



**THE HIGH COURT
PLANNING AND ENVIRONMENT**

Record No. 2024/562MCA

**IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS
AMENDED)**

BETWEEN:

JOHN HEGARTY, EUGENE GLENDON AND SYLVIA GLENDON AND GEMMA DESMOND

Applicants

-and-

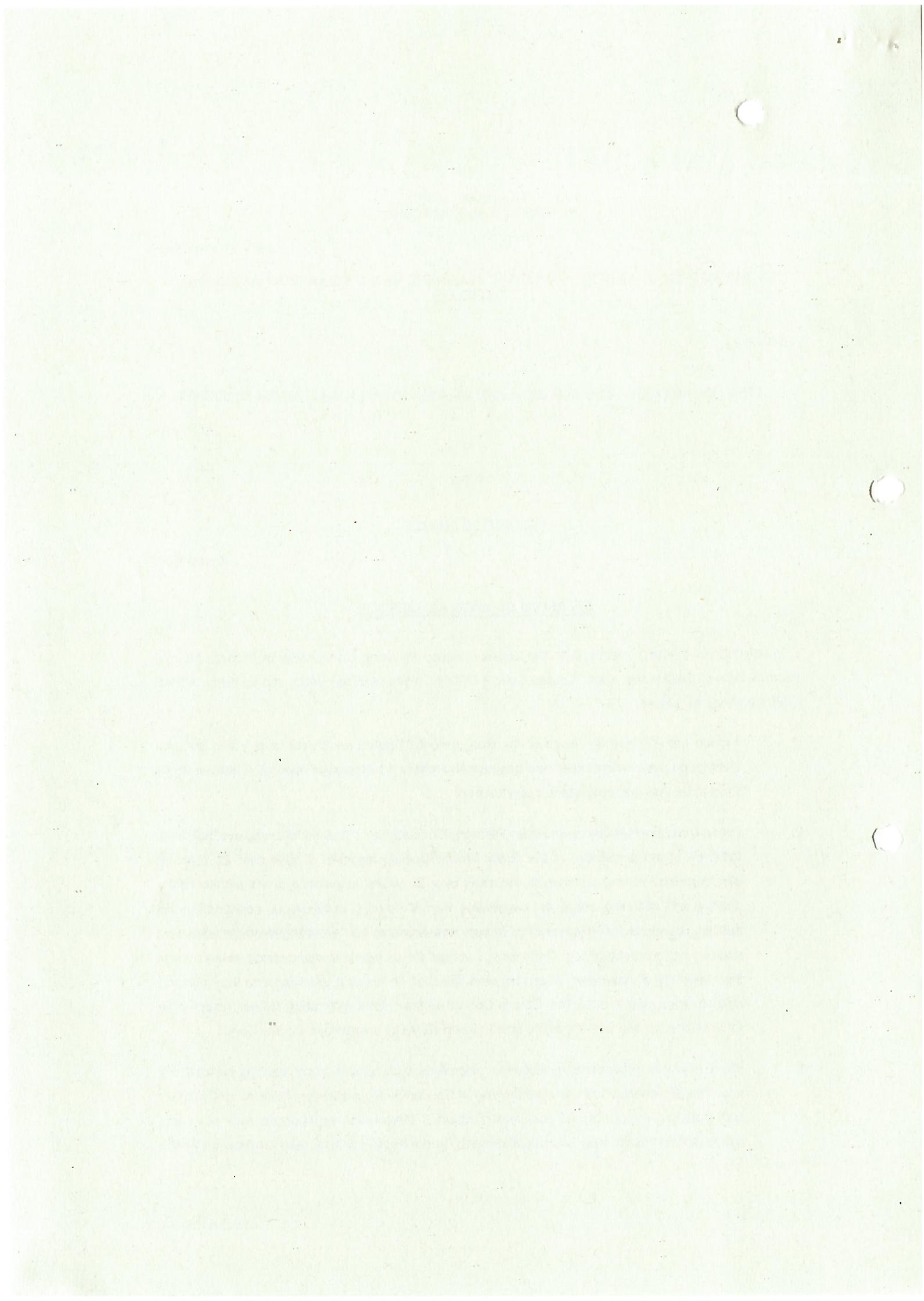
TOWERCOM LIMITED

Respondent

AFFIDAVIT OF MÀIRI HENDERSON

I, MÀIRI HENDERSON, Director with McCutcheon Halley Planning Consultants of 6 Joyce House, Barrack Square, Ballincollig, Cork, County Cork, P31YX97, aged eighteen years and upwards, **MAKE OATH** and say as follows:

