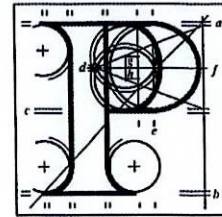


Our Case Number: ABP-316272-23

Planning Authority Reference Number:



**An
Bord
Pleanála**

Bernard Colman & Mary Mualdoon
48 Rathfarnham Road
Dublin 6W

Date: 16 August 2023

Re: Bus Connects Templeogue/Rathfarnham to City Centre Core Bus Corridor Scheme
Templeogue/Rathfarnham to City Centre

Dear Sir / Madam,

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

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

The Board has also received an application for confirmation of a compulsory purchase order which relates to this proposed road development. The Board has absolute discretion to hold an oral hearing in respect of any application before it, in accordance with section 218 of the Planning and Development Act 2000, as amended. Accordingly, the Board will inform you in due course on this matter. The Board shall also make a decision on both applications at the same time.

If you have any queries in relation to this matter please contact the undersigned officer of the Board at laps@pleanala.ie

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

Yours faithfully,

Eimear Reilly
Executive Officer
Direct Line: 01-8737184

HA02A

Tell	Tel	(01) 858 8100
Glaos Áitiúil	LoCall	1890 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
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64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

**[48 Rathfarnham Road
Terenure
Dublin 6W]
D6WVY84**

An Bord Pleanála
Strategic Infrastructure Division
64 Marlborough Street
Dublin 1
D01 V902
Ireland

AN BORD PLEANÁLA
LDG. _____
ABP. _____
11 AUG 2023
Fee: € _____ Type: _____
Time: _____ By: *Reg Post*

PL
11 August 2023

By Registered Post

Dear Sirs

**Re: Templeogue/Rathfarnham to City Centre Core Bus Corridor Scheme
Compulsory Purchase Order 2023 (the "Order")
Objection by Bernard and Mary to the permanent and temporary
acquisition of lands at 44 Rathfarnham Road, Terenure, Dublin 6W,
D6W PX79 pursuant to the Order**

Part A - Introduction

We refer to the notices (the "Notices") dated 19 April 2023 sent to us, Bernard and Mary Muldoon, being the owners/occupiers of lands at 48 Rathfarnham Road, Terenure, Dublin 6W, D6WVY84, notifying us that the National Transport Authority (the "NTA") had made the Order with the intention of submitting it to An Bord Pleanála (the "Board") for confirmation.

We are the owners/occupiers of the lands at 48 Rathfarnham Road, Terenure, Dublin 6W, D6WVY84 Ireland proposed to be compulsorily acquired pursuant to the Order, and which are identified on the maps attached to the Notices.

We hereby:

- object to the proposed compulsory acquisition of our lands pursuant to the Order for the reasons set out below; and
- request that the Board does not confirm the Order and annuls the proposed compulsory acquisition of our lands as contemplated by the Order.

Part B – Definitions

In this letter, the following capitalised terms shall have the following meanings:

"EIA Directive" means Directive 2014/52/EU of the European Parliament and the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the

effects of certain public and private projects on the environment;

"**EIAR**" means the Environmental Impact Assessment Report dated April 2023 in respect of the Proposed Scheme, a copy of which has been made available by the NTA at www.templeogueathfarnhamscheme.ie;

"**Preferred Route Option Report**" means the Preferred Route Option Report dated February 2023 in respect of the Proposed Scheme, a copy of which has been made available by the NTA at www.templeogueathfarnhamscheme.ie;

"**Proposed New Road Layout**" means the proposed new road layout between Bushy Park Road and Terenure Road North, as described in Volume 2, Chapter 4, Section 4.5.2 of the EIAR, which, among other matters, envisages the widening of the existing road to accommodate 1.5m wide cycle tracks, bus lanes and traffic lanes in both directions; and

"**Proposed Scheme**" means the Templeogue/Rathfarnham to City Centre Core Bus Corridor Scheme.

