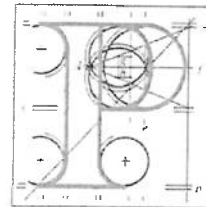


Our Case Number: ABP-317660-23



**An
Bord
Pleanála**

Legal Representatives of the Estate of Agnes Cassidy
c/o Rodney Cassidy
31 Clanbrassil Street
Dublin 8

Date: 11 December 2023

Re: Bus Connects Kimmage to City Centre core bus corridor scheme
Kimmage, Dublin

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

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

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

31 Clanbrassil St, Dublin 8

8th December 2023
BY HAND

To the Secretary of Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG-	<u>068547 - 23</u>
ABP-	
08 DEC 2023	
Fee: €	<u>50.00</u> Type: <u>PMO</u>
Time:	<u>15.59</u> By: <u>HAND</u>

RE: Kimmage to City Centre Core Bus Corridor Scheme

We Rodney Cassidy and Vanessa Cassidy as beneficiaries of the Estate of the late Agnes Cassidy hereby make the following submission/observation in respect of an application made by the National Transport Authority pursuant to Section 51 of the Roads Act 1993 (as amended) in relation to the Kimmage to City Centre Core Bus Corridor Scheme which seeks approval for the scheme under the said provisions of the Roads Act and also seeks a development consent in respect of the said development pursuant to Council Directive 2011/92 EU (as amended).

The scheme proposed the construction of the Kimmage to City Centre Core Bus Corridor which has an overall length of 3.7km along the R817 Kimmage Lower Road and the R137 Harold's Cross Road and extends through Clanbrassil Street Upper and Lower and New Street South with other elements of the scheme between Sundrive Road and Mount Argos View, at the junction of Harold's Cross Road with Kenilworth Park and at the junction of Ravensdale Park and Poddle Park as well as the junction of Derravaragh Road and Corrib Road which is located within the functional area of Dublin City Council and South Dublin County Council.

For completeness and the avoidance of confusion please see attached postal order in the sum of €50.00

The public notice identifying the scheme under Section 51(3) refers to the development or part of it being in the County of Dublin but it is submitted that for the purposes of the Roads Act 1993 (as amended) and for the purposes of the Planning Act part of which the scheme purports to rely on, the County of Dublin no longer exists as an administrative entity and it is inappropriate to refer to the County of Dublin for the purposes of this scheme which is both misleading and inaccurate relative to the said scheme.

The said scheme envisages a 7.4km priority bus infrastructure, an 8km cycling infrastructure and facilities, as well as two new foot bridges, pedestrian/ cyclist board walk, as well as refurbished pedestrian facilities, 12 junctions upgrade, 29 new/refurnished raised table and side entry facilities, reconfiguration of existing bus stops resulting in 23 new bus stop facilities, as well as public realm works including landscaping, planting street furniture, street lighting, retaining walls, boundary walls, sustainable urban drainage and a range of other works. The scheme also envisages

earth works including excavation of unacceptable material, importation of material, the provision of road pavement signing, lining, ancillary works, as well as the provision of gates, fencing and boundary retreatment works. In addition, the provision of new and diverted drainage infrastructure, as well as the diversion of utilities and services including associate ancillary works and the construction of accommodation works including boundary treatment, ancillary grading and landscaping work, together with all ancillary and consequential works associated therewith.

The documentation grounding this application has been examined, particularly in the context of the obligations under Council Direction 2011/92, the recent High Court decisions in respect Balcadden Road SAA Residents Association Limited v An Bord Pleanala, Sweetman v An Bord Pleanala, have all considered and addressed the obligations under the Environmental Impact Assessment. In particular the obligation to give a full description of the scheme, which is a fundamental requirement of the Environmental Assessment Directive. This requires at a minimum, the type of detail that would be required for a simple house extension if that were being applied under Articles 22 and 23 of the Planning and Development Regulations and must include plans and particulars of all the structures that are proposed with appropriate details which will show their design, their foundation details as well as the detailing which is envisaged in the elevations and this level of detail is absent from the documentation lodged and the application is seriously deficient and invalid in circumstances where it cannot be said to comply with the fundamental requirements of the Directive in respect of the level of detail that has been submitted.

