern boundary or within the golf course. No indicative route is shown for busconnects whereas the “Route 6 Lucan to City Centre” description in Table 7.2 of the Development Plan is imprecise and open to interpretation as to the actual route selection from Lucan to Dublin City Centre.

The land use zoning maps do include an orange and green dashed line to denote “Cycleway Proposal (Cycle South Dublin)” but there is none shown within or in close proximity to Hermitage’s southern boundary at the N4. There is a lengthy list of Cycle South Dublin Routes and Projects in Table 7.1 of the Development Plan, and it is noted that these are indicated on Development Plan Maps. The cycleway proposal affecting Hermitage isn’t specified in the Development Plan in table 7.1 or on land use zoning map no. 2.

Reference has already been made to the absence of any basis for the compulsory acquisition of Hermitage lands and while it may be the case that such a document exists, its absence in the public domain sheers the document of any validity and cannot be relied upon if it has not been placed in the public domain and accessible to Hermitage so that it can determine the basis upon which the compulsory acquisition of its lands, its extent and its impacts have been arrived at.

In the event that such a document does not exist, then the entire application made is contrary to law, contrary to Hermitage's constitutional rights under Article 43 and Article 40.3.2 and accordingly cannot be further considered by the Board as a fundamental condition precedent to the making of an application has not been complied with.

The Acquiring Authority, in formulating the application, appear to have conflated the two procedures and appear to have adopted an approach which seeks to justify the basis of the application made under Section 51 of the Roads Act as being one and the same with the considerations in respect of compulsory acquisition. This is a fundamental error, and the two applications are entirely separate and distinct, as has been set out earlier, and entirely different considerations apply in respect of both. The entire procedure therefore has proceeded on a fundamental illegality. The Board cannot condone such, particularly in circumstances where there is a direct attack on constitutionally protected rights and while the normal applications that are considered by the Board under the Planning and Development Acts or Strategic Infrastructure legislation or other such legislative schemes require a certain level of public engagement. The case law establishes that in the case of compulsory acquisition there is a heightened standard to be applied. It is, in constitutional terms, a very significant step to authorise the compulsory acquisition of lands and this can only be done where the procedural obligations underlying any such acquisition are strictly complied with.

There is no basis therefore set out which Hermitage can engage with to see the basis upon which it has been considered appropriate to proceed with the compulsory acquisition of Hermitage lands. This is a fundamental requirement because it is a case where the onus of proof is not simply on Hermitage to oppose the application but rather the primary duty is on the Acquiring Authority to justify the acquisition. If no such justification exists, then the entire application is based on a fundamental illegality and cannot be considered further. If such a justification is produced which has been prepared in advance of the making of the application relative to Hermitage lands, then it is both unfair and unreasonable that this information has not been communicated to Hermitage, and accordingly the application must equally be rejected.

Even if the Board were to refer across to the application under Section 51 and we submit that it would be quite improper and inappropriate for them to do so, they will not find in any event any appropriate or indeed any considerations of the effect of the Scheme on Hermitage. The references to the documentation in terms of effect refer to a plan and rather imprecise references to the land take which is identified on part of the maps in the EIA report, the creation of netting, the relocation of boundary walls, but no analyses of the effect on Hermitage. While this is a matter perhaps more appropriately to be made within the Section 51 submission, it is nonetheless clear from the absence of any consideration within that procedure that no regard was had to the impact that the Scheme would have on Hermitage as part of the considerations as to whether to compulsorily acquire the land identified within the application.

This is quite simple extraordinary and deeply concerning because the case law establishes definitively the level and extent of considerations that are necessary before lands are identified within a scheme for compulsory acquisition and the obligations on the part of the Acquiring Authority in that regard. It is inappropriate and unconscionable that Hermitage are put to the trouble and expense of engaging in a process that is so fundamentally flawed, will be required to engage expertise to deal with this summary attempt to acquire its lands and yet there has been no justification for the Scheme nor compliance with the established case law.

In *Clinton v. An Bord Pleanala [2007] IESC 19 ("Clinton")* the Supreme Court set out the parameters within which any such compulsory acquisition must occur and the test to be employed. The most fundamental requirement in that test is to consider the impact on the landowner whose constitutional rights are to be infringed and to determine whether these can be justified. This is an extremely onerous task placed upon the Acquiring Authority. We have not been able to identify where this exercise has been carried out and it is clearly required to be carried out before the nature, extent and effect of the lands included within the Scheme were identified. It is not possible now to do an ex post facto justification. Therefore, we would request the Board formally to reject the application in the light of the failure to comply with the fundamental legal requirements to establish even a prima facie case that it is appropriate to compulsorily acquire these lands.

The compulsory acquisition is being proposed by the Acquiring Authority without having set out the precise statutory basis upon which it relies and without having demonstrated that it has complied with all formal requirements in that regard. There is no detail at the level required following the judgment of the Supreme Court in *Clinton* that demonstrates that the Acquiring Authority directed its mind to the procedural obligation required to be complied with and in particular that the Scheme proposed was such as to create the least impact on the landowner consistent with achieving the objectives of the Scheme. There appears to be no information on the impacts on Hermitage and, as a consequence, no analysis as to how these impacts can be ameliorated which is the essence of the test that was required to be conducted if the requirements of the Supreme Court in *Clinton* were to be fulfilled. This is an entirely separate and materially different exercise to the obligations that arise under European Community law, and it is required to vindicate Hermitages' right under Art 40.3 and Art 43 of the Constitution as well as obligations under the European Convention of Human Rights.