1. I make this Affidavit on behalf of the Respondent ("Towercom") from facts within my own knowledge save where otherwise appears and where so otherwise appears, I believe those facts to be true and accurate in every respect.
2. I am a Director of McCutcheon Halley Planning Consultants. I hold the following qualifications: INSERT. I am a member of the Royal Town Planning Institute. I have over 22 years of planning and housing experience, including over 20 years' experience in the private sector dealing with planning consents, negotiating Part V housing agreements, coordinating the delivery of reports for Environmental Impact Assessments and providing strategic advice on housing and planning policy. Previously, I worked for six years as an academic researcher at the University of Aberdeen, where my work focused on housing, planning and rural policy. I also previously worked for Cork County Council as their Housing Strategy Officer, responsible for coordination and delivery of the first Housing Strategy prepared in County Cork.
3. I have previous experience in relation to enforcement complaints in my planning consultancy role. This experience has included drafting of Section 5 Declaration applications to Cork City and County Council, including several Section 5 Declaration applications related to grid connection routes for solar farm developments, and a Section 5 Declaration application for the



development of a wall within an Architectural Conservation area which was referred to An Bord Pleanála.

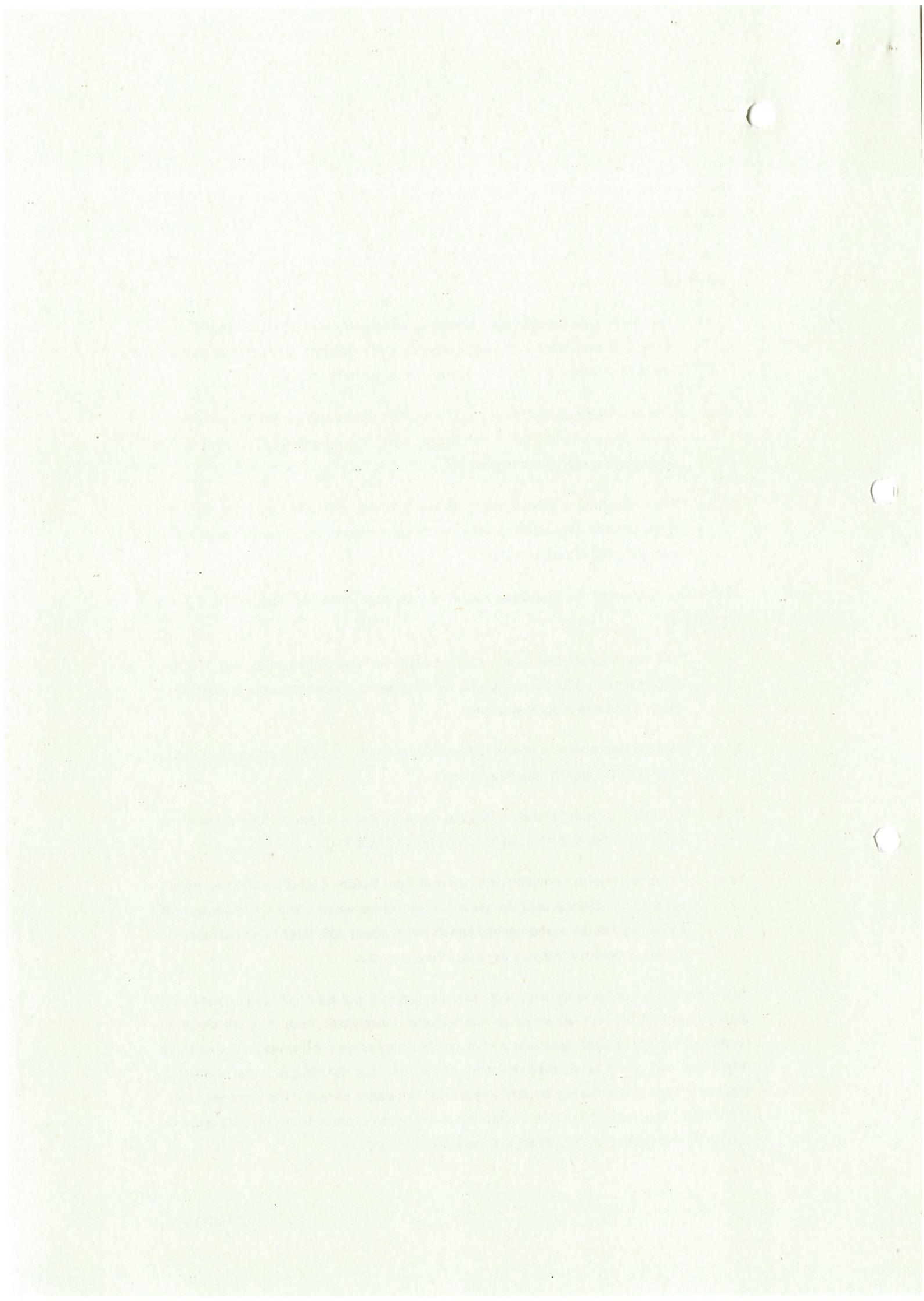
- 4 As an expert witness in this case, I am aware that whilst I have been engaged by Towercom, my primary duty of objectivity is to the Court. I do not have any financial or other interest in the proposed development. I confirm that I understand the nature of my obligations and have complied with my obligations to assist the Court in making this affidavit.
- 5 It is my understanding that Towercom are undertaking the development on behalf of/as agent for Vodafone and that the development consists of:
 - 5.1 The replacement of an existing telecommunications pole on lands at the Eir Exchange, Wellington Road, Cork, which is structurally compromised, with an adjacent structure of a similar height and profile and similar utility telecommunications infrastructure.
 - 5.2 Removal of the existing pole structure following completion of the installation of the replacement pole.
6. The development consists of the following:
 - 6.1 Excavations for foundation works
 - 6.2 Foundation installation and ducting works
 - 6.3 Installation of new pole and telecommunication equipment
 - 6.4 Remove of existing wooden pole and equipment and reinstatement works.
7. The communications pole is located within an Architectural Conservation Area.
8. An issue has arisen as to the planning status of this development and in particular whether the works are exempted development under the provisions of the Planning and Development Act 2000 (as amended) ("the 2000 Act") and/or the Planning and Development Regulations 2001 ("the Regulations"). I have been retained by Towercom to provide expert evidence on this issue.
9. I have inspected the locus and can confirm that the original communications pole remains in place and that foundation works have been carried out at the proposed location of the replacement pole, approximately 3.2m north-east of the existing structure.
- 10 I have prepared a report following the said inspection upon which marked "MH1" I have signed my name prior to the swearing hereof (the "Report"). As is set out in the Report, I have formed

