

Planning Report

For Works at Eir Exchange, Wellington Road, Saint Lukes, Cork

on behalf of Towercom Ltd

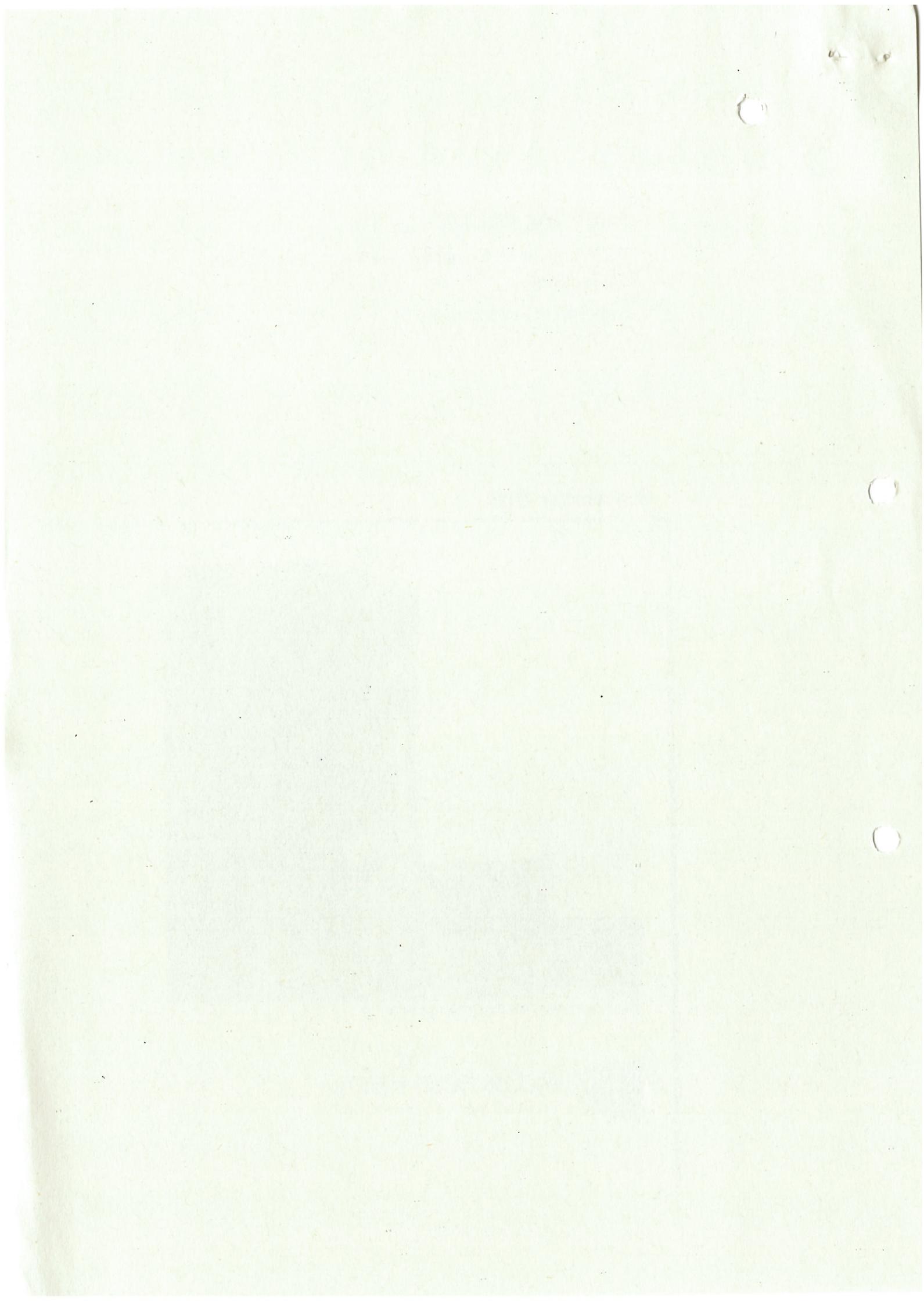
November 2024



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CHARTERED PLANNING CONSULTANTS



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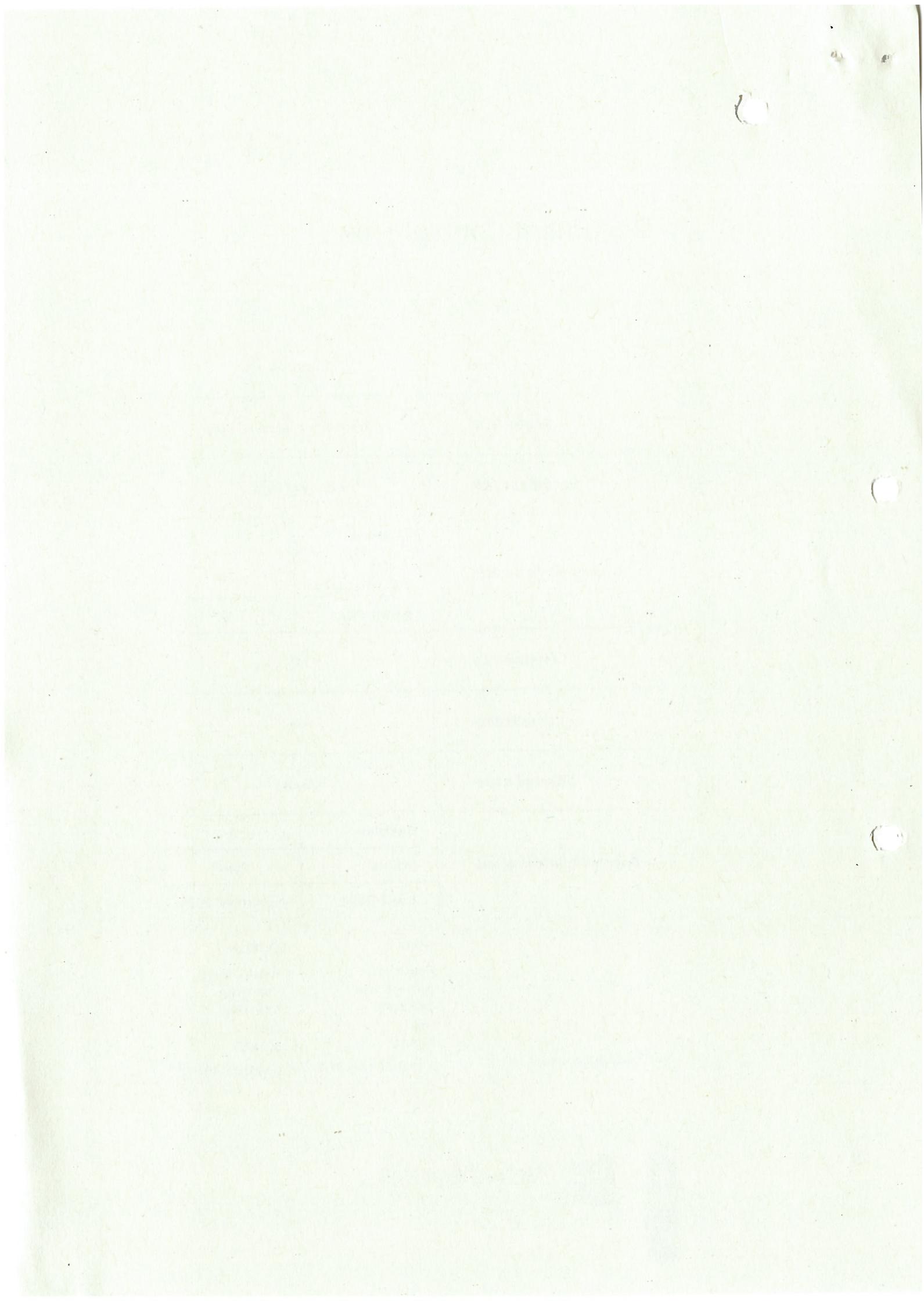
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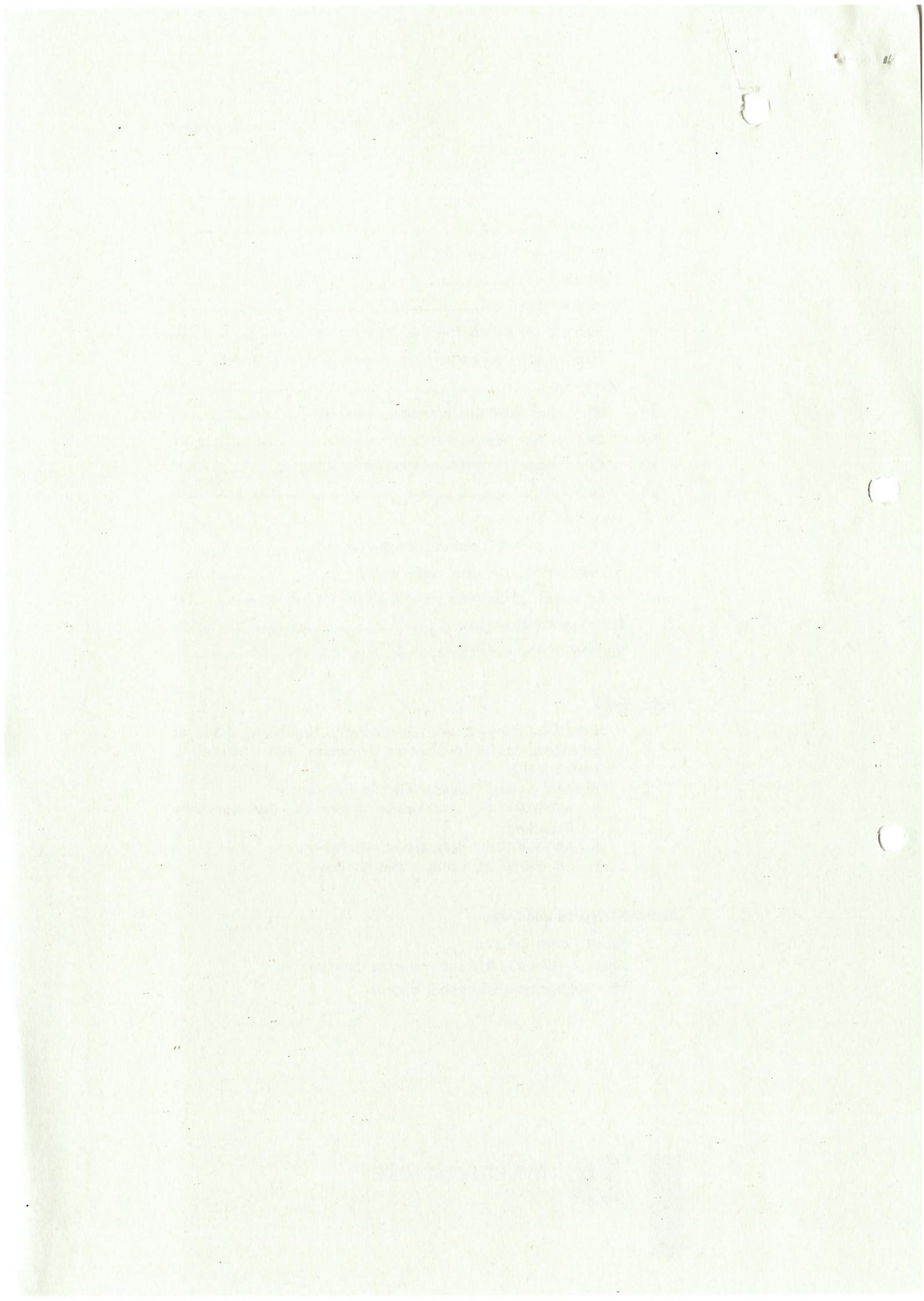
- 1 Extract of Planning and Development Regulations 2001 (as amended), consolidated version September 2024 – Schedule 5, Parts 1 and 2
- 2 Relevant An Bord Pleanála Referrals Precedent
 - a. APB-302441-18, Monkstown Road, Co. Dun Laoghaire Rathdown
 - b. ABP-312012-21, Ballyclerihan, Co. Tipperary
 - c. ABP-310361-21, Camp, Tralee, Co. Kerry