Part C - Summary of Principal Objections

The following is a summary of our principal objections, which are set out in greater detail in Part D, below:

- The EIAR is seriously deficient in describing and assessing only part of what is readily apparent a wider project in material non-compliance with the requirements of the EIA Directive. Therefore, in the circumstances, is it not possible for the Board to carry out an adequate environmental impact assessment of the Proposed Scheme on the basis of the EIAR and, consequently, to grant planning permission for the Proposed Scheme, or any part thereof, or to confirm the Order.
- The NTR has not complied with the legal principals in relation to the compulsory acquisition of private property as identified by the Supreme Court in *Reid v Industrial Development Agency [2015] 4 IR 494*, and it has not justified, nor indeed has it even sought to justify, in accordance with those principles, the interference with our constitutional property rights which the Proposed New Road Layout as presented and the proposed compulsory acquisition of our lands to accommodate its construction would occasion. The Proposed New Road Layout as presented and the proposed compulsory acquisition of our lands to accommodate its construction are not: (i) justified or necessitated by the exigencies of the common good applying principles of social justice; or (ii) proportionate to the ends sought to be achieved, in each case when balanced against the negative implications of compulsorily acquiring our lands.
- The Proposed New Road Layout as presented is otherwise an unsuitable development in an urban village for community, social and safety reasons.

Each of these objections is set out in detail in Part D, below.

Part D - Objections

- **The EIAR is seriously deficient in describing and assessing only part of what is readily apparent a wider project, as required by the EIA Directive. Therefore, in the circumstances, is it not possible for the Board to carry out an adequate environmental impact assessment of the Proposed Scheme on the basis of the EIAR and, consequently, to grant planning permission for the Proposed Scheme, or any part thereof, or to confirm the Order.**

The Proposed Scheme is but part of a wider project comprising 12 schemes to be delivered under the BusConnects Dublin – Core Bus Corridors Infrastructure Works (the "**BusConnects Dublin Project**"). Notwithstanding the interdependence of the elements of the wider project, it is startling that the other elements are not described or assessed in any meaningful detail in the EIAR (including, in particular, the impacts on the Proposed Scheme of the immediately proximate Kimmage to City Centre Core Bus Corridor Scheme and the UCD/Ballsbridge to City Centre Core Bus Corridor Scheme), thus rendering it impossible for the Board to complete an environmental impact assessment of the Proposed Scheme on the basis of the EIAR.

The fact that the Proposed Scheme is but part of a wider project is explicitly acknowledged in a number of places in the EIAR, including in Sections 1 and 3.4 of the of the Non-Technical Summary contained in Volume 1 of the EIAR:

"The Proposed Scheme is one of 12 schemes to be delivered under the BusConnects Dublin-Core Bus Corridors Infrastructure Works (hereinafter called the CBC Infrastructure Works). The CBC Infrastructure Works is one of the initiatives within the NTA's overall BusConnects programme." (Section 1 of Volume 1)

"The GDA Transport Strategy 2022 - 2042 puts the delivery of Dublin BusConnects, of which the Proposed Scheme is part, at the heart of its objectives." (Section 3.4 of Volume 1)

In *O'Grianna v An Bord Pleanala [2014] IEHC 632*, the High Court made clear that where different elements of a project are inter-dependent on each other, the EIA Directive requires that they be assessed together, at least on a cumulative basis. The High Court, in this case, was concerned with whether an environmental impact assessment of a wind farm development, which did not include an assessment of the construction of the overhead power lines which would be necessary to connect the wind farm to the national grid, was lawful. The High Court held that it was not:

"This is not a case such as in R (Littlewood) v Bassetlaw District Council [2008] EWHC 1812 where the development in question was a stand-alone project within a larger Master Plan development, the full details of which had not yet been finalised. In that case it was held that phase 1 was not dependent or reliant upon the completion of any other part of the master plan, and therefore the cumulative effects of the entire master plan did not need to be

assessed. The present case is different. The wind turbine development on its own serves no function if it cannot be connected to the national grid. In that way, the connection to the national grid is fundamental to the entire project, and in principle at least the cumulative effect of both must be assessed in order to comply with the Directive." (Paragraph 27)

Insofar as *O'Grianna* may be said to suggest that other elements of a masterplan can be ignored altogether if a single element is capable of operating on a stand-alone basis, the High Court in *Fitzpatrick v An Bord Pleanala [2017] IEHC 585* has made clear that account must be taken of any such future masterplans in an environmental impact assessment. In that case, the High Court was asked to consider whether adequate consideration had been given of future proposals to extend the development the subject of the planning application when the Board completed its environmental impact assessment. In the particular circumstances, the High Court concluded that it had:

"The court has also considered whether at the earliest possible stage in all the technical planning and decision making processes to date the purpose of the EIA in obtaining an overview of the effects of the project on the environment and to have projects designed in such a way that they have the least possible effect on the environment has been achieved. It is achieved if 'as far as practically possible' account is taken in the EIA of any current plans to extend the specific project in hand. The court is satisfied that it is clear from the information sought and gathered by the Inspector and by the Board, and the considerations set out in the evidence adduced before the court, that the obligations cast upon the Board have been fully discharged. Future contingencies and occurrences in relation to future aspects of the project have been extensively explored and considered in the course of this process. It is abundantly clear that the possible future expansion requirements of the developers were considered. The Board concurred with and adopted the Inspector's assessment which, inter alia, included an extensive assessment of later potential phases of the project relevant to the assessment of the site location and in assessing the potential material impact in terms of climate change of a future build out of the masterplan." (Paragraph 70)

Whether the 12 schemes to be delivered under the wider BusConnects Dublin Project are considered functionally inter-dependent parts of a single project or as separate elements of a larger plan, some of which are for implementation in the future, it is clear that the NTA has not provided the Board with sufficient information to complete its environmental impact assessment in circumstances where no meaningful description or assessment of those other elements are provided in the EIAR (including, in particular, the impacts on the Proposed Scheme of the immediately proximate Kimmage to City Centre Core Bus Corridor Scheme and the UCD/Ballsbridge to City Centre Core Bus Corridor Scheme), no meaningful evidence of their environmental effects is offered and no meaningful attempt is made to describe how the environmental effects of the different elements of the BusConnects Dublin Project will interact or operate cumulatively.

The EIAR is seriously deficient in describing and assessing only part of what is

readily apparent a wider project in material non-compliance with the EIA Directive. Therefore, in the circumstances, is it not possible for the Board to carry out an adequate environmental impact assessment of the Proposed Scheme on the basis of the EIAR and, consequently, to grant planning permission for the Proposed Scheme (or any part thereof) or to confirm the Order, and the proposed compulsory acquisition of our lands, as contemplated by the Order, should be annulled.

- **The NTR has not complied with the legal principals in relation to the compulsory acquisition of private property as identified by the Supreme Court in *Reid v Industrial Development Agency*, and it has not justified, nor indeed has it even sought to justify, in accordance with those principles, the interference with our constitutional property rights which the Proposed New Road Layout as presented and the proposed compulsory acquisition of our lands to accommodate its construction would occasion. The Proposed New Road Layout as presented and the proposed compulsory acquisition of our lands to accommodate its construction are not: (i) justified or necessitated by the exigencies of the common good applying principles of social justice; or (ii) proportionate to the ends sought to be achieved, in each case when balanced against the negative implications of compulsorily acquiring our lands.**

In the leading Supreme Court decision of *Reid v Industrial Development Agency* [2015] 4 IR 494, the Supreme Court identified the following principles from the relevant jurisprudence in relation to compulsory acquisition:

"(i) The conferring and exercise of statutory powers in this regard must accord with the Constitution and must respect and implement the principles of both natural and constitutional justice. There has never been any doubt but that such applies to any state interference with property rights (Foley v. The Irish Land Commission And Another [1952] I.R. 118, Nolan v. Irish Land Commission [1981] I.R. 23).

(ii) The impact on the right to private property, which can vary from the minimal to the absolute, as in this case where the entire holding including the family dwelling house is sought to be expropriated, must be justified or necessitated by the exigencies of the common good, which will of course have regard to the principles of social justice.

(iii) Even where so justified, compensation will virtually always be an important aspect of constitutional protection.

(iv) The conferring and exercise of such power must be granted and carried out in such a way that the impairment of the individual's rights must not exceed that which is necessary to attain the legitimate object sought to be pursued. In other words, the interference must be the least possible consistent with the advancement of the authorised aim which underlines the power.