The Environmental Impact Assessment Directive has at its heart, a facility that allows the public to engage but that engagement is only possible where the scheme is described at an appropriate level of detail and that detail is completely absent in respect even of the matters that are specified in the public notice, where there is no or no adequate detail in respect of many of the structures proposed.

A structure is defined as anything that is constructed or made on land and therefore all of the structures, whether they be great or small require to be identified and the greater the extent of the scheme, with significant impacts necessitates an even greater level of detail be provided as otherwise it is impossible to properly engage and indeed to identify and address impacts, particularly adverse impacts that would arise from the scheme.

In circumstances therefore where the documentation lodged does not meet the requirements of the Environmental Impact Assessment Directive, it is impossible to engage in any or any proper consideration of the impacts of the scheme as the identification of these impacts is impossible.

By virtue of this scheme not being fully described and indeed not being designed to an appropriate level of detail, it is impossible for the environmental impact assessment directive to identify and describe the main effects of the scheme.

While there is a purported Environmental Impact Assessment Report submitted and this report under the Environmental Impact Assessment Directive is required to identify all likely significant affects both direct and indirect, this obligation is predicated upon a fully designed scheme and in the absence of a fully designed

scheme, the Environment Impact Assessment Report cannot identify these effects because the design of the scheme is a fundamental prerequisite for such an exercise. The said scheme is therefore contrary to the obligations under the Environmental Impact Assessment Directive and the Board have an obligation to ensure compliance with these obligations both because they appear definitely in the Environmental Impact Assessment Directive itself but also in order to facilitate proper and appropriate public engagement which is impossible because of these deficiencies.

The position becomes even more stark when one considers the Natura Impact Statement which acknowledges that the proposed development has the potential to effect European sites and failed the Stage 1 assessment which then necessitates the preparation of a Stage 2 assessment and the preparation of a Natura Impact Statement.

This Natura Impact Statement therefore requires that the scheme be subject to the most detailed assessment in respect of its potential impact on the conservation objectives of European sites. In circumstances where the impact on these sites is acknowledged, it requires findings that are precise and definitive, and which remove all reasonable doubt as to the impacts on such European sites. There can be no doubt remaining in respect of the type of impact that a Stage 2 assessment is required to address, but these impacts cannot be identified if the scheme is not fully designed. Accordingly, the Natura Impact Statement based on an incomplete design cannot meet the standard for an appropriate assessment as is required under Council Directive 92/43 EEC.

Accordingly, therefore the application fails to comply with the obligations of European Community Law and in particular prevents both public participation in respect of the Habitats Directive and the Board having the requisite information in order to conduct that assessment.

The lands of the Estate of Agnes Cassidy deceased is an example of where these deficiencies are evident, whereby the scheme which is proposed does not identify either for the purpose of Section 51 of the Roads Act, or for the purpose of the Environmental Impact Assessment Directive or for the purpose of the Habitats Directive, an identification of the likely effects on those lands and in particular on the material asset that is this activity, which is a matter that the Environmental Impact Assessment Directive in particular requires to be addressed.

Indeed, for the purposes of a consideration of the impact on material assets, the documentation does not appear to disclose that the activity even exists, that the operators of the activity are operating lawfully on the lands and that the proposed development will extinguish this activity if the scheme is approved in the form submitted.

This is a significant environmental impact for the purposes of the EIA Directive, but no consideration of this issue arises from the Environmental Impact Assessment Report which accompanies the application and we have sought in vain to identify an analysis of the full effects of this development upon the operation which is lawfully being conducted on the said lands.

It is incredible that where there is an obligation to conduct an assessment where material assets are specifically identified that no such consideration has been conducted, particularly given the nature of the activity which exists on these lands for well over seven decades.