The fundamental obligation on the Acquiring Authority and the test that is required to be met is that the least possible impact on the landowner is created by adopting a Scheme utilising the various statutory powers of the Acquiring Authority that meets the requisite standard and the NTA has not, in preparing the Scheme and in formulating the CPO, directed their minds to these requirements. The Scheme therefore as proposed, in the absence of such consideration is fundamentally invalid and void.

In conclusion therefore, while formally objecting to the inclusion of Hermitage lands within the compulsory acquisition maps, which of itself has caused significant damage and distress to Hermitage and to its reputation and has prejudiced its short to medium term development. We would respectfully request that the Board at this stage reject the application for the compulsory acquisition of these lands on the basis that the inclusion of the said lands is contrary to and inconsistent with their classification in the Development Plan, that there is no basis for the inclusion of the lands nor the extent of the lands within the application for compulsory acquisition made, that contrary to the requirements of the statutory Scheme and the constitutional requirements there has been no analyses of a type required in the Supreme Court judgment in *Clinton*, which would justify



the Scheme and in the absence of all of these procedural requirements having been met, it is not appropriate that this application could be further considered and certainly should not be considered in accordance with and in parallel to the Scheme under Section 51.

While we have not been furnished with the necessary documentation grounding the making of the CPO, we raise the manner in which this Order has been drafted and prepared in terms of the procedures that were followed and we intend, should the Board proceed with the hearing, to have these matters raised again as preliminary issues at that stage of the process. However, our fundamental submission is that this application to compulsorily acquire Hermitage lands whether as a matter of law and as a matter of constitutional justice as well as under the relevant statute should not be allowed to proceed in the form and in the manner that is currently envisaged.

We would be grateful if you would confirm receipt of this submission as well as confirming that you will deal with the preliminary issues raised within the near future so that we can be aware of the position that the Board is intending to adopt in respect of the matters that are set out above.

Please direct all future correspondence on this matter to our office.

Yours faithfully

Mason Hayes & Curran LLP
MASON HAYES & CURRAN LLP



Flannery Nagel
Environmental Ltd.


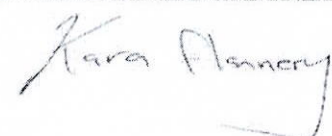
A REPORT BY FLANNERY NAGEL ENVIRONMENTAL LIMITED: JANUARY 2023

Hermitage Golf Course(HGC)

BUSCONNECTS EIAR NOISE REVIEW

JANUARY 2023

Document Control Sheet

Report Title	BusConnects EIAR Noise Review, January 2023
Project number	HE01002a
Version Status	FINAL V.3
Date	04th January 2023
Prepared under the management of: Elisabeth Nagel– Project Manager	Directed, reviewed and approved by: Kara Flannery– Project Director
 	
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<p>This report has been prepared by Flannery Nagel Environmental Ltd with all reasonable skill, care and diligence within the terms of the contract with the client, in accordance with our terms of business and taking into account the resources made available within the timeframe for reporting. We disclaim any responsibility to the client in respect of any matters outside the scope of works as detailed.</p>	

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1. Introduction

In January 2021 FNE carried out a noise baseline assessment at Hermitage Golf Course (hereafter referred to as HGC). The objective of the assessment was to establish the background noise levels experienced in the golf course due to sound emanating from the N4 dual carriage way. The assessment also provided predictions of likely noise levels that may be experienced if the boundary wall and mature tree frontage were to be removed as part of the Bus Connects road works.

In October 2022 the National Transport Authority (NTA) submitted an Environmental Impact Assessment Report (EIAR) to An Bord Pleanála for the proposed BusConnects N4 scheme, Lucan to Dublin City.. Submissions to An Bord Pleanála regarding the EIAR must be made in January 2023. Accordingly HGC requested a review to be carried out of the noise impact assessment and mitigation measures (as relevant) contained in the EIAR, where they address the N4 stretch of road adjacent to HGC, and to ascertain whether any changes in the route proposals have been made since the November 2020 Draft Route Options Report.

This review was desk based only and did not include any further noise monitoring.

2. Background

The document **BusConnects Draft Preferred Route Options Report (PRO), November 2020** sets out a proposal to construct a double lane bicycle path along the north of the N4, adjacent to HGC, with no cycle lane along the southern side of the N4 between the M50 junction and Lucan N4 Junction 3. This was a change from the initial **Emerging Preferred Route (EPR)** of 2019 which was proposing a cycle lane on each side of the N4. It is understood that the change to a two-way cycle lane along the north of the N4 was decided upon after the 2nd round of public consultation, and that this option is preferred as it provides a better integration of cycle infrastructure and improved safety for all road users.

The provision of a two-way cycle lane along the boundary of HGC will require the relocation of the external boundary wall of HGC by 4.3 m into the golf course, and the erection of a high sports net which will require a further temporary land take of up to 5m. This will result in an estimate total requirement to fell more than 400 trees along a 10m wide strip of land along the N4 boundary of the HGC, as well as the removal / relocation of the 1.8m high stone wall.

The current perimeter planting of the golf course includes conifers and mixed deciduous trees which offer a visual shield and noise attenuation from the N4 traffic.