Attached Figures and Maps

Figure 1 – Site Location

Figure 2 – Extent of ACA and Protected Structures

View Management Framework Map 02



1. Introduction

This Planning Report has been prepared by Màiri Henderson RTPI, Director with McCutcheon Halley Planning Consultants.

The purpose of the report is to prepare an assessment of whether the work commenced at Eir Exchange, Wellington Road, Saint Lukes, Cork, to replace a structurally unstable communications pole with a new pole, constitute development and whether the work constitutes exempted development under the provisions of the Planning and Development Act 2000 (as amended).

Figure 1, attached, indicates the approximate location of the development by red concentric circles.

This report is provided as a professional planning opinion prepared specifically for the purposes of High Court Record No. 2024/562 MCA. The views and conclusions presented herein are based on the professional judgement of the author, reflecting analysis of relevant planning principles, statutory instruments and established precedent at the time of writing.

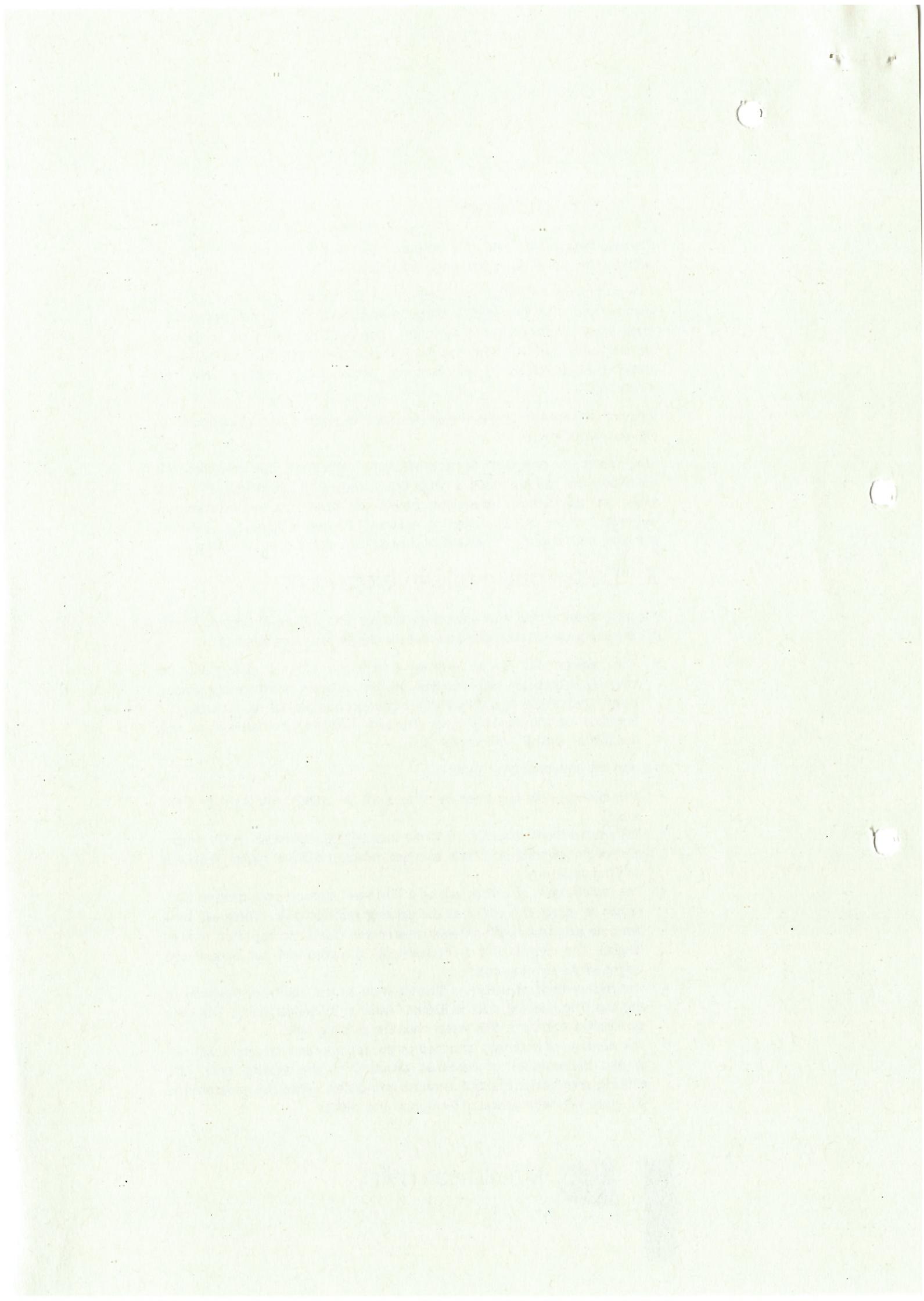
2. Description of Development

It is my understanding that Towercom Ltd are undertaking the development in a statutory undertaker role and that the development consists of:

- The replacement of an existing telecommunications pole which is severely structurally compromised, with an adjacent structure of a similar height and profile and similar utility telecommunications infrastructure.
- Removal of the existing pole structure following completion of the installation of the replacement pole.

It is also my understanding that:

- The existing pole has been in place since the 1990s and is made from wood.
- The replacement structure is to be located approximately 3.2m north-east of the existing structure, at a ground level of 0.6m higher than the existing structure.
- The replacement structure will be a 12m steel support pole painted dark brown to reflect the colour of the existing wooden pole. There will be a 3m pole extension with antenna cluster and dishes on top (15m overall height). The height of the replacement structure will not exceed the height of the existing pole.
- The replacement structure is 508mm wide all the way from the base to the top. The existing pole is 320mm wide at its widest point. The new structure is therefore 59% wider than the existing pole.
- The number of antennas attached to the replacement structure will not exceed the number of antennas attached to the existing pole. The existing pole has a total of 6 antenna and dishes, while the replacement structure will have a total of 5 antenna and dishes.



3. Description of the site

The existing pole and its proposed replacement are located within the landholding boundary of the Eir exchange building at Wellington Road, St Lukes, Cork City.