We have identified these deficiencies in the objection made to the compulsory acquisition proposals in respect of these lands but the issues under the Environmental Impact Assessment fall under a separate and distinct category, namely a consideration of the parameters within which the environmental impact assessment Directive is required to address.

There has been no consideration of a range of factors in respect of these lands specifically material assets which will also include the impact on the other factors in the Environmental Impact Assessment Directive and accordingly it cannot be said that the documentation lodged could ever form a basis for the Board to address their obligations under the Environmental Impact Assessment Directive.

The lands occupied and used by the beneficiaries of the Estate of the Late Agnes Cassidy lie close to the Grand Canal which is ecologically very important and is a major amenity as well as ecologically important not just within the city but in fact given the extent of the hydrological connections of national importance. There are also connections through that water-based system with a number of European sites and where the scheme crosses a number of underground rivers which ultimately connect to Dublin Bay, which has both special areas of conservation and special protection areas and the potential impact in respect of these areas is likely to be very significant.

The public notice in this regard identifies what it describes as “the excavation of unacceptable material” which is understood to be waste which would include hazardous waste and the impact of any such disturbance of the ground will have a consequential impact on ground water as well as air emissions and the potential impact therefore on hydrology which flows ultimately into Dublin Bay, is likely to be very significant.

The documentation lodged does not appear to address the nature and extent of this waste and indeed the manner which the notice is to be published referring as it does to “unacceptable material” is both misleading and inappropriate and is deliberately designed to minimise the nature of this material and the obligations in respect of the publication of the public notice would necessitate the description of this material in appropriate language rather than the manner which it is described in the public notice.

It is therefore submitted that the documentation lodged for the purposes of Section 51 of the Roads Act but more particularly for the purpose of Council Directives 92/43 (The Habitats Directive) and 2011/92 (The Environmental Impact Assessment Directive), does not meet the obligations of both Irish Law but more particularly that of European Community Law. It does not meet the aforementioned obligations insofar that the information that is required, as a minimum to describe the scheme, identifies the effects of the scheme, meets the high level of certainty required under the Habitats Directive and at this stage allows any appropriate level of engagement by the public in respect of what is being proposed.

Indeed, the very notice that is published appears to be confused in circumstances whereby it refers in the second paragraph to the Kimmage to City Centre Core Bus Corridor Scheme having an overall length of approximately 3.7km along the Kimmage Road Lower and the R137 Harold's Cross Road but indicates no further lengths. It was originally understood that this was the length of the scheme but when one looks at the subsequent paragraphs one will see a figure of 7.4km of bus priority infrastructure and traffic management and a further figure of 8km total in both direction of cycling infrastructure and facilities. Therefore, there is complete confusion as to the nature and extent of the scheme. This is unacceptable in a scheme that requires public consultation and engagement and precision as to the manner in which the scheme is published, thereby allowing the public to understand what is involved.

This is in addition to the concern about the type of language used particularly in respect of hazardous waste which we understand refers to unacceptable material in the same notice. There is an obligation as part of the provision of appropriate and adequate information in respect of the scheme to have the notice republished to properly identify the nature and extent of the proposed development.

While we have identified the deficiencies at every level of the application and identified that it is impossible to engage at the appropriate level of detail in respect of the premises of the beneficiaries of the Estate of the late Agnes Cassidy, the affect in environmental terms on the property will be devastating.

It appears that the access to the lands is to be extinguished and that the existing use of the property is no longer viable if the scheme were approved. We have set out some of this detail in our submission on the compulsory acquisition which, while the two process are separate and distinct, we rely on what is set out in that submission in respect of the failure to address the impact on material assets and the other relevant factors under the EIA Directive.

It is intended once the Board require a proper public notice to be published and were proper plans and drawing describing the scheme are submitted and where a proper Environmental Impact Assessment Report which identifies the full impacts of the scheme is available to engage a range of specialists to advise particularly civil and traffic engineers, planning consultant, noise, dust and air omission specialists as well as ground water expertise to deal with the impacts not just on our property but on the environment generally but that cannot be engaged at the moment in the light of the inadequate drawings and the absence of information which would render any such engagement superfluous.