3. Review of EIAR, Chapter 9, Noise Assessment

A review was carried out of the available documents relating to the BusConnects Lucan to Dublin City proposal and the submission to An Bord Pleanála in October 2022, with a particular focus on the EIAR, Chapter 9, Noise Assessment.

The specific documents reviewed and referenced are presented on page 10 of this report.

The purpose of the review was to establish the consideration given, if any, of the impact that the construction and operation of a two-lane cycle lane will have on HGC.

Noise Impact Considerations

a) EIAR Chapter 9, Noise Impact Assessment

The HGC is not indicated as a Noise Sensitive Location in the BusConnects EIAR noise assessment. The beneficial aspect of the recreational greenspace, and the value of protecting it from increased noise exposure, is not addressed in the EIAR.

The Noise impact assessment chapter is based on 6 background noise measurement locations along the entire BusConnects route, with the closest monitoring point to HGC in a residential garden south of the N4. The prediction of potential noise impacts along the N4 was primarily based on road noise mapping undertaken for the EPA in 2016.

It is predicted in the EIAR that **Operational Noise Levels** along the BusConnects route will be imperceptibly different to current noise levels. This does not take into account the negative impact that will be experienced at HGC due to the land-take and felling of trees, thereby removing the current noise screening that is provided by the high boundary wall and mature trees in the golf course. It is likely that the operational noise impacts from the N4 in the southern part of HGC will be up to 10dB higher than current noise levels adjacent to the boundary, if no effective mitigation, such as a high new wall, is provided along the HGC boundary.

The **Construction Noise** assessment is generic across the entire Bus Connects route, and does not focus on specific noise concerns at different locations. Overall construction noise impact is predicted as moderate and temporary along the route.

The impact of construction noise along the HGC boundary has not been considered. The general construction noise impact assessment looks at noise generated by standard construction plant, such as excavators, dump trucks and road planers. The chapter does not include noise from tree felling activities, nor rotary drilling noise which may be caused during the construction of the secant pile wall proposed for the HGC boundary wall.

It is likely that the construction noise impacts along the HGC boundary may cause sporadic noise levels above 85dBA for a prolonged period of time, while the boundary area is clear felled, and the new boundary wall is erected.

b) Height of Retaining Wall from traffic side

The cycle-route infrastructure depicted in the EIAR (*Figure, Lucan to City Centre Core Bus Corridors Infrastructure Works, Sheet 3 of 31, dated 30/09/22*) depicts a two-lane cycle path along the north of the N4, with a relocated HGC boundary wall, mirroring the Preferred Route Options of November 2020. This includes provision of a 15m high golf netting along part of the golf course perimeter, and a secant pile retaining wall forming the new boundary to the golf course. Details of the proposed retaining wall are provided in *Structure Details Appendix, Drawing BCIDA-ACM-STR _GA-0006_RW_01-DR-CB-0101* <https://lucanscheme.ie/wp-content/uploads/sites/7/2022/10/18.-Bridges-and-Major-Retaining-Structures-2.pdf>

The detailed retaining wall drawing RW01.06 indicates that the retaining wall on the HGC side will be a minimum of 1.5m in height. However due to the undulation of land, the level of the cycle path and road on the traffic side will rise and fall. The drawings do not provide details of the final height of the retaining wall from the road level, it appears that it may only be 0.5m in some sections.

Likely Noise impact: The height of the retaining wall from the traffic side is relevant for the noise impact from the road, as the noise assessment carried out in January 2021 by FNE showed that the noise propagation from the N4 traffic into HGC was directly related to the height of the boundary wall vis a vis the tops of passing busses and trucks. If the boundary wall height from the traffic side is reduced to 50cm, the noise impact on HGC in these sections will be significantly higher than current noise experienced.

Figure: EIAR, Sheet 3 of 31, Lucan to City Centre Core Bus Corridors Infrastructure Works, Sept 2022