the professional opinion that the works being carried out are development which is exempted development.

11. As is apparent from the Report, my professional conclusion as to the planning status of the development is as follows:
 - 11.1 The development constitutes exempted development under the provisions of Section 4 (1) (g) of the 2000 Act because it consists of the renewing of existing apparatus by a statutory undertaker, for the purpose of telecommunication services.
 - 11.2 The restrictions of Section 4 (4) of the 2000 Act related to developments which require an environmental impact assessment or appropriate assessment do not apply to paragraph (g) of section 4 (1).
 - 11.3 The restrictions of Section 82 (1) of the 2000 Act related to developments which materially affect the character of an architectural conservation area do not apply to paragraph (g) of section 4 (1).

12. I have also considered the alternative scope for exemption under the Regulations, it is my opinion that:
 - 12.1 The development falls within Class 31 (j) Part 1 of Schedule 2, Part 1 of the Regulations as it for the construction of an antenna support structure in place of an existing antenna support structure.
 - 12.2 None of the conditions and limitations relevant to Class 31 (j) in column 2 of Part 1 of Schedule 2 apply to the development.
 - 12.3 None of the restrictions on exempted development in Article 9 of the Regulations apply to the development, so as to de-exempt Class 31 (j).
 - 12.4 The restrictions to exempted development under Section 4 (4) of the 2000 Act do not apply to the development, because it does not fall within a class of development which requires an environmental impact assessment, and there is no likelihood or the development affecting a protected European site.

- 13 The restriction to exempted development under Section 82 (1) of the 2000 Act does not apply because, while the works fall within an Architectural Conservation Area, they are minor in nature and replace an existing structure which has been in place since the 1990s. The existing pole forms part of the established character of the area and contributes to the residential amenity of the area and the city by providing telecommunication services. The slight relocation of the replacement pole 3.2 m to the north-east of the existing pole could not be considered to constitute works that materially affect the character of the area.



14. It is therefore my opinion that the development, as well as being exempt under Section 4 (1) (g) of the 2000 Act, is also exempt under the provisions of Class 31(j) of the Regulations. Accordingly, it is my professional opinion that the development can be undertaken without the need to obtain planning permission in advance.