(v) Such power must be expressly conferred by statute on the body which seeks to implement it. Further, where constitutional rights are abrogated by statutory intervention, such provisions must be construed in a way which gives

full effect to the above principles.

(vi) As the Act of 1986 is a post-constitutional statute, there is a presumption, inter alia, that all steps taken within and as part of the compulsory process will be duly compliant with the aforesaid principles (East Donegal Co-Operative Livestock Mart Ltd. v. Attorney General [1970] I.R. 617)."

The NTA has shown scant regard for these principles in this case and has, moreover, failed to provide the Board with any evidence which would allow it to be satisfied that the hugely significant interference with our constitutional property rights (and those of other similarly affected property holders) is justified.

Firstly, it would appear that the NTA has misinterpreted the principles identified in *Reid v Industrial Development Agency* and taken the view that a payment of compensation is all that is required to entitle it to override our constitutional property rights (and those of other similarly affected property holders) and justify the making of a compulsory acquisition order. This is manifestly incorrect and wrong. The payment of compensation is, in effect, but a condition precedent to the exercise of compulsory acquisition powers, provided an interference with individual property rights is first proven to be justified or necessitated by the exigencies of the common good applying principles of social justice and to be proportionate to the ends sought to be achieved.

The NTA is required, by law, to establish to the satisfaction of the Board that the interference with our constitutional property rights that will result from the Proposed New Road Layout and the proposed compulsory acquisition of our lands to accommodate its construction is justified or necessitated by the exigencies of the common good applying principles of social justice and is proportionate to the ends sought to be achieved.

The NTA has totally failed in this regard as it has neither justified, nor even sought to justify, in accordance with the *Reid v Industrial Development Agency* principles, the interference with our constitutional property rights. While the Preferred Route Option Report sets out details of the preferred route option and alternative option assessments for the Proposed Scheme (and indeed the alternative options are compared against each other on certain criteria), nowhere in the Preferred Option Report or in the EIAR, when discussing the preferred route option or any alternative option is: (i) any consideration given to the impairment of our constitutional rights (or those of any other person) as property owners affected by the Proposed New Road Layout; or (ii) any proportionality assessment made which seeks to balance the aims and perceived benefits of the Proposed New Road Layout against such impairment of such property rights. In fact, in all cases within the Preferred Route Option Report and the EIAR, whether describing the preferred route option or any alternative option, the compulsory acquisition of land is presented merely as a factual consequence and not part of any substantive assessment.

Secondly, and without prejudice to the above, the Proposed New Road Layout and proposed compulsory acquisition of our lands (and those of other similarly affected property holders) to accommodate its construction is not justified or necessitated by

the exigencies of the common good applying principles of social justice or proportionate to the ends sought to be achieved. In this regard, principle (iv) identified by the Supreme Court in *Reid v. Industrial Development Agency* is paramount:

"(iv) The conferring and exercise of such power must be granted and carried out in such a way that the impairment of the individual's rights must not exceed that which is necessary to attain the legitimate object sought to be pursued. In other words, the interference must be the least possible consistent with the advancement of the authorised aim which underlines the power."
(Our emphasis added in underline)

The aims and objective of the Proposed Scheme are outlined in in Section 1.1 of the of the Non-Technical Summary contained in Volume 1 of the EIAR. These are as follows:

- Enhance the capacity and potential of the public transport system by improving bus speeds, reliability and punctuality through the provision of bus lanes and other measures to provide priority to bus movement over general traffic movements;
- Enhance the potential for cycling by providing safe infrastructure for cycling, segregated from general traffic wherever practicable;
- Support the delivery of an efficient, low carbon and climate resilient public transport service, which supports the achievement of Ireland's emission reduction targets;
- Enable compact growth, regeneration opportunities and more effective use of land in Dublin, for present and future generations, through the provision of safe and efficient sustainable transport networks;
- Improve accessibility to jobs, education and other social and economic opportunities through the provision of improved sustainable connectivity and integration with other public transport services; and
- Ensure that the public realm is carefully considered in the design and development of the transport infrastructure and seek to enhance key urban focal points where appropriate and feasible.