The site is situated within an established residential area, which is designated as Wellington Road / Saint Luke's Architectural Heritage Area in the Cork City Development Plan 2022 – 2028 (the CDP).

The following structures recorded as Protected Structures in the CDP are located within the vicinity of the site:

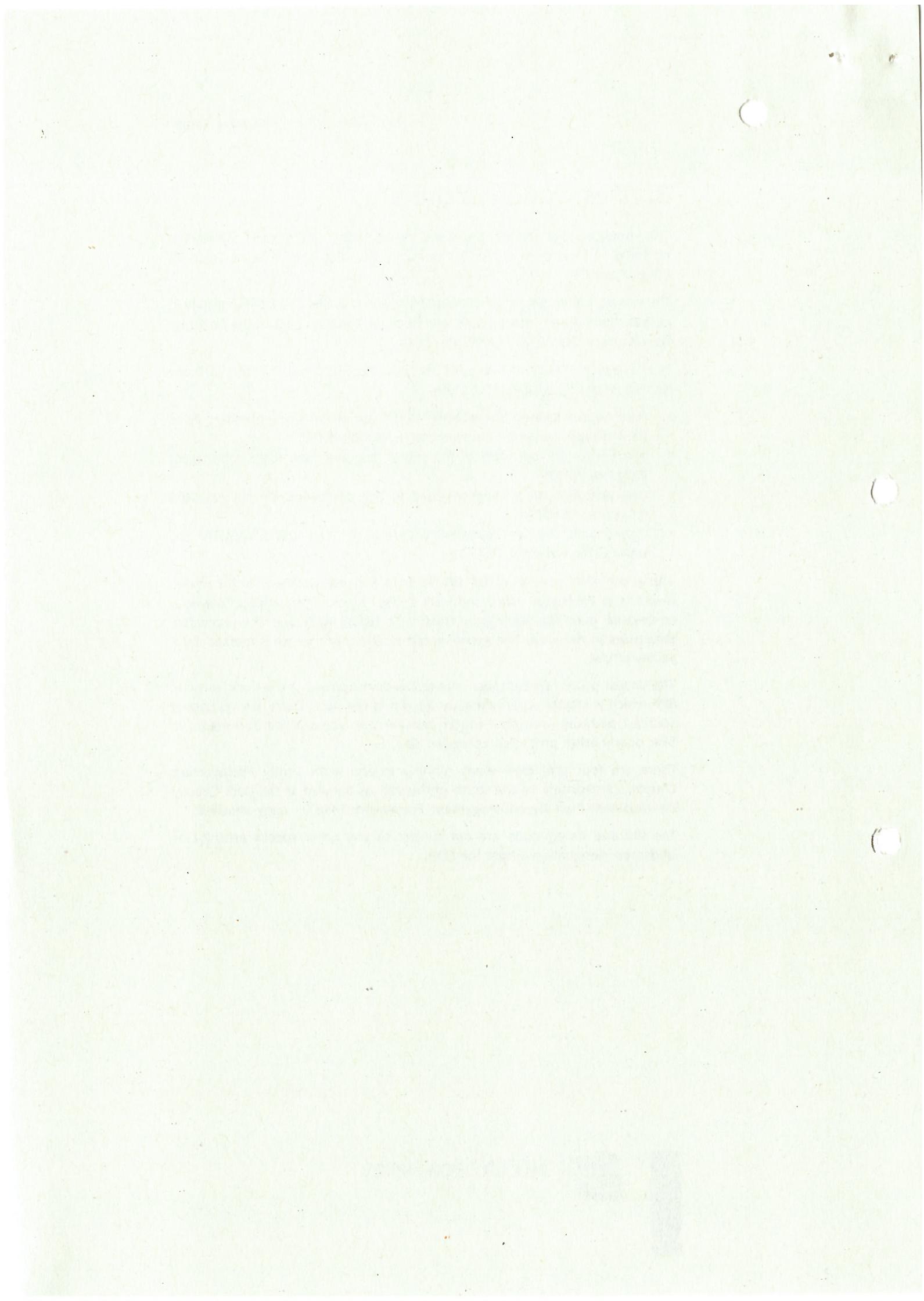
- Four houses located immediately to the east of the site – numbers 20 to 23 Wellington Road (RPS references: PS454 to PS457)
- Ten houses to the north of the site in Belgrave Place (RPS references: PS747 to PS757)
- One post box on Wellington Road to the north-west of the site (RPS reference: PS1030)
- One church, Trinity Presbyterian Church, located immediately to the south (RPS reference: PS425)

There are also several other protected structures located in the wider environs of Wellington Road and Saint Lukes. Figure 2, attached, provides a contextual map for Wellington Road / St Luke's ACA and the protected structures in the area. The approximate location of the site is marked by a yellow arrow.

The closest protected European site to the development is the Cork Harbour SPA which is located approximately 4.5 km to the east. There are no known source / pathway / receptor routes between the site and the Cork Harbour SPA, or any other protected European site.

There are four protected views running to and from Trinity Presbyterian Church, immediately to the south of the site, as detailed in the Cork County Development Plan View Management Framework Map 02, copy attached.

The site and its environs are not subject to any other special amenity or landscape designation under the CDP.



4. Legislative Context

4.1 Planning and Development Act 2000 (as amended)

Under the provisions of the Planning and Development Act 2000 (as amended) [hereafter referred to as the PDA], the following relevant definitions are provided:

'Development' is defined in Section 3 of the Planning and Development Act 2000 (as amended) as *"the carrying out of works on, in, over or under land or the making of any material change of use of any structures or other land"*.

'Works' are defined in Section 2 to include *"any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal"*.

'Structure' is defined to mean *"any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined"*.

"Statutory undertaker" means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or
- (c) provide services connected with or carry out works for the purposes of the carrying on of the activities of, any public undertaking.

The following sections of the PDA are relevant to the assessment within this report.

Section 4 (1) of the PDA provides that certain activities shall be exempted development for the purposes of the Act.

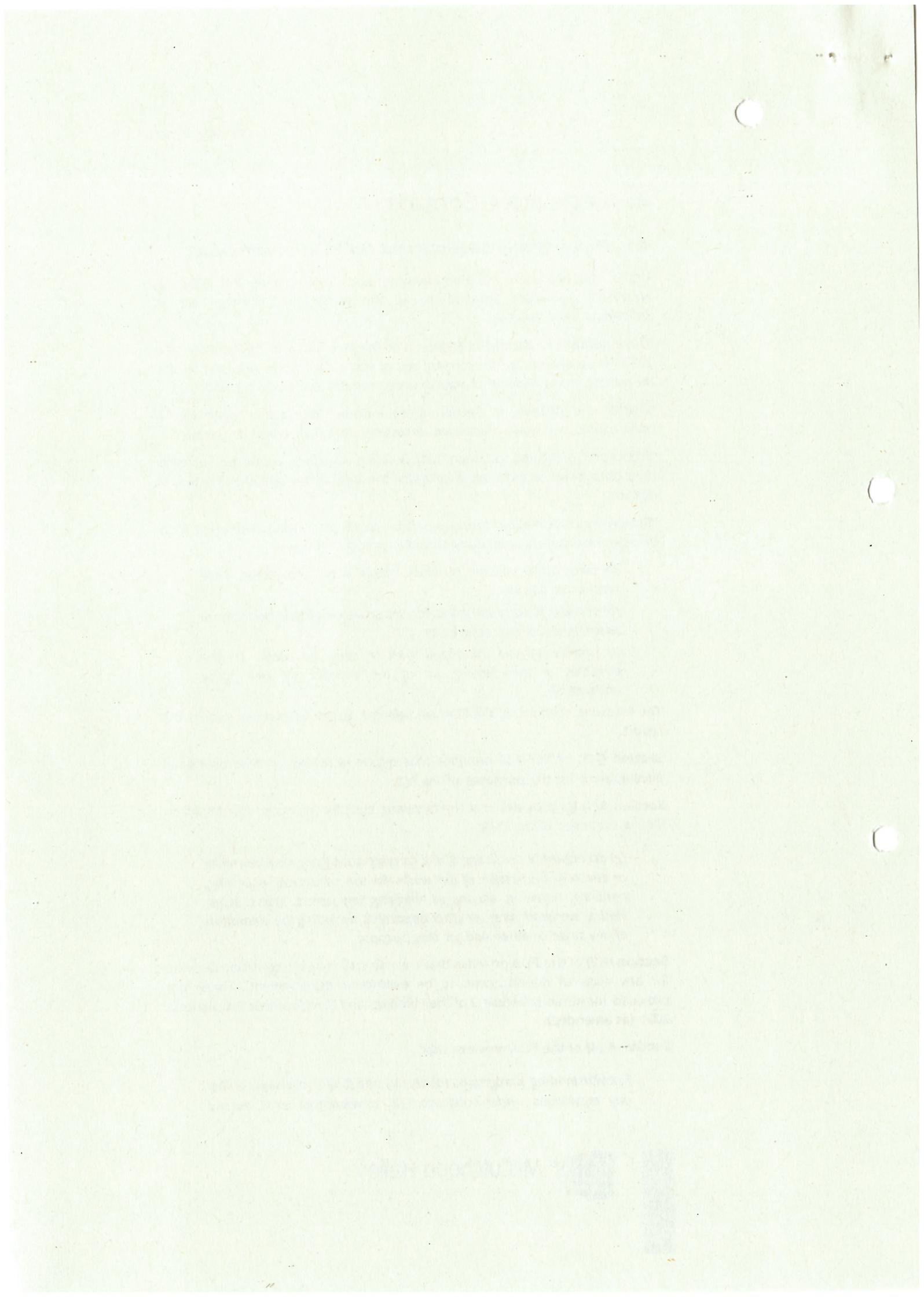
Section 4 (1) (g) provides that the following shall be exempted development for the purposes of the PDA:

- (g) *development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;*

Section 4 (2) of the PDA provides that the minister may by regulation provide for any class of development to be exempted development. These are provided for within Schedule 2 of the Planning and Development Regulations 2001 (as amended).