Maire Henderson

SWORN by MAIRI HENDERSON
this 15 day of November 2024
at *Station House Main St. Ballincollig*
in the City/County of Cork
before me a Practising Solicitor/ Commissioner for
Oaths and [I personally know the Deponent.] ~~OR~~
~~[the Deponent has been identified to me by~~
[] who is personally known to me and
who certifies that the Deponent is personally known to
him/her.]



[Signature]

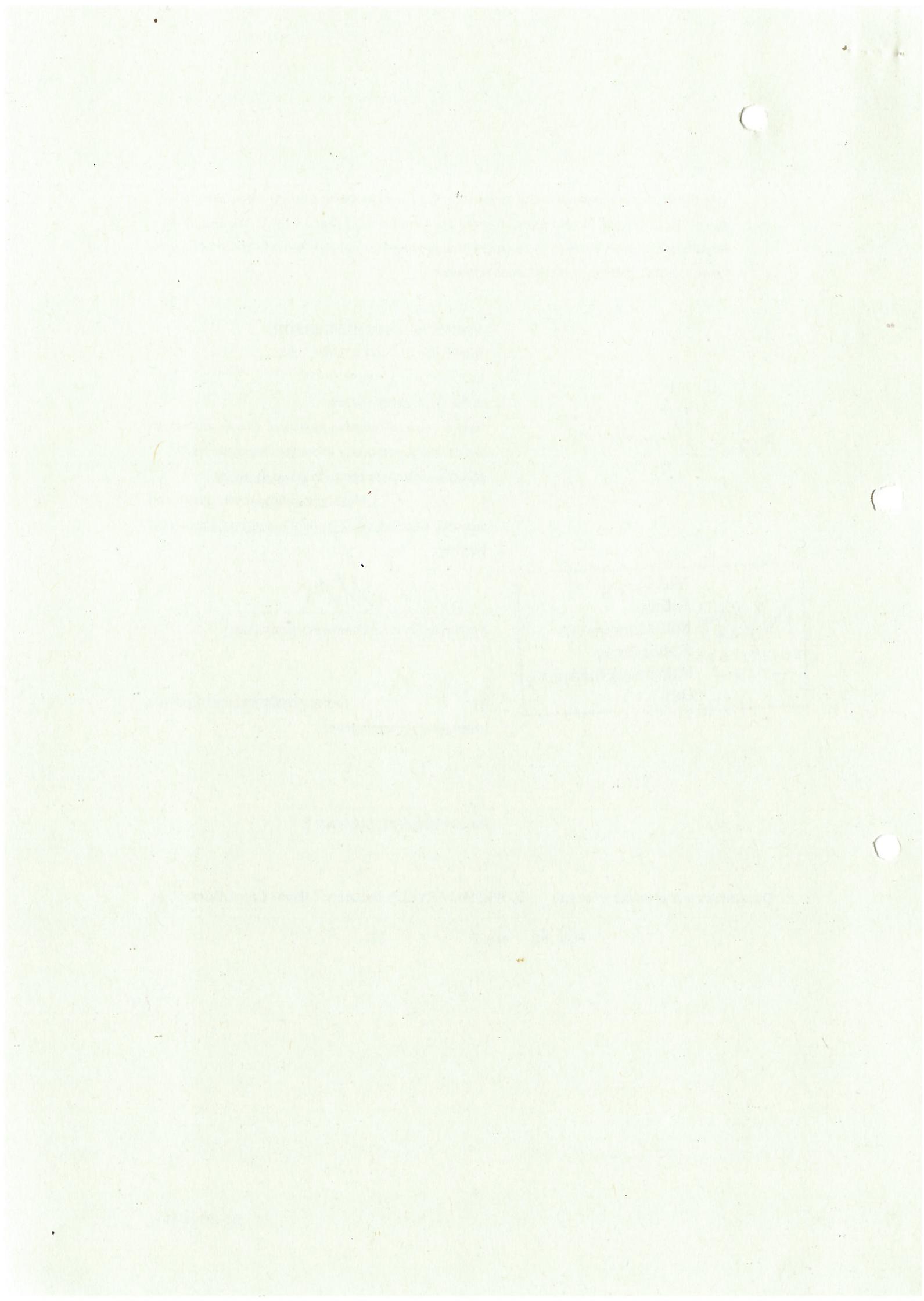
Practising Solicitor/Commissioner for Oaths

[] hereby certify that the Deponent
is personally known to me.