It is quite clear that the extensive road widening contemplated by the Proposed New Road Layout as presented is principally driven by a desire to accommodate dedicated bus lanes in both directions along the 300 metre section of road from Bushy Park Road to Terenure Road North with a view to improving bus speeds, reliability and punctuality. The other stated aims and objectives are clearly capable of being accommodated (including, in particular, dedicated cycle lanes in each direction, which we fully support) without any, or with minimal, road widening of this section of road.

In this regard, among other matters, Chapter 6 (Traffic & Transport) of Volume 2 of the EIAR provides a comparison of journey times under the 'Do Minimum' scenario and the 'Do Something' scenario. Section 6.4.6.1.11.3 contains the outputs of how it is anticipated the Proposed Scheme will impact on bus journeys along the 6.3 km

Rathfarnham to City Centre section of the Proposed Scheme. This is done by reference to the A2 service which traverses the entire length of this section. The A2 service average journey times, as modelled, are contained in Tables 6.52 and 6.54 set out in Chapter 6 of Volume 2 of the EIAR, as follows:

Table 6.52: A2 Service Bus Journey Times (Inbound Direction)

Peak Hour	Do Minimum (minutes)	Do Something (minutes)	Difference (minutes)	% Difference
2028 AM	35.2	29.4	-5.8	-16%
2028 PM	31.1	29.1	-2.0	-6%
2043 AM	33.2	29.3	-3.9	-12%
2043 PM	30.7	29.3	-1.4	-5%

Table 6.54: A2 Service Bus Journey Times (Outbound Direction)

Peak Hour	Do Minimum (minutes)	Do Something (minutes)	Difference (minutes)	% Difference
2028 AM	29.5	28.9	-0.6	-2%
2028 PM	35.2	27.0	-8.2	-23%
2043 AM	28.4	28.1	-0.3	-1%
2043 PM	31.1	26.5	-4.6	-15%

The projected time savings in the 'Do Something' scenario range: (i) for the inbound direction, from 2 minutes to 5.8 minutes for the entire 6.3 km Rathfarnham to City Centre section of the Proposed Scheme when it opens in 2028, dropping to between 1.4 minutes and 3.9 minutes in 2043; and (ii) for the outbound direction, from 0.6 minutes to 8.2 minutes for the entire 6.3 km Rathfarnham to City Centre section of the Proposed Scheme when it opens in 2028, dropping to between 0.3 minutes and 4.6 minutes in 2043, which are relatively modest time savings. It fair to say that the time savings represented by the 300 metre section of from Bushy Park Road to Terenure Road North must represent but a fraction of such savings, probably less than 1 minute in all cases. It should be further noted that the dated nature of the data on which the modelling was based does not take into account adjusted hybrid working practices following the COVID-19 epidemic, which has resulted in substantively less peak hour traffic, particularly so on Mondays and Fridays, uncongested roads and much faster commute times. We submit that that there are no circumstances in which such almost negligible time savings for bus commuters travelling in either direction between Bushy Park Road and Terenure Road North under the Proposed New Road Layout could, in any way, be considered by any reasonable person to be: (i) justified or necessitated by the exigencies of the common good applying principles of social justice; or (ii) proportionate to the ends sought to be achieved, in each case when balanced against the negative implications of compulsorily acquiring our lands (and indeed of our similarly affected neighbours), and to conclude otherwise would be simply absurd and manifestly unjust. Such negative implications include:

- Depriving us, in perpetuity, of the use and enjoyment of those parts of our lands proposed to be permanently acquired pursuant to the Order.
- Depriving us, temporarily, of the use and enjoyment of those parts of our lands

proposed to be temporarily acquired pursuant to the Order.

- Reducing the dimensions size of our front driveway to a size where it is not possible to turn a car and exit front first as we currently can. This will require us, when leaving our house by car, to reverse across a footpath and cycle path and into four lanes of traffic, which poses an unacceptable level of risk for us (and indeed other affected property owners) and danger for the pedestrians, cyclists and motorists whom we will have to negotiate. In particular, in the case of pedestrians, reversing poses great danger to young children who frequent the footpaths and cycle lanes in large numbers on a daily basis as they travel to and from school and other activities.
- Curtailing our ability to enter our front driveway as we will have to negotiate any extra lane of traffic with our view of the cycle lane obscured by bus traffic in the dedicated bus lanes. The improved cycle lane infrastructure, which we fully support, will increase the number of bike users, making it even more important that we are able to exit and enter our house in the safest manner for all road users.
- Increasing the effect of noise pollution and toxic emissions by bringing the road closer to the front of our house.