However, in the event that the Board were to proceed to consider this application and it is submitted that it should be rejected simpliciter, then there is an obligation to prepare proper plans and documentation and republish the proposed scheme and at that stage there will be a more detailed engagement when these details are available.

We understand the Board will be conducting an oral hearing in respect of this matter given the impact this scheme would have on our property rights, on the material asset which forms the basis of our livelihood and the livelihood of our employees and

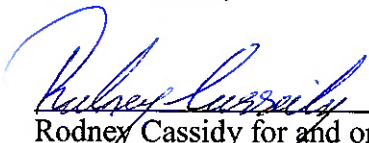
creating material for reuse within the manufacturing industry. Accordingly, we intend to fully engage with any oral hearing by the provision of specialist advice in respect of all of these areas

The Board will appreciate it is impossible to deal with the detail of this in a written form, given the inadequacy of information and the complexity that any such submission would entail and it is simply not possible without clarification on a range of matters and fundamental conflicts of fact on the documentation that can only be resolved by way of such clarification to allow a more detailed and comprehensive submission can be made.

The Board might indicate how they intend to proceed with the application and whether they are proposing to require the level of detail particularly in respect of the property at 31 Upper, Clanbrassill Street but also along the full extent of the scheme which we are entitled to rely upon as part of the Environmental Impact Assessment Directive, the appropriate assessment and indeed the approval of the scheme under Section 51 of the Roads Act 1993 and we will of course address the details of this information when it is provided.

We should say that if it were proposed to continue with this process in the absence of this level of detail, we believe that the Board would be acting unlawfully and contrary to the Environmental Impact Assessment Directive and the Habitats Directive because of the absence of identification of affects and the formulation of appropriate measures to identify these affects as well as the absence of adequate notice as to the nature of the scheme all relevant to the Environmental Impact Assessment Directive and under; the Habitats Directive the level of certainty required under the Habitats Directive can never be achieved and therefore we would reserve our position if the Board were intending to proceed but it would be intended to raise all of these issues at an oral hearing and we have no doubt that the Board will consider these matters and will not allow that situation to occur.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Rodney Cassidy', is written over a horizontal line.

Rodney Cassidy for and on behalf of the beneficiaries of the Estate of the Late Agnes Cassidy

31 Clanbrassil St, Dublin 8

8th December 2023

By Hand

To the Secretary of Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG-	_____
ABP-	_____
08 DEC 2023	
Fee: €	<u>N/A</u> Type: <u>N/A</u>
Time: <u>16:02p</u>	By: <u>HAND</u>

We Rodney Cassidy and Vanessa Cassidy as Legal Personal Representatives of the Estate of the late Agnes Cassidy hereby make the following submission/observation in respect of an application made by the National Transport Authority pursuant to Section 51 of the Roads Act 1993 (as amended) in relation to the Kimmage to City Centre Core Bus Corridor Scheme which seeks approval for the scheme under the said provisions of the Roads Act and also seeks a development consent in respect of the said development pursuant to Council Directive 2011/92 EU (as amended).

The scheme proposed the construction of the Kimmage to City Centre Core Bus Corridor which has an overall length of 3.7km along the R817 Kimmage Lower Road and the R137 Harold's Cross Road and extends through Clanbrassil Street Upper and Lower and New Street South with other elements of the scheme between Sundrive Road and Mount Argos View, at the junction of Harold's Cross Road with Kenilworth Park and at the junction of Ravensdale Park and Poddle Park as well as the junction of Derravaragh Road and Corrib Road which is located within the functional area of Dublin City Council and South Dublin County Council.

The public notice identifying the scheme under Section 51(3) refers to the development or part of it being in the County of Dublin but it is submitted that for the purposes of the Roads Act 1993 (as amended) and for the purposes of the Planning Act part of which the scheme purports to rely on, the County of Dublin no longer exists as an administrative entity and it is inappropriate to refer to the County of Dublin for the purposes of this scheme which is both misleading and inaccurate relative to the said scheme.