Section 4 (4) of the PDA provides that:

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be



exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 81 (1) of the PDA provides that:

81.—(1) A development plan shall include an objective to preserve the character of a place, area, group of structures or townscape, taking account of building lines and heights, that—

(a) is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest or value, or

(b) contributes to the appreciation of protected structures,

if the planning authority is of the opinion that its inclusion is necessary for the preservation of the character of the place, area, group of structures or townscape concerned and any such place, area, group of structures or townscape shall be known as and is in this Act referred to as an “architectural conservation area”.

Section 82 (1) of the PDA provides that:

Notwithstanding paragraph (a), (h), (i), (ia) (j) (k) or (l) of section 4(1), or any regulations made under section 4(2), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

Section 172 of the PDA provides that:

1) An environmental impact assessment shall be carried out by the planning authority or the Board, as the case may be, in respect of an application for consent for proposed development where either—

(a) the proposed development would be of a class specified in—

(i) Part 1 of Schedule 5 of the Planning and Development Regulations 2001, and either—

(I) such development would equal or exceed, as the case may be, any relevant quantity, area or other limit specified in that Part, or

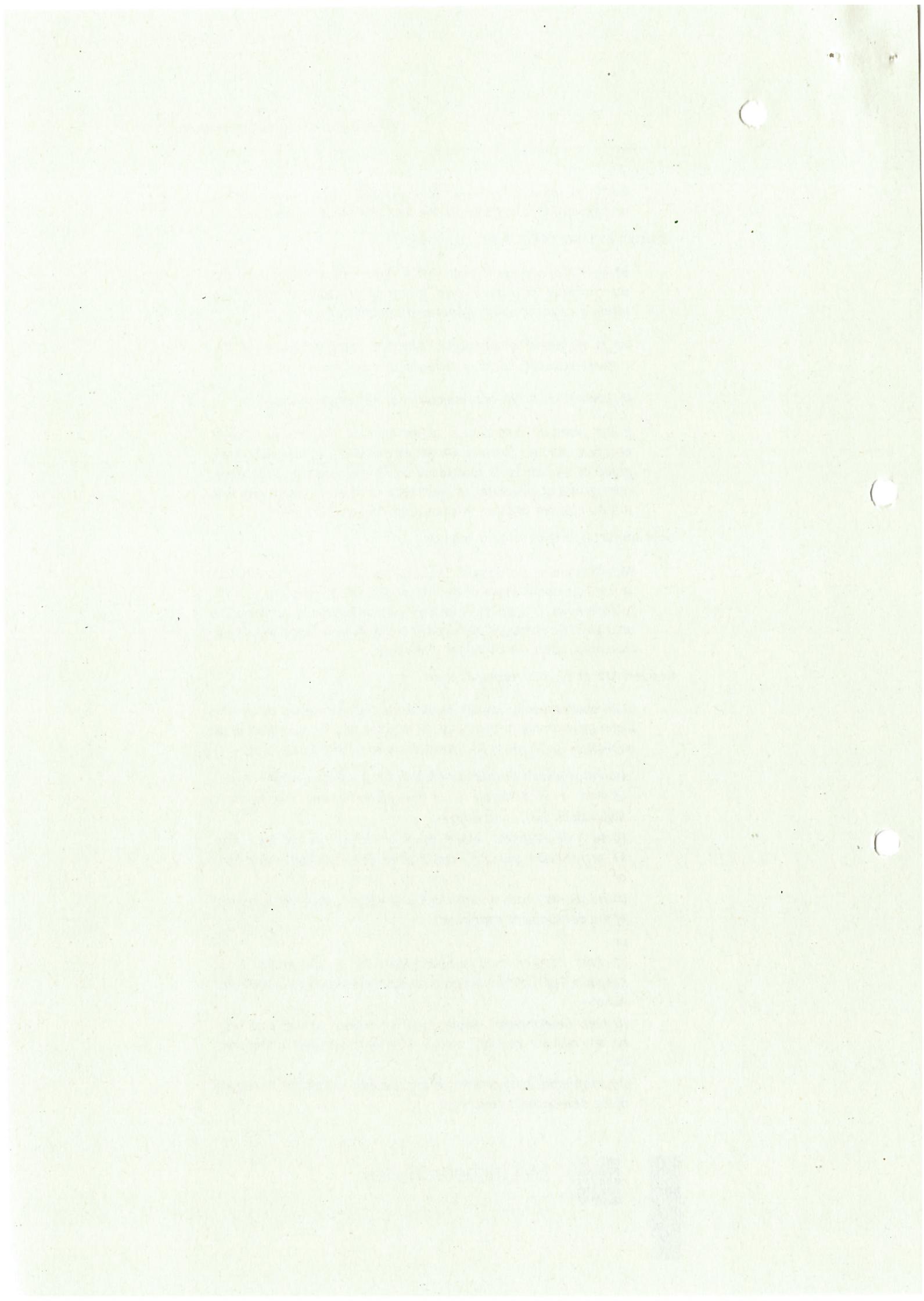
(II) no quantity, area or other limit is specified in that Part in respect of the development concerned,

or

(ii) Part 2 (other than subparagraph (a) of paragraph 2) of Schedule 5 of the Planning and Development Regulations 2001 and either—

(I) such development would equal or exceed, as the case may be, any relevant quantity, area or other limit specified in that Part, or

(II) no quantity, area or other limit is specified in that Part in respect of the development concerned,



or

(b) (i) the proposed development would be of a class specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001 but does not equal or exceed, as the case may be, the relevant quantity, area or other limit specified in that Part, and

(ii) it is concluded, determined or decided, as the case may be,—

(i) by a planning authority, in exercise of the powers conferred on it by this Act or the Planning and Development Regulations 2001 (**S.I. No. 600 of 2001**),

(II) by the Board, in exercise of the powers conferred on it by this Act or those regulations,

(III) by a local authority in exercise of the powers conferred on it by regulation 120 of those regulations,

(IV) by a State authority, in exercise of the powers conferred on it by regulation 123A of those regulations,

(V) in accordance with section 13A of the Foreshore Act, by the appropriate Minister (within the meaning of that Act), or

(VI) by the Minister for Communications, Climate Action and Environment, in exercise of the powers conferred on him or her by section 8A of the **Minerals Development Act 1940**,

that the proposed development is likely to have a significant effect on the environment.