Person identifying Deponent]'

This Affidavit is filed on behalf of the by WILLIAM FRY LLP, Solicitors, 2 Grand Canal, Dublin 2.

Filed this day of 20 .



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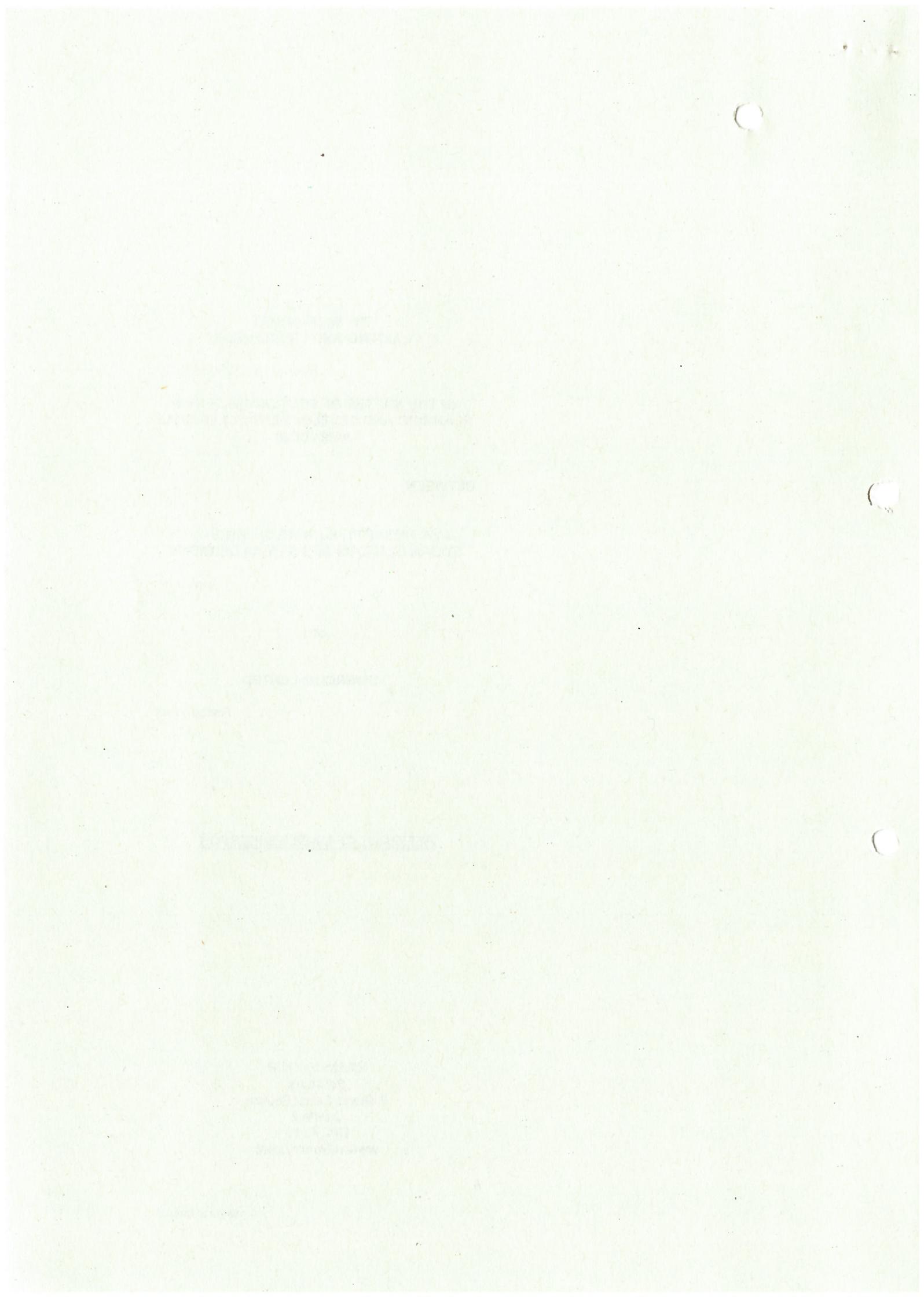
-and-

TOWERCOM LIMITED

Respondent

AFFIDAVIT OF MÁIRÍ HENDERSON

William Fry LLP
Solicitors
2 Grand Canal Square
Dublin 2
D02 A342
www.williamfry.com



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