The said scheme envisages a 7.4km priority bus infrastructure, an 8km cycling infrastructure and facilities, as well as two new foot bridges, pedestrian/ cyclist board walk, as well as refurbished pedestrian facilities, 12 junctions upgrade, 29 new/refurnished raised table and side entry facilities, reconfiguration of existing bus stops resulting in 23 new bus stop facilities, as well as public realm works including landscaping, planting, street furniture, street lighting, retaining walls, boundary walls, sustainable urban drainage and a range of other works. The scheme also envisages earth works including excavation of unacceptable material, importation of material, the provision of road pavement signing, lining, ancillary works, as well as the provision of gates, fencing and boundary retreatment works. In addition, the provision of new and diverted drainage infrastructure, as well as the diversion of utilities and services including associate ancillary works and the construction of accommodation

works including boundary treatment, ancillary grading and landscaping work, together with all ancillary and consequential works associated therewith.

The documentation grounding this application has been examined, particularly in the context of the obligations under Council Direction 2011/92, the recent High Court decisions in respect Balcadden Road SAA Residents Association Limited v An Bord Pleanala, Sweetman v An Bord Pleanala, have all considered and addressed the obligations under the Environmental Impact Assessment. In particular the obligation to give a full description of the scheme, which is a fundamental requirement of the Environmental Assessment Directive. This requires at a minimum, the type of detail that would be required for a simple house extension if that were being applied under Articles 22 and 23 of the Planning and Development Regulations and must include plans and particulars of all the structures that are proposed with appropriate details which will show their design, their foundation details as well as the detailing which is envisaged in the elevations and this level of detail is absent from the documentation lodged and the application is seriously deficient and invalid in circumstances where it cannot be said to comply with the fundamental requirements of the Directive in respect of the level of detail that has been submitted.

The Environmental Impact Assessment Directive has at its heart, a facility that allows the public to engage but that engagement is only possible where the scheme is described at an appropriate level of detail and that detail is completely absent in respect even of the matters that are specified in the public notice, where there is no or no adequate detail in respect of many of the structures proposed.

A structure is defined as anything that is constructed or made on land and therefore all of the structures, whether they be great or small require to be identified and the greater the extent of the scheme, with significant impacts necessitates an even greater level of detail be provided as otherwise it is impossible to properly engage and indeed to identify and address impacts, particularly adverse impacts that would arise from the scheme.

In circumstances therefore where the documentation lodged does not meet the requirements of the Environmental Impact Assessment Directive, it is impossible to engage in any or any proper consideration of the impacts of the scheme as the identification of these impacts is impossible.

By virtue of this scheme not being fully described and indeed not being designed to an appropriate level of detail, it is impossible for the environmental impact assessment directive to identify and describe the main effects of the scheme.

While there is a purported Environmental Impact Assessment Report submitted and this report under the Environmental Impact Assessment Directive is required to identify *all* likely significant affects both direct and indirect, this obligation is predicated upon a fully designed scheme and in the absence of a fully designed scheme, the Environment Impact Assessment Report cannot identify these effects because the design of the scheme is a fundamental prerequisite for such an exercise. The said scheme is therefore contrary to the obligations under the Environmental Impact Assessment Directive and the Board have an obligation to ensure compliance with these obligations both because they appear definitely in the Environmental

Impact Assessment Directive itself but also in order to facilitate proper and appropriate public engagement which is impossible because of these deficiencies.

The position becomes even more stark when one considers the Natura Impact Statement which acknowledges that the proposed development has the potential to effect European sites and failed the Stage 1 assessment which then necessitates the preparation of a Stage 2 assessment and the preparation of a Natura Impact Statement.