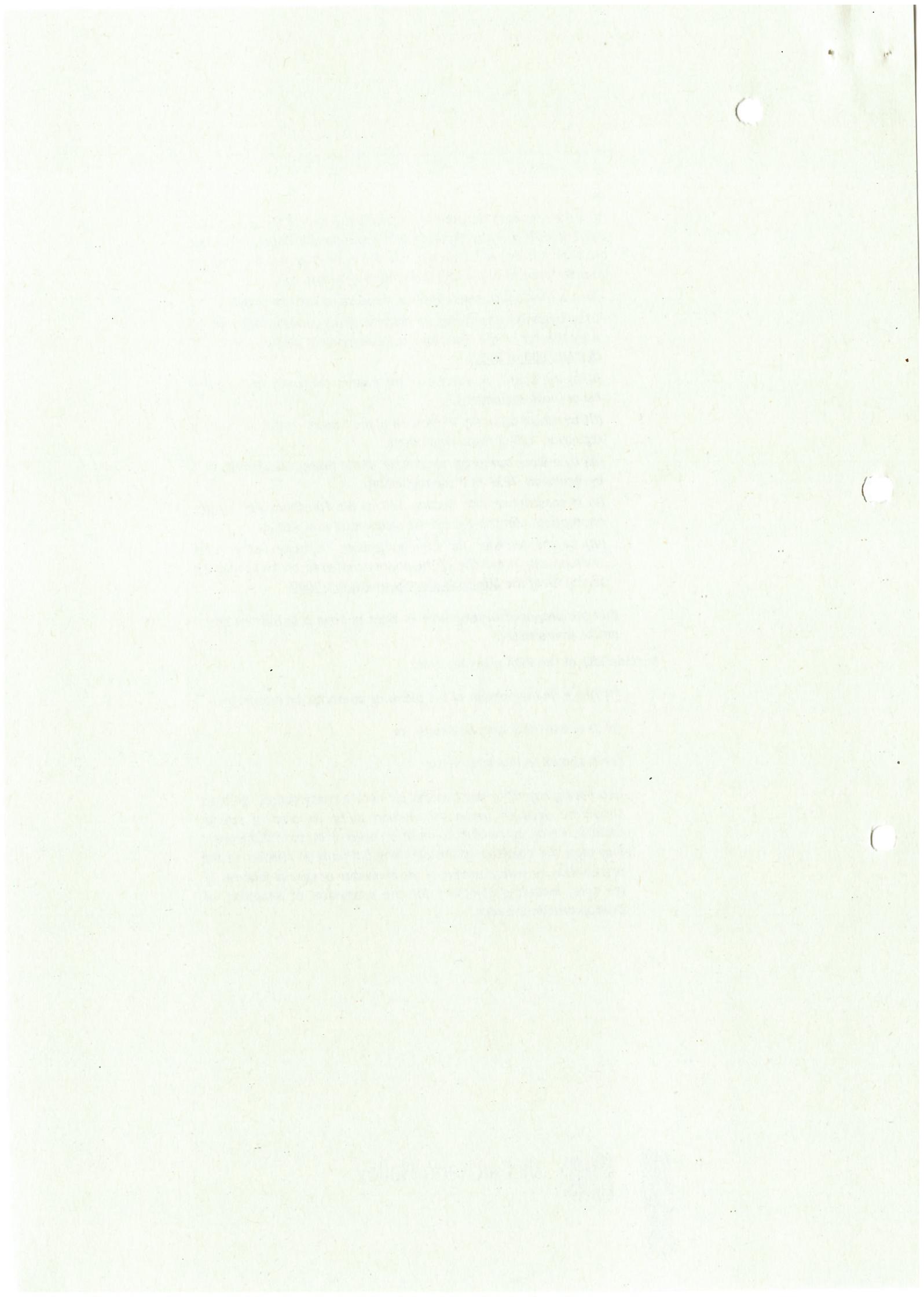
Section 202 of the PDA provides that:

(1) Where, in the opinion of the planning authority, by reason of—

(a) its outstanding natural beauty, or

(b) its special recreational value,

and having regard to any benefits for nature conservation, an area should be declared under this section to be an area of special amenity, it may, by resolution, make an order to do so and the order may state the objective of the planning authority in relation to the preservation or enhancement of the character or special features of the area, including objectives for the prevention or limitation of development in the area.



4.2 Planning and Development Regulations 2001 (as amended)

The following provisions of the Planning and Development Regulations 2001 (as amended) [hereafter referred to as the Planning Regulations] are relevant to the assessment within this report.

Article 6 of the Planning Regulations provides that:

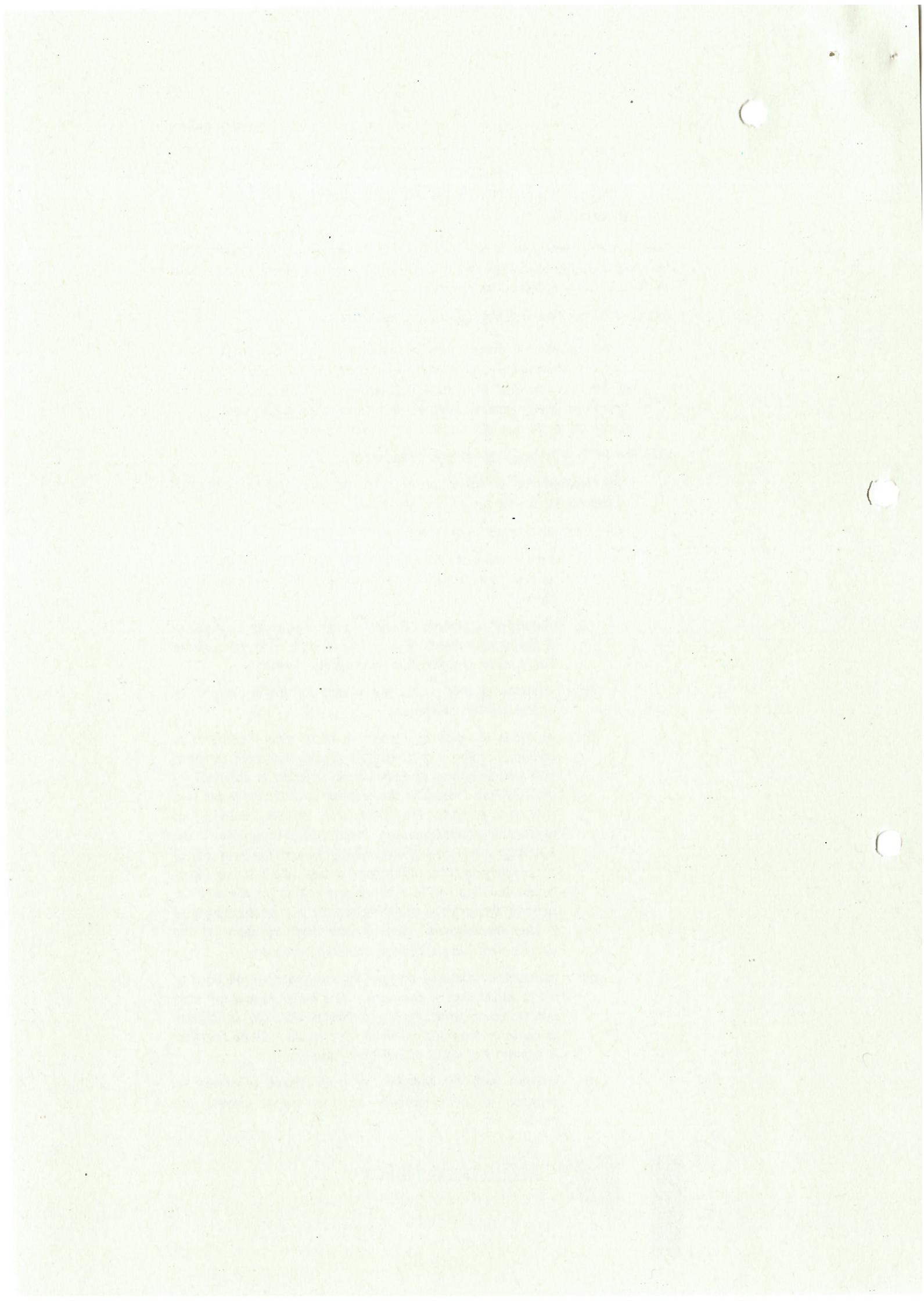
Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 of the Planning Regulations provides that:

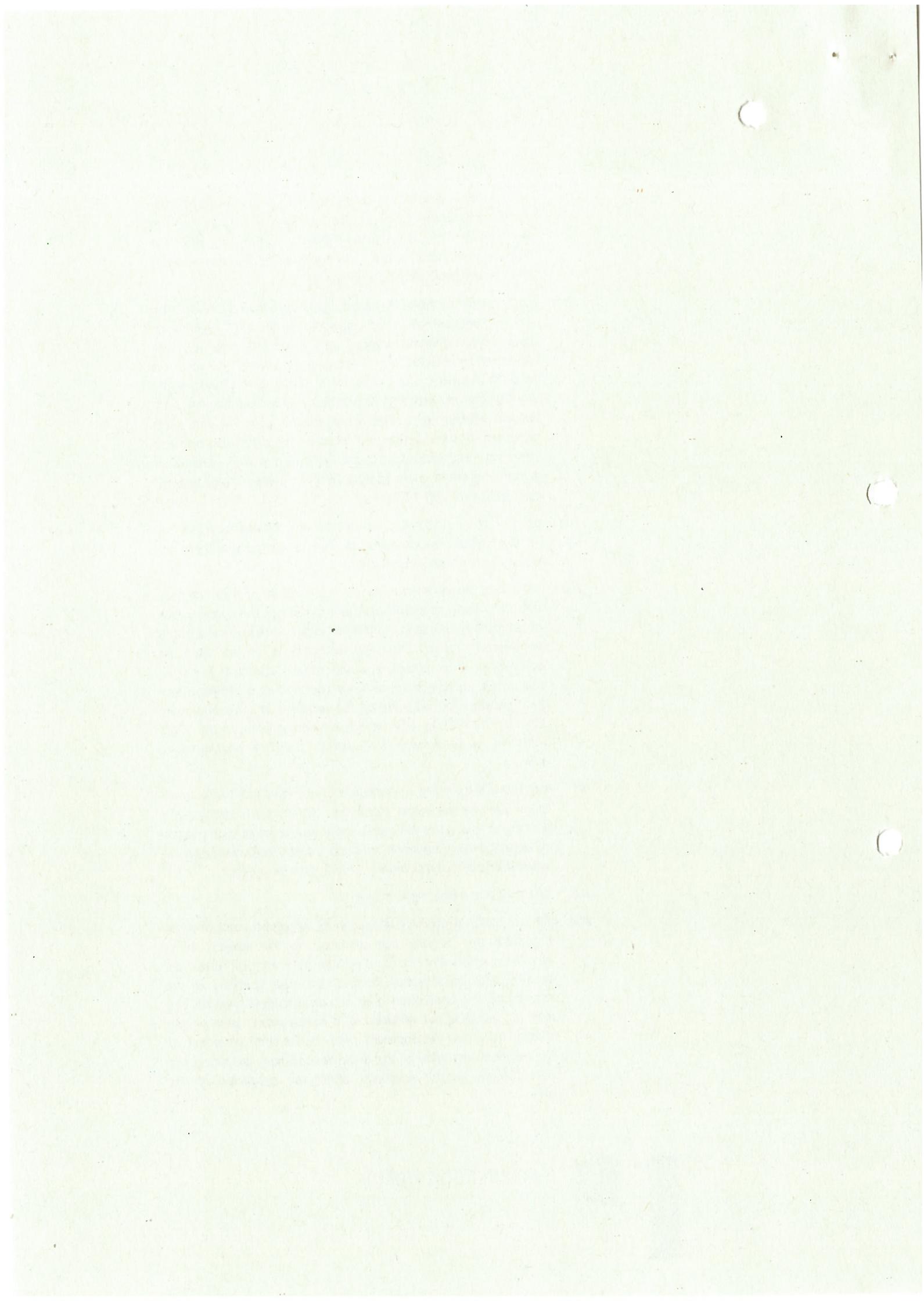
(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