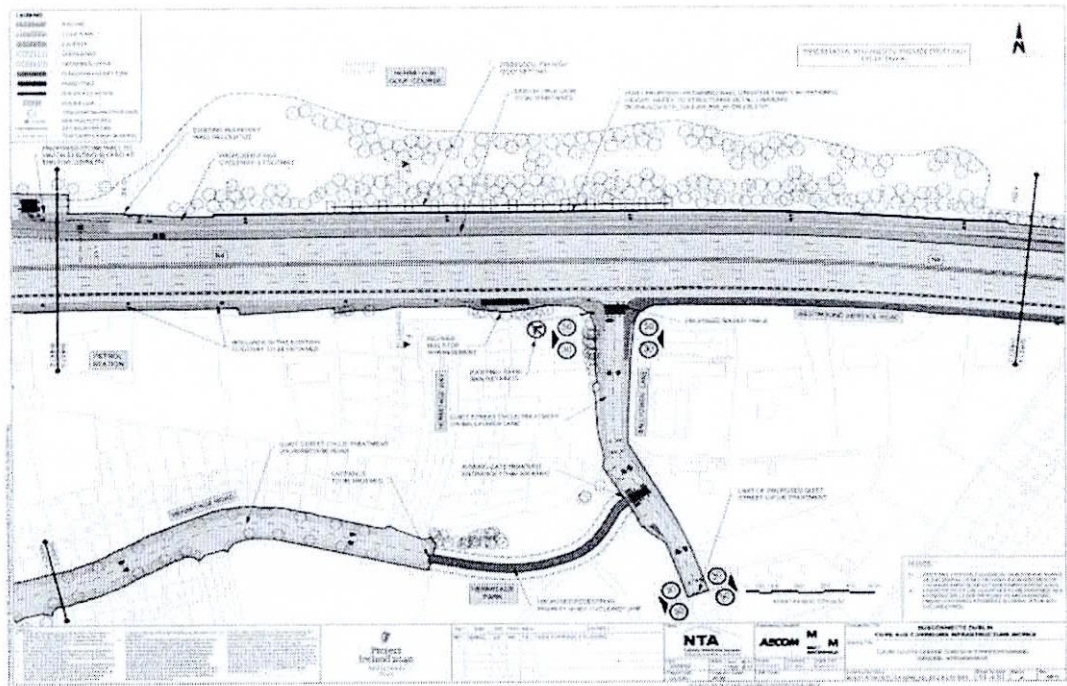
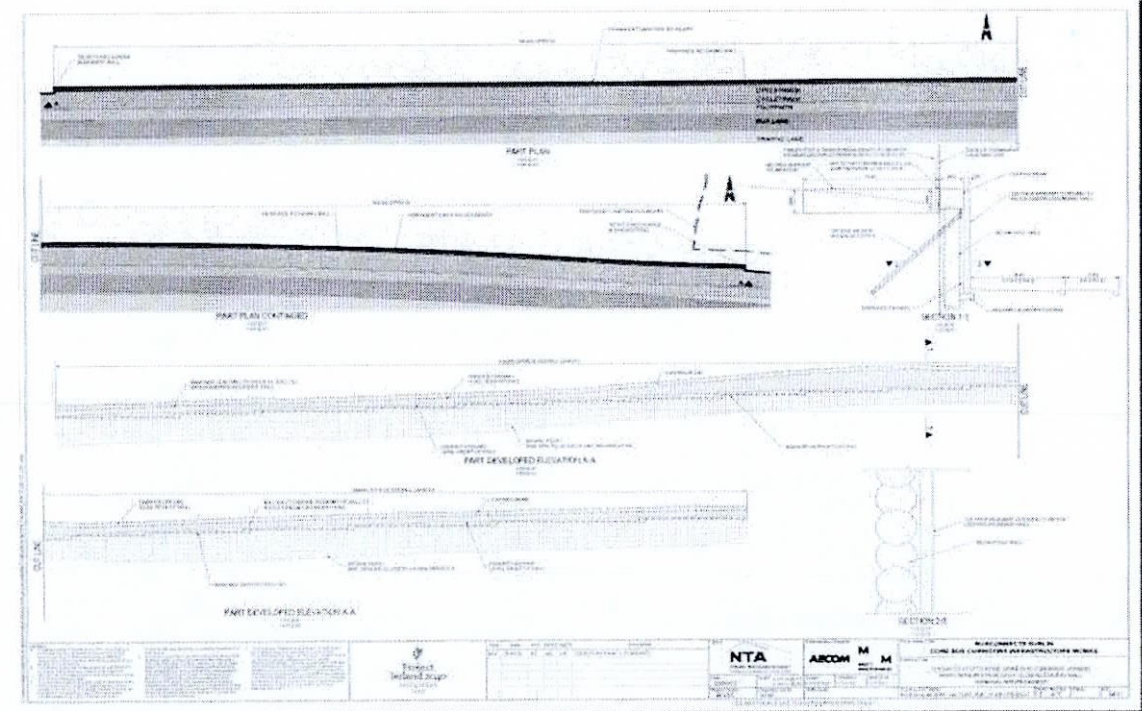


Figure: EIAR, Structure Details Appendix, Drawing BCIDA-ACM-STR_GA-0006_RW_01-DR-CB-0101

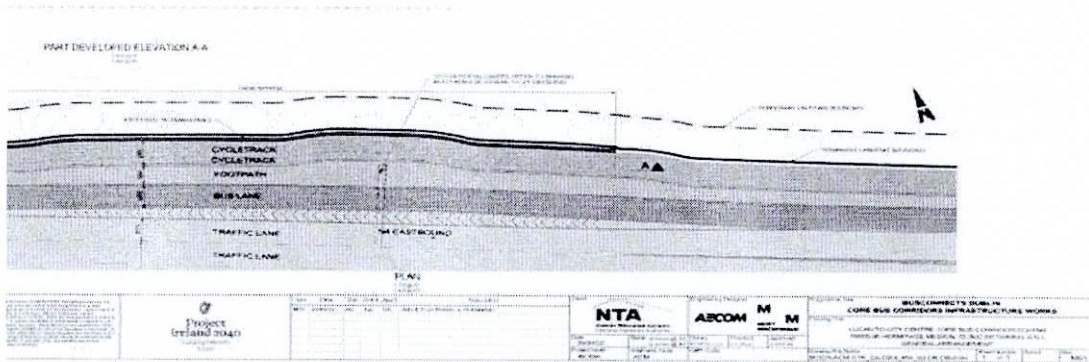


c) Width of proposed land take and required tree felling

Based on the PRO of November 2020 it was expected that the land take from HGC along the boundary would be about 5.8 meters, consisting of the relocation of the external boundary wall by 3.5m into the golf course, the construction of a new boundary wall, and the erection of a high sports net, presumed to require another 1.5m strip of land take. However the more detailed drawing provided above indicates that the netting support foundation and new ground anchors to support the retaining wall will require up to 5m land-take, in addition to 4.5m for the new cycle path and boundary wall. This would result in a land take of nearly 10m along the boundary, and the felling of over 400 trees.