Each of these considerations equally apply to our similarly affected neighbours.

In circumstances where: (a) the impact on our interests have not been adequately described or assessed as required by law when considering the preferred route option or any alternative option; and (b) the time savings for bus commuters travelling in either direction between Bushy Park Road and Terenure Road North under the Proposed New Road Layout is almost negligible (and could not, in any way, be considered by any reasonable person to be: (i) justified or necessitated by the exigencies of the common good; or (ii) proportionate to the ends sought to be achieved, in each case when balanced against the negative implications of compulsorily acquiring our lands), it is submitted that the Board should refuse to grant planning permission for this section of the Proposed Scheme as presented, not confirm the Order and annul the proposed compulsory acquisition of our lands as contemplated by the Order.

- **The Proposed New Road Layout as presented is an unsuitable development in an urban village for community, social and safety reasons.**

The Proposed New Road Layout as presented, is completely out-of-character with Terenure as an urban village and will have a negatively impact for community, safety and social reasons.

While the dedicated cycle tracks are to be welcomed, the construction of the four bus and traffic lane configuration will result in a significant adverse change in the physical character and historic fabric of the area, together with the way residents operate and circulate socially and in a safe manner. This is particularly disappointing given that Terenure, as an urban community, has made great strides in recent years and it is this sense of community that promotes proper social responsibility and positive engagement and interaction between residents. Furthermore, it is a collection of such urban communities that, in turn, contributes to a vibrant and sustainable capital city.

Terenure is a community that has three primary schools and four secondary schools, as well as a variety of pre-school and after-school care facilities. It also comprises the wonderful public amenity that is Bushy Park as well as the VEC and CYM sports grounds. All of this means that Terenure is a location with lots of children. Whether they are walking to, or from school, to sports or other activities or just socialising with friends, they are exposed to the dangers of negotiating roads and traffic. As matters stand, with the speed of cars, buses and particularly taxis travelling through the village (often in breach of the inadequate speed limits) and the completely deficient crossings, pedestrians, but particularly children, are exposed to significant safety risk. Additionally, as we all know, children do not necessarily adhere to pedestrian crossing in any event when in a hurry. All of these risks will be accentuated by replacing a two lane road with a four lane carriageway adjacent to schools, shops and people's homes.

As outlined above, further safety risks and dangers arise for property owners located adjacent the Proposed New Road Layout in terms of exiting and entering their properties and for the pedestrians, cyclists and motorists whom they will have to negotiate.

Aside from the specific points made in section 2 of the Part D, above, it would be perverse if the Board was to give planning permission for measures that do not deliver any meaningful time savings in bus journeys and at the same time damage the physical character and historic fabric of the community while materially increasing the risk and danger of accident for pedestrians, cyclists and motorists living in the community or commuting. Accordingly, for these separate reasons, the Board should refuse to grant planning permission for this section of the Proposed Scheme as presented, not confirm the Order and annul the proposed compulsory acquisition of our lands as contemplated by the Order.

Conclusion and Contact Information

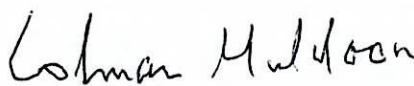
We reserve our full legal rights to appeal any decision of the Board to the courts.

Should you wish to discuss, please contact Bernard or Mary Muldoon as follows:

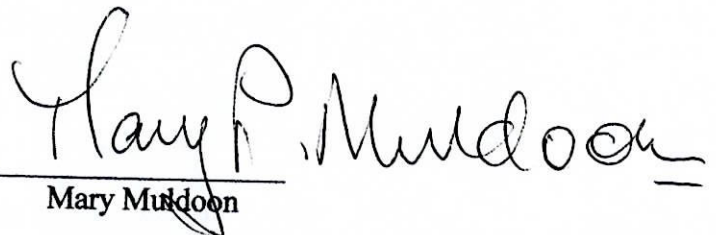
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Yours faithfully



Bernard Colman Muldoon



Mary Muldoon