This Natura Impact Statement therefore requires that the scheme be subject to the most detailed assessment in respect of its potential impact on the conservation objectives of European sites. In circumstances where the impact on these sites is acknowledged, it requires findings that are precise and definitive, and which remove all reasonable doubt as to the impacts on such European sites. There can be no doubt remaining in respect of the type of impacts that a Stage 2 assessment is required to address, but these impacts cannot be identified if the scheme is not fully designed. Accordingly, the Natura Impact Statement based on an incomplete design cannot meet the standard for an appropriate assessment as is required under Council Directive 92/43 EEC.

Accordingly, therefore the application fails to comply with the obligations of European Community Law and in particular prevents both public participation in respect of the Habitats Directive and the Board having the requisite information in order to conduct that assessment.

The lands of the Estate of Agnes Cassidy Deceased are examples of where these deficiencies are evident, whereby the scheme which is proposed does not identify either for the purpose of Section 51 of the Roads Act, or for the purpose of the Environmental Impact Assessment Directive or for the purpose of the Habitats Directive, an identification of the likely effects on those lands and in particular on the material asset that is this activity, which is a matter that the Environmental Impact Assessment Directive in particular requires to be addressed.

Indeed, for the purposes of a consideration of the impact on material assets, the documentation does not appear to disclose that the activity even exists, that the operators of the activity are operating lawfully on the lands and that the proposed development will extinguish this activity if the scheme is approved in the form submitted.

This is a significant environmental impact for the purposes of the EIA Directive, but no consideration of this issue arises from the Environmental Impact Assessment Report which accompanies the application and we have sought in vain to identify an analysis of the full effects of this development upon the operation which is lawfully being conducted on the said lands.

It is incredible that where there is an obligation to conduct an assessment where material assets are specifically identified that no such consideration has been conducted, particularly given the nature of the activity which exists on these lands for well over seven decades.

We have identified these deficiencies in the objection made to the compulsory acquisition proposals in respect of these lands but the issues under the Environmental Impact Assessment fall under a separate and distinct category, namely a consideration of the parameters within which the environmental impact assessment Directive is required to address.

There has been no consideration of a range of factors in respect of these lands specifically material assets which will also include the impact on the other factors in the Environmental Impact Assessment Directive and accordingly it cannot be said that the documentation lodged could ever form a basis for the Board to address their obligations under the Environmental Impact Assessment Directive.

The lands occupied and used by the Representatives of the Estate of the Late Agnes Cassidy lie close to the Grand Canal which is ecologically very important and is a major amenity as well as ecologically important not just within the city but in fact given the extent of the hydrological connections of national importance. There are also connections through that water-based system with a number of European sites and where the scheme crosses a number of underground rivers which ultimately connect to Dublin Bay, which has both special areas of conservation and special protection areas and the potential impact in respect of these areas is likely to be very significant.

The public notice in this regard identifies what it describes as “the excavation of unacceptable material” which is understood to be waste which would include hazardous waste and the impact of any such disturbance of the ground will have a consequential impact on ground water as well as air emissions and the potential impact therefore on hydrology which flows ultimately into Dublin Bay, is likely to be very significant.

The documentation lodged does not appear to address the nature and extent of this waste and indeed the manner which the notice is published referring as it does to “unacceptable material” is both misleading and inappropriate and is deliberately designed to minimise the nature of this material and the obligations in respect of the publication of the public notice would necessitate the description of this material in appropriate language rather than the manner which it is described in the public notice.

It is therefore submitted that the documentation lodged for the purposes of Section 51 of the Roads Act but more particularly for the purpose of Council Directives 92/43 (The Habitats Directive) and 2011/92 (The Environmental Impact Assessment Directive), does not meet the obligations of both Irish Law but more particularly that of European Community Law. It does not meet the aforementioned obligations insofar that the information that is required, as a minimum to describe the scheme, identifies the effects of the scheme, meets the high level of certainty required under the Habitats Directive and at this stage allows any appropriate level of engagement by the public in respect of what is being proposed.