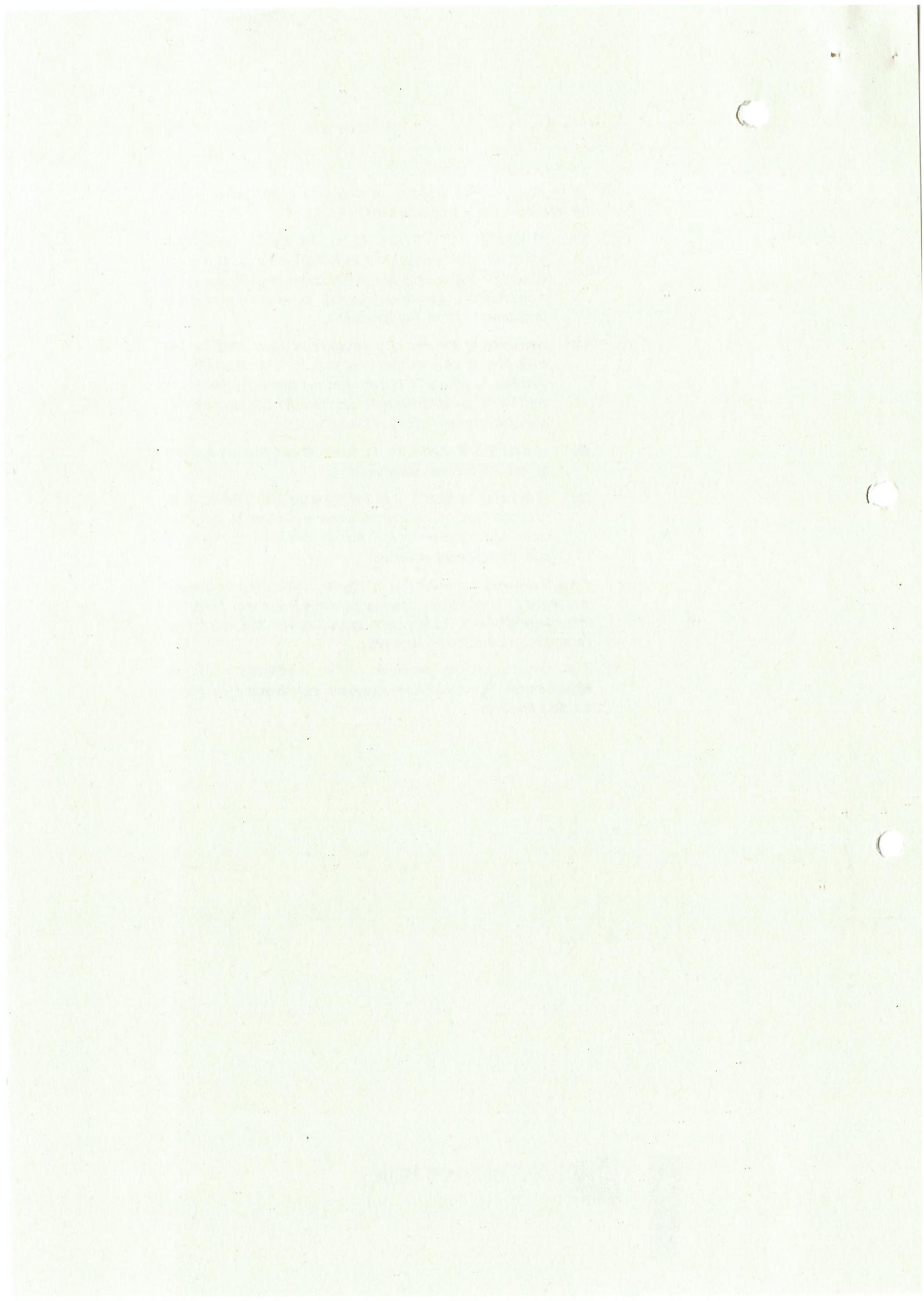
- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.*
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,*
- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*
- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*
- (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the*



- preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, save any excavation, pursuant to and in accordance with a licence granted under section 26 of the National Monuments Act, 1930 (No. 2 of 1930),
 - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,
 - (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
 - (x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,
 - (xi) obstruct any public right of way,
 - (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,



- (b) *in an area to which a special amenity area order relates, if such development would be development:—*
- (i) *of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or*
 - (ii) *consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or*
 - (iii) *of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or*
 - (iv) *of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,*
- (c) *if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,*
- (d) *if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.*

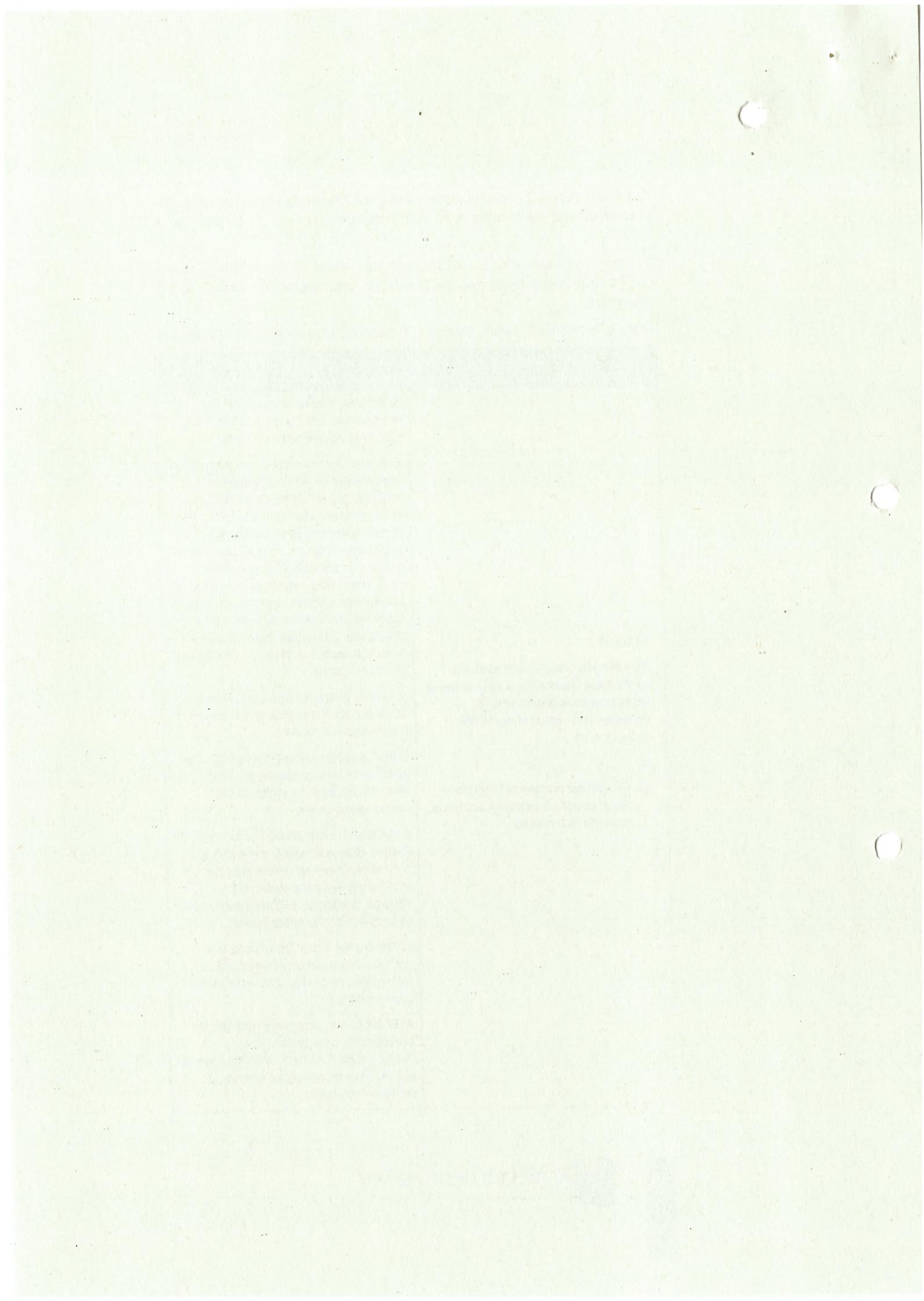


Part 1 of Schedule 2 provides classes of General Exempted Development. The class of development relevant to this assessment is Class 31 (j), detailed in Table 1.