The drawing RW05.06 below indicates that this may be the extent of temporary land-take, with permanent land-take at about 4meters.

Figure: EIAR, Structure Details Appendix, Drawing BCIDA-ACM-STR _GA-0006_RW_05-DR-CB-0101



Likely Noise impact : The FNE noise monitoring in HGC in January 2021 clearly showed the beneficial mitigation afforded the golf course due to the 5-10 meter depth of mature trees along the boundary to the N4, and the additional noise reduction evident where the boundary wall was higher than the passing trucks and buses. If a 10m land take is required, and with it the felling of most of the mature trees, the noise levels experienced in the golf course near the N4 are likely to increase by up to 10dBA .

During the FNE noise assessment, noise levels at 10meters from the current boundary wall, with mature tree lining, were between 65-68dBA LAeq., compared to noise levels recorded at the road side of the N4 of 84dB LAeq. Noise levels in the middle of the golf course, at 250m from the N4, were 52dB LAeq.. If mitigation measures are not implemented, it is likely that noise levels near the boundary wall will be over 75dBA once the existing boundary wall and mature trees have been removed. Mitigation measures to be considered are a higher boundary wall, high enough to screen passing buses and trucks from the golf course side, and the planting of tall evergreen trees to replace the felled cover.

4. Conclusion

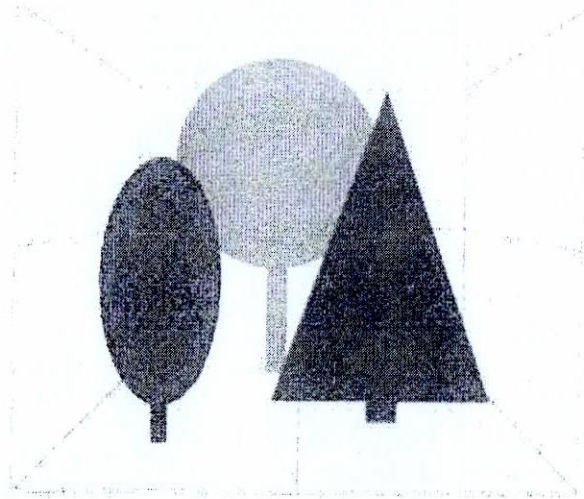
- The EIR report does not specifically assess the noise impacts along the boundary of HGC. A generic assessment of noise along the entire BusConnects route states that operational noise impacts will be imperceptible, and that construction noise impacts will be moderate and temporary along most of the route.
- The impact of specific construction noise at HGC, including tree felling and rotary drilling from a secant pile wall construction have not been assessed in the EIR.
- The long term increased noise impacting HGC, if no mitigation is provided once the boundary wall and mature trees have been removed, has not been assessed.
- The current 1.8m high perimeter wall plus the 6m high tree line along the N4 provide an approximate 10dBA noise mitigation to the southern part of HGC. If this wall height is reduced to 0.5m along some stretches, and tall evergreen trees are not replanted, the noise levels experienced in the golf course along the N4 boundary are predicted to be around 75dBA.
- A 10dBA increase in noise levels is generally perceived as a **doubling of loudness**, and would be very noticeable to people using the golf course within 50meters of the N4 dual carriageway. A doubling of loudness is known to give rise to annoyance in a high percentage of people, and would reduce the restorative quality of the HGC environment.
- It is considered that a wall of approximately 2.5m height would be required to provide effective noise mitigation to the golf course, in the absence of the current stone wall and tree perimeter. An exact mitigation wall height and design has not been specified nor evaluated as part of this report.

5. References

- Environmental Impact Assessment Report, BusConnects Lucan to City Centre, October 2022
<https://lucanscheme.ie/>
 - EIAR, BusConnects Lucan to City Centre, Vol.1. General Arrangement Drawings
<https://lucanscheme.ie/wp-content/uploads/sites/7/2022/10/03.-General-Arrangement.pdf>
 - EIAR, BusConnects Lucan to City Centre, Vol.2,3 & 4. Chapter 9, Noise Assessment, plus Noise Figures & Drawings ; <https://lucanscheme.ie/wp-content/uploads/sites/7/2022/10/Chapter-09-Noise-and-Vibration-1.pdf>
 - EIAR, BusConnects Lucan to City Centre, Vol.3. Bridges and major Retaining Structures
<https://lucanscheme.ie/wp-content/uploads/sites/7/2022/10/18.-Bridges-and-Major-Retaining-Structures-2.pdf>
- BusConnects Lucan to City Centre Core Bus Corridor Preferred Route, March 2020
- BusConnects Draft Preferred Route Options Report, November 2020
- Bus Connects Information on the Proposed Approach to Environmental Assessment, November 2020
- EPA (2020). EPA Noise Maps [Online] Available from <https://gis.epa.ie/EPAMaps/>
- TII (previously National Roads Authority (NRA)) (2004) Guidelines for the Treatment of Noise and Vibration in National Road Schemes.
- TII (previously National Roads Authority (NRA)) (2014) Good Practice Guide for the Treatment of Noise during the Planning of National Road Schemes.
- FNE. Hermitage Noise Assessment Final Report, January 2021

The Tree File

Consulting Arborists



Roadside Trees and Woodland

Groups at

Hermitage Golf Club
Ballydowd
Lucan
Co Dublin

The Tree File Ltd

Consulting Arborists
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February 2021

086-3819011

27th February 2021

Hermitage Golf Club
Ballydowd
Lucan
Co Dublin

**Re. Trees in Respect of Road Upgrade and Amendment Works
at Hermitage Golf Club, Ballydowd, Lucan, Co Dublin**

Prepared by

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1 Report Brief

The proposed alternative route for Bus Connects cycle way would entail the loss of a strip of ground that currently supports trees that constitute the southern edge of the Golf Course.