Indeed, the very notice that is published appears to be confused in circumstances whereby it refers in the second paragraph to the Kimmage to City Centre Core Bus Corridor Scheme having an overall length of approximately 3.7km along the Kimmage Road Lower and the R137 Harold's Cross Road but indicates no further

lengths. It was originally understood that this was the length of the scheme but when one looks at the subsequent paragraphs one will see a figure of 7.4km of bus priority infrastructure and traffic management and a further figure of 8km total in both direction of cycling infrastructure and facilities. Therefore, there is complete confusion as to the nature and extent of the scheme. This is unacceptable in a scheme that requires public consultation and engagement and precision as to the manner in which the scheme is published, thereby allowing the public to understand what is involved.

This is in addition to the concern about the type of language used particularly in respect of hazardous waste which we understand refers to unacceptable material in the same notice. There is an obligation as part of the provision of appropriate and adequate information in respect of the scheme to have the notice republished to properly identify the nature and extent of the proposed development.

While we have identified the deficiencies at every level of the application and identified that it is impossible to engage at the appropriate level of detail in respect of the premises of the Estate of the late Agnes Cassidy, the affect in environmental terms on the property will be devastating.

It appears that the access to the lands is to be extinguished and that the existing use of the property is no longer viable if the scheme were approved. We have set out some of this detail in our submission on the compulsory acquisition which, while the two process are separate and distinct, we rely on what is set out in that submission in respect of the failure to address the impact on material assets and the other relevant factors under the EIA Directive.

It is intended once the Board require a proper public notice to be published and where proper plans and drawing describing the scheme are submitted and where a proper Environmental Impact Assessment Report which identifies the full impacts of the scheme is available to engage a range of specialists to advise particularly civil and traffic engineers, planning consultant, noise, dust and air omission specialists as well as ground water expertise to deal with the impacts not just on our property but on the environment generally but that cannot be engaged at the moment in the light of the inadequate drawings and the absence of information which would render any such engagement superfluous.

However, in the event that the Board were to proceed to consider this application and it is submitted that it should be rejected simpliciter, then there is an obligation to prepare proper plans and documentation and republish the proposed scheme and at that stage there will be a more detailed engagement when these details are available.

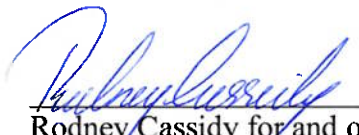
We understand the Board will be conducting an oral hearing in respect of this matter given the impact this scheme would have on our property rights, on the material asset which forms the basis of our livelihood and the livelihood of our employees and indeed which provides a very important public service in the circular economy by creating material for reuse within the manufacturing industry. Accordingly, we intend to fully engage with any oral hearing by the provision of specialist advice in respect of all of these areas.

The Board will appreciate it is impossible to deal with the detail of this in a written form, given the inadequacy of information and the complexity that any such submission would entail and it is simply not possible without clarification on a range of matters and fundamental conflicts of fact on the documentation that can only be resolved by way of such clarification to allow a more detailed and comprehensive submission can be made.

The Board might indicate how they intend to proceed with the application and whether they are proposing to require the level of detail particularly in respect of the property at 31 Upper, Clanbrassill Street but also along the full extent of the scheme which we are entitled to rely upon as part of the Environmental Impact Assessment Directive, the appropriate assessment and indeed the approval of the scheme under Section 51 of the Roads Act 1993 and we will of course address the details of this information when it is provided.

We should say that if it were proposed to continue with this process in the absence of this level of detail, we believe that the Board would be acting unlawfully and contrary to the Environmental Impact Assessment Directive and the Habitats Directive because of the absence of identification of affects and the formulation of appropriate measures to identify these affects as well as the absence of adequate notice as to the nature of the scheme all relevant to the Environmental Impact Assessment Directive and under; the Habitats Directive the level of certainty required under the Habitats Directive can never be achieved and therefore we would reserve our position if the Board were intending to proceed but it would be intended to raise all of these issues at an oral hearing and we have no doubt that the Board will consider these matters and will not allow that situation to occur.

Yours faithfully



Rodney Cassidy for and on behalf of the Legal Personal Representatives of the Estate of the Late Agnes Cassidy