Column 1 provides details of the exempted Class of Development, while Column 2 provides details of the Conditions and Limitations related to the exemption.

Table 1: Extract from Part 1, Schedule 2, Planning & Development Regulations

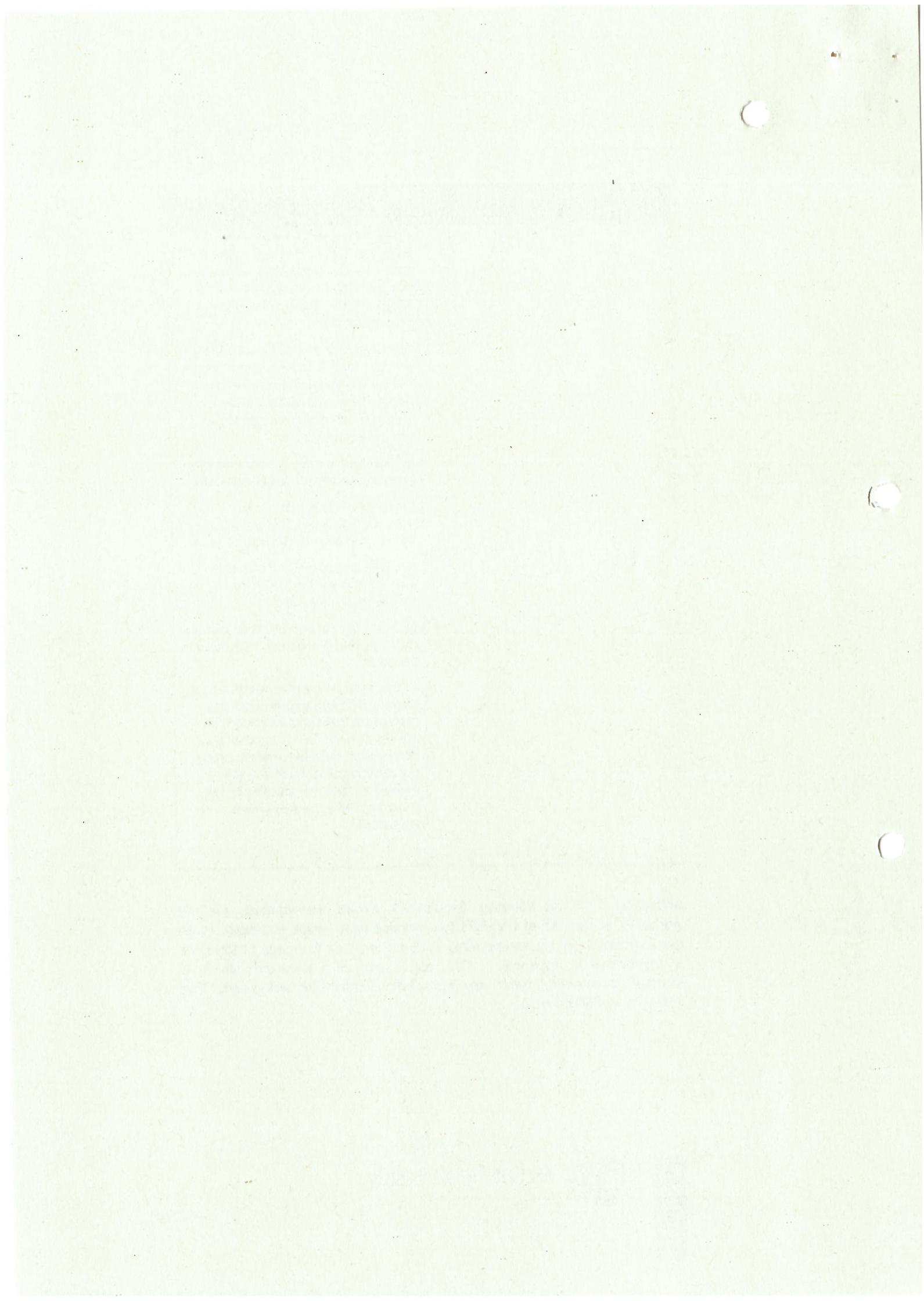
Column 1 Description of Development	Column 2 Conditions and Limitations
<p>Class 31</p> <p>The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of-</p> <p>...</p> <p>(j) An antenna support structure in place of an existing antenna support structure.</p> <p>...</p>	<p>1. The replaced structure shall be removed no later than 4 weeks following its decommissioning.</p> <p>2. Where, for reasons of the integrity of the network or other operational reasons, the structure to be replaced remains in use during the construction of the replacement structure, the replacement structure shall be located as near as possible to the existing structure having regard to construction activity and safety requirements and, in any case, no replacement structure shall be located more than 20 metres from the replaced structure (measured from the base).</p> <p>3. (a) The height of the replacement structure shall not exceed the height of the replaced structure.</p> <p>(b)(i) Subject to sub-paragraph (ii), the width of the replacement structure shall not exceed the width of the replaced structure.</p> <p>(ii) Where the replaced structure was 2 metres or less in width, the width of the replacement structure may not be more than twice the width of the replaced structure, all measurements to be taken at the widest point.</p> <p>(c) Where the replaced structure did not incorporate an antenna platform, the replacement shall not incorporate such a platform.</p> <p>4.(a) Subject to sub-paragraph (b), the antennae to be attached to the replacement structure shall not exceed the number of antennae on the replaced structure.</p>



Column 1 Description of Development	Column 2 Conditions and Limitations
	<p>(b) An additional 12 antennae for mobile telephony may be attached to the replacement structure, of which not more than 8 of the additional 12 shall be of the dish type (whether shielded or not).</p> <p>5. (a) The dimensions of any additional antenna for mobile telephony shall not exceed the greatest length, width or depth of any antenna for mobile telephony of corresponding type on the replaced structure.</p> <p>(b) In any other case, the dimensions of any antenna provided shall not exceed:</p> <p>(i) in the case of any panel type antenna, 1.5 metres in length × 0.4 metres in width × 0.15 metres in depth,</p> <p>(ii) in the case of any co-linear type antenna, 5 metres in length × 0.1 metres in diameter, and</p> <p>(iii) in the case of any dish type antenna (whether shielded or not), 1.8 metres in diameter.</p> <p>6. The replacement of an antenna support structure together with any replaced or additional antenna shall not result in the field strength of the non-ionising radiation emissions from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulation.</p>

Schedule 5 of the Planning Regulations details development for the purposes of Part 10 of the PDA (i.e. development which is subject to an Environmental Impact Assessment) in Part 1 and Part 2. A copy of Schedule 5 is provided in Appendix 1. The replacement of a telecommunications structure does not fall within any class of development set out in either Part 1 or Part 2 of Schedule 5.





5. Precedent

The following three referrals to An Bord Pleanála on the exempted development status of projects are relevant to the considerations in this report.

1. ABP-302441-18, Erection of a Telecommunications Mast on Monkstown Road, Co. Dun Laoghaire Rathdown.
2. ABP-312012-21, Construction of a 12m pole with 1 np Antenna Attached at Ballyclerihan, Co. Tipperary.
3. ABP-310362-21, Development of a telecommunications mast and associated infrastructure, west of the village of Camp, Tralee, Co. Kerry.