- 1.1.1 "The Tree File Ltd" has been requested by the management of the Golf Club to review the tree population in this area.
- 1.1.2 This report provides a preliminary overview of the tree and woodland likely to be directly or indirectly affected by the road works or works ancillary to the road works.

1.2 Report Context

- 1.2.1 This report and the recommendations it makes are based on an above ground visual review of the tree in question. The recommendations provided are based upon the inspector's knowledge and experience.

1.3 Nature of Information

- 1.3.1 The information outlined in this report is based on a simple "walk through" review. It includes a simple qualitative review in light of the proposed works. It is not intended as a basis for management or an assessment of risk, both of which would require a greater depth of inspection and consideration.

2 Introduction

- 2.1 The proposed Alternative Route for Bus Connects cycle way will require the consumption of notable ground-space within the Golf Course lands. This area of ground supports a visually significant and broadly healthy population of young but well-established trees.
- 2.2 This report has reviewed those trees considered most at risk from the works. The review considered both direct impacts relating to the consumption of space for the Bus Connects cycle way, as well as further construction and access space. It also considers related repercussions including the requirement for new planting to screen the road and cycleway and the space this will require to the north of the existing tree belts and the possible need for further fairway space to the north of the existing fairway, thereby keeping current fairway widths.
- 2.3 For this reason, this review includes an overview of trees that directly adjoin the boundary, but also some groups positioned some 100 metres to the north but adjoining the 16th fairway that may be affected as above.

3 Findings

- 3.1 From the outset, it was appreciated that many trees in the review area were particularly similar in respect of size, age and condition. For this reason, the report deals with trees in groups as opposed to on an individual basis. Such groups are based on location and similarities of constituent specimens. These trees have been reviewed in group fashion with the result being defined below in respect of tree groups 1 to 10.
- 3.2 It was noted there are extensive trees around the 16th fairway in "10-20", "10-25", "40-50" and "greater than 140" years old categories. The older trees at locations depicted on historical mapping and therefore appear to relate to the prior "estate" context. Additionally, the younger age profile that includes many hundreds of specimens, illustrate extensive, relatively recent, planting works and the creation of what is at present a substantial and established tree population.
- 3.3 The huge numbers of relatively young trees located on both sides of the 16th fairway, means that the trees surveyed in Hermitage GC offer great sustainability (especially in Groups 1,3,7,8 & 9).

4 Construction Works

- 4.1 While Hermitage GC has been advised that construction plant would operate from the N4 roadside (not on the course) there is also concern relating to the different elevation and root system of trees not removed. Should any construction plant operate on the course there is potential for additional impact on trees, by causing damage to the root zone or requiring additional tree felling [a haul road etc]
- 4.2 To complicate issues, the topography of the golf course varies with ground levels often being much higher than the existing road and footpath. Therefore, any works undertaken will involve sometimes substantial excavations and the creation of retaining structures.

5 Collateral Issues

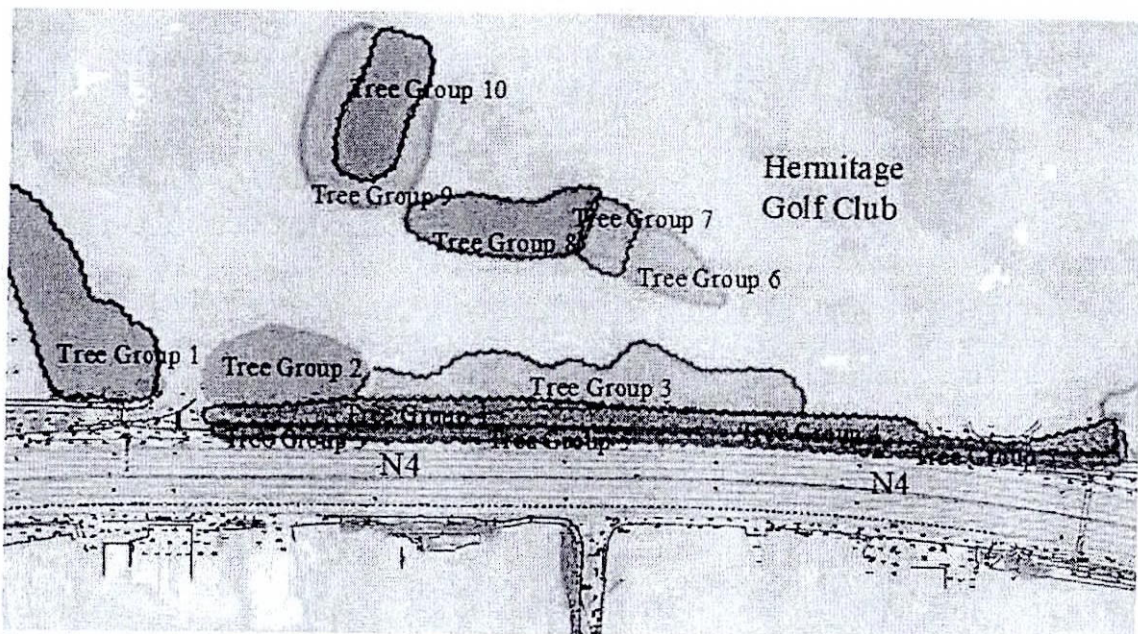
- 5.1 Collateral issues must also be considered. The simple loss of trees to the south of the Golf

Course will create a new requirement for new screening and the development of a new tree belt. This will require space that creates a knock-on effect regarding the adjoining 16th fairway.

- 5.2 While it is noted that some species / groups are already under attack (Dutch Elm, Chalara canker, etc), these comprise only a tiny proportion of the potentially impacted tree population. Equally, it is appreciated that many trees are being replaced as part of the Hermitage's tree management plan.

6 Conclusions

- 6.1 If constructed the proposed Bus Connects cycle way would have a significant impact on the trees in Hermitage GC, both along the southern boundary at the N4 and also up to 100 m further north in the golf course dramatically altering the course and necessitating the requirement for additional tree felling
- 6.2 Should the cycle way be constructed the reorientation of the course is likely to impact on trees planted c170years ago (Woodland Group 7). [1837-42 and the 1888 to 1913 historical maps] which likely formed of the original Hermitage planting.
- 6.3 The drawing below (Key Drawing) illustrates the various tree groups and clearly illustrates the potential significant negative impact on the course landscape. It is likely that tree groups 4 and 5, as well as much of group 3 will be lost as a direct of the new cycleway. However, Groups 1 and 2 will likely lose some specimens and collateral impact including the requirement for new planting space and the corresponding shifting of fairway 16 to the north, may result in losses within tree groups 6 to 10.
- 6.4 Considering the above, the cycle way works will have a significant impact on the golf course landscape and tree population with approximately 700nr trees in danger of loss.



Key Drawing – Tree Group Locations

7 Tree Groups

7.1 Tree Group 1 (See Fig 1)

Beech (*Fagus sylvatica*)
Sycamore (*Acer pseudoplatanus*)
Ash (*Fraxinus excelsior*)
Wych Elm (*Ulmus glabra*)

This is a particularly young woodland showing evidence of artificial planting. Species found include Beech, Sycamore and Ash as well as particularly small number of Elm. The woodland is defined to the east by a ditch and bank type scenario with the wooded area being elevated compared to the open grassland to the east. The western boundary appears to be defined by a suppressed hedge of Hawthorne amongst other species.

Within the woodland, there are a small number of stumps from larger, older trees however, most trees in this area would be in the order of 20 – 25 years with only a small number likely to be in the order of 40 – 50 years.

Woodland density is high particularly in respect of Beech that often exist at less than 1.50 m centres. This has led to widespread elongation and the development of tall, spindly forms that may create management and sustainability issues over time.

Notwithstanding high densities, this woodland appears to offer reasonably good sustainability, that can be improved with management, including woodland thinning.

7.2 Tree Group 2 (See Fig 2)

Wych Elm (*Ulmus glabra*)
Ash (*Fraxinus excelsior*)

This area is made up of by natural regeneration, dominated by Wych Elm and Ash. Some evidence of Dutch Elm disease is noted within the Elm population with some trees showing symptomatic dieback or death. This woodland group will need careful monitoring over time regarding any spreading of the disease.

Notwithstanding this, the woodland area can still be regarded as young, with the majority of trees being in the order of 20 – 30 years of age.

7.3 Tree Group 3 (See Fig 3)

Sycamore (*Acer pseudoplatanus*)
Norway Maple (*Acer platanoides*)

Located directly adjoining the roadside boundary line of Cypresses, there are between 4 and 5 rows of trees. Most rows incomplete suggesting early life attrition and losses. Nonetheless, most of these trees, typically dominated by Sycamore and Norway Maple remain healthy despite those along the southernmost edge having been suppressed by an

adjoining alignment of Leyland Cypress.

Current statures would suggest ages in the order of circa 15-20 years. While a clear majority of remaining trees are of reasonable health, a small number were noted to be affected by various pathological issues and suppression. Nonetheless, and when reviewed cumulatively, the group offers substantial sustainability.

7.4 Tree Group 4 (See Fig 4)

Ash (*Fraxinus excelsior*),
Hornbeam (*Carpinus betulus*),
Beech (*Fagus sylvatica*),
Sweet Chestnut (*Castanea sativa*)
Lime (*Tilia europea*)
Laburnum (*Laburnum anagyroides*),
Whitebeam (*Sorbus aria*),
Turkey Oak (*Quercus cerris*),
Norway Maple (*Acer platanoides*)

This deliberately planted area supports multiple species. All trees are, without exception, young with many being in excellent condition. Current statures would suggest ages in the order of circa 20 and 25 years. While a clear majority of trees are of good health, a small number were noted to be affected by various pathological issues. Nonetheless, and when reviewed cumulatively, the trees would be regarded as offering excellent overall sustainability. This group is a more dispersed and mixed population than Tree Group 3. There is a difference in size with tree group 4 being slightly larger than Tree Group 3. This may relate to differing planting dates/sizes but equally, it may relate to their more open aspect and reduce levels of competition in respect of the northernmost trees.

7.5 Tree Group 5 (See Figs 5 and 6)

Leyland Cypress (*Cupressocyparis leylandii*),

A broadly continuous and contiguous alignment of trees adjoining the southern boundary of the site. The trees are typically found at circa 1.00 – 1.25 m from the retaining boundary wall of the site. Tree quality is variable and often poor as result of suppression and competition by near neighbours. Review of individual trees shows growth distortions and truncation is at circa 2.00 m illustrating a point at which the tree line has been cut in the past, in respect of the development of a hedge. This management has not been kept up and at this stage, most trees extend beyond this level and have reached up to 12.00 metres in height.

Suppression is lead to the loss of much of lower canopies and the trees often retain viable crown material only at higher levels. There are affected by way of screening is now highly variable. The species is known to be most troublesome in respect of management and is unlikely to prove sustainable in the long term. Additionally, consideration should be given to their proximity to the boundary wall, particularly where it acts as a retaining structure. In line with "Table A1", of "BS 5837, Trees in Relation to Design, Demolition and Construction – Recommendations", the planting of trees near lightly laden structures runs the risk of mechanical damage relating to tree growth over time. In this respect, the proximity of these trees to the boundary wall in line with their potential for growth over

time would suggest a high potential for damage. Equally, and depending upon the footing tied to the wall, the curtailment of root spread in southerly direction could equally affect the trees, predisposing them to failure and collapse in a southerly direction.

7.6 Tree Group 6 (See Fig 7)

Hybrid Black Poplar (*Populus x Canadensis*),
Sycamore (*Acer pseudoplatanus*),
Norway Maple (*Acer platanoides*)

A stand of early-mature trees presumed to be in the order of some 25 – 50 years of age. At present, their position divides into adjoining fairways. Their condition is broadly good, and their potential is to offer substantial sustainability.

7.7 Woodland Group 7 (See Fig 8)

Beech (*Fagus sylvatica*),
Ash (*Fraxinus excelsior*),

This small stand is associated with an area of raised ground includes five fully mature Beech and a mature Ash. Unfortunately, the Ashes in poor condition having sustained major loss of its crown apex resulting in extensive damage and with the uppermost sections of both primary stems now being affected by in a notice. Regardless of any roadwork impacts, this tree offers minimal sustainability.

The remaining five Beech are in good condition. These trees are notable by their age that suggests a planting date likely to be at the end of the 19th century beginning of the 20th century. It is likely that these trees form an element of the original Hermitage planting and the existing group appear to coincide with tree groups shown on both the 1837-42 and the 1888 to 1913 historical maps.

7.8 Tree Group 8 (See Fig 9)

Oak (*Quercus robur*),
Common Alder (*Alnus glutinosa*),
Ash (*Fraxinus excelsior*),
Whitebeam (*Sorbus aria*),
Beech (*Fagus sylvatica*),
Hornbeam (*Carpinus betulus*),
Sweet Chestnut (*Castanea sativa*)
Lime (*Tilia europea*).

An area of young and recently planting trees, most being in the order of 10-20 years of age. Most of these trees were found to be in excellent overall condition thereby offering notable sustainability if kept.

7.9 Woodland Group 9 (See Fig 10)

Ash (*Fraxinus excelsior*)
Wych Elm (*Ulmus glabra*)
Holly (*Ilex aquifolium*)

Elder (*Sambucus nigra*)
Ivy (*Hedera helix*)
Hawthorn (*Crataegus monogyna*)
Sycamore (*Acer pseudoplatanus*)

This is an overgrown area dominated by Ash and Wych Elm. All the Wych Elm and underlying scrub thicket appears to be naturally arising, some of the Ash, particularly to the west of the group may have been planted. Nonetheless, trees tend to be young, with many less than 10 years of age. Within the group, Dutch Elm disease is already noted many of the elms have died or are showing evidence of the disease. Therefore, the Elm proportion is unlikely to survive into the future.

The Ash would appear to offer great sustainability however, due consideration should be given to the developing prevalence of Chalara canker disease across Ireland. This rapidly spreading pathogen has the potential to see the loss of all Ash.

7.10 Woodland Group 10 (See Fig 11)

Beech (*Fagus sylvatica*)
Sycamore (*Acer pseudoplatanus*)
Ash (*Fraxinus excelsior*)
Wych Elm (*Ulmus glabra*)
Sweet Chestnut (*Castanea sativa*)

These trees form a loose alignment within an otherwise overgrown area. It supports several particularly large and aged trees that are shown on both the 1837-42 and the 1888 to 1913 historical maps. Most of these trees appear to be in good overall condition however, a small number are affected by pathogens and others have suffered mechanical failure.

Nonetheless, and if kept as a cohesive group including the Ash, Sycamore and Sweet Chestnut, the overall group would offer notable sustainability. However, considering the probable demise of the younger and adjoining Ash and Elm, then more planting not including Elm or Ash would be advisable.

Photographic Record



Fig 1-Tree Group 1



Fig 2-Tree Group 2



Fig 3-Tree Group 3 (inner, denser belt)



Fig 4-Tree Group 4 (more dispersed belt)



Fig 5 - Tree Group 5 (Leyland Cypress Boundary Line)



Fig 6 - Tree Group 5 (Leyland Cypress and Boundary Wall)



Fig 7 - Tree Group 6



Fig 8 - Tree Group 7



Fig 9 - Tree Group 8



Fig 10 - Woodland Group 9 (Sapling Elm and Ash)



Fig 11 - Woodland Group 10 (Mature Beech and Ash)