5.1 Monkstown Road Telecommunications Mast

The Board considered the following referral:

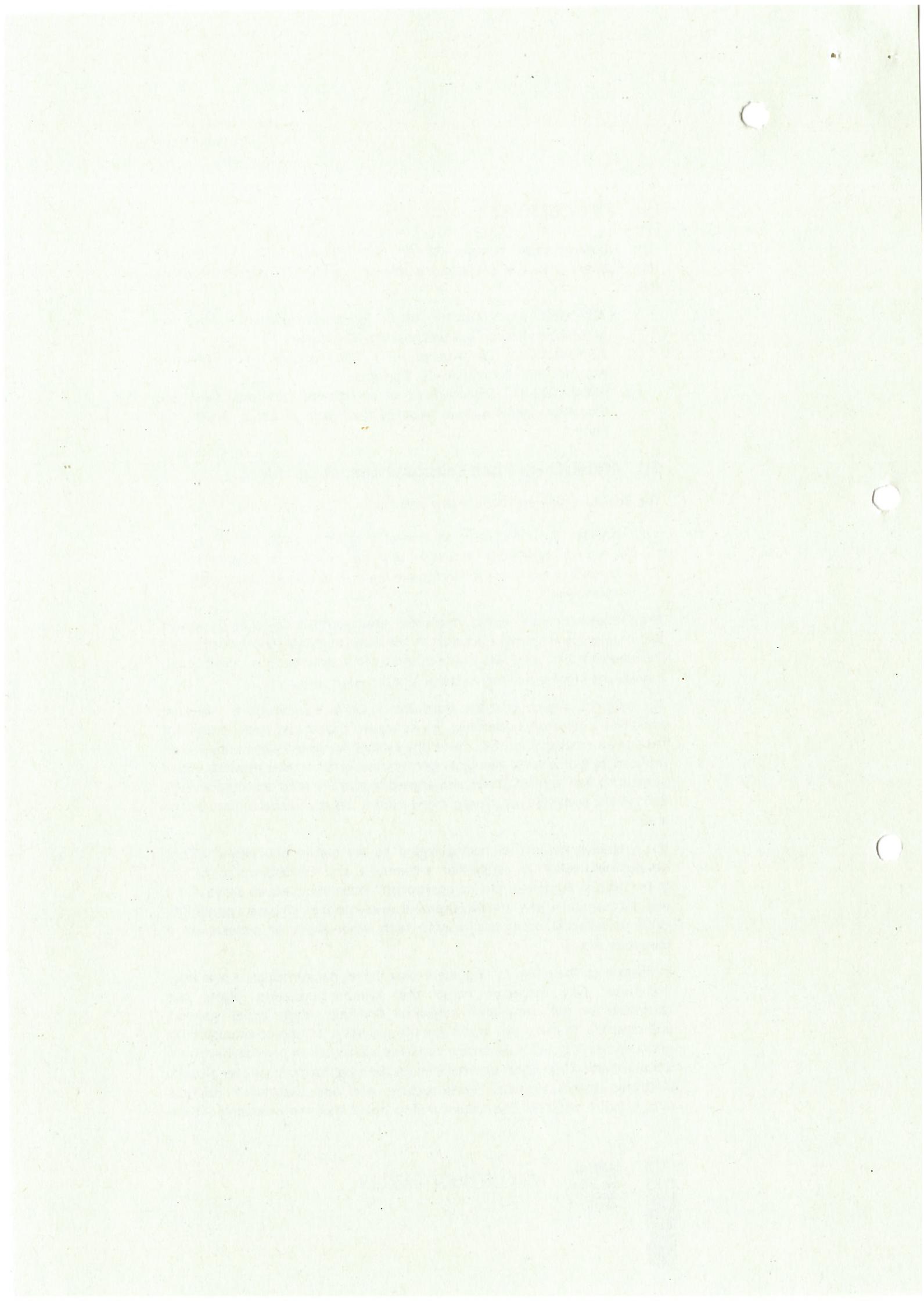
Whether the attachment of telecommunications antenna to a lamppost supporting structure and the erection of ancillary equipment is or is not development and is or is not exempted development.

The site lay within an existing residential area, with the objective to protect and or improve residential amenity in the Dun Laoghaire Rathdown County Development Plan 2016 -2022. The location of the structure is adjacent to but outside the Monkstown Architectural Conservation Area.

The referrers argued that the contractor – Signal Infrastructure - did not constitute a statutory undertaker. It was argued that the equipment was not fixed to an existing lamppost, rather the existing lamppost was removed and replaced by a new taller and wider telecommunications mast to which a new streetlamp was applied. It was also argued that as the mast adjoined an ACA and several protected structures, it had a direct negative visual impact on the area.

The Inspector noted that having regard to the nature and extent of the development within an established urban area, and the distance of the site to the nearest European site, no appropriate assessment issues arose and it was not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

In relation to the referrers' argument that Signal did constitute a statutory undertaker, the Inspector noted that telecommunication rights are controlled by the compliance regulator ComReg, which issues general authorisation to carry out works for the provision of telecommunications under license. Signal Infrastructure Ltd were authorised to provide Electronic Communication Networks and Services for the establishment of over ground electronic communications infrastructure and any associated physical infrastructure in 2016. The Inspector also noted that the occupants of the



structure are both licensed and operators in the state – namely Vodaphone and Eir Mobile. The Inspector was satisfied, having regard to the information submitted that both Cignal Infrastructure Ltd and the occupants came with the classification of 'statutory undertaker'.

In terms of impacts on the ACA, the Inspector noted that the structure fell outside the boundary of the ACA and that no restrictions were applicable.

The Board Direction concluded that:

- (a) *The works are such that the fixing of antenna to a lamppost supporting structure, together with the installation of the ancillary equipment constitutes development within the meaning of the Act.*
- (b) *The provision of the ancillary cabinet equipment by a statutory undertaker authorised to provide a telecommunications service would come within the scope of Class 31 (f) of the said Regulations.*
- (c) *The attachment of the antennas directly to the lamppost supporting structure by a statutory undertaker authorised to provide a telecommunications service would generally come with the scope of Class 31 (k)(ii) of the said Regulations*
- (d) *On the basis of the submitted, the development would comply with the conditions and limitations of the said Class.*

The Board therefore determined that the attachment of the telecommunications antennae to a lamppost supporting structure, and the provision of ancillary equipment was development and was exempted development.

5.2 Ballyclerihan Telecommunications Mast

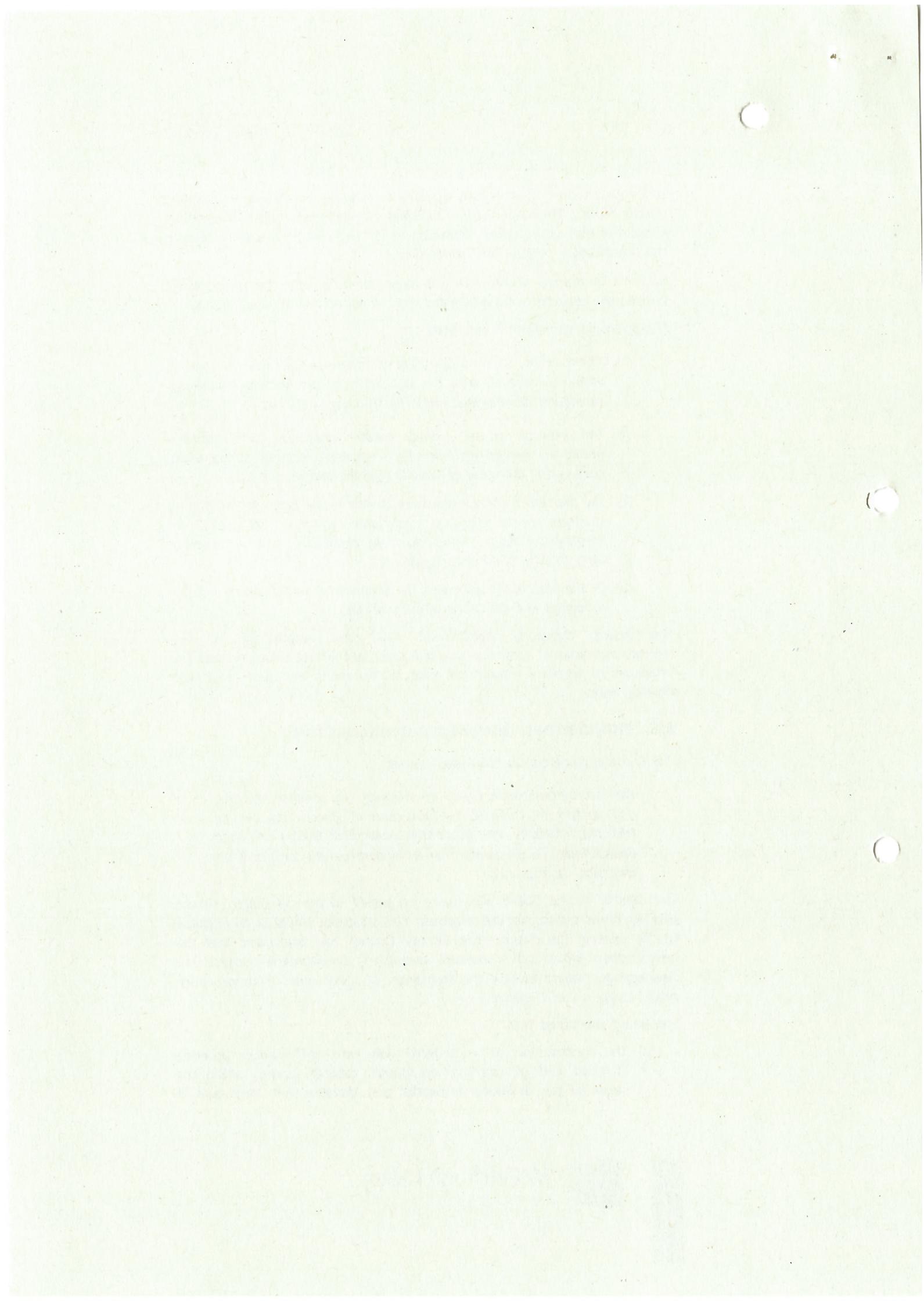
The Board considered the following referral:

Whether the construction of a 12m pole with 1 np. Antenna attached, and equipment cabinets, to form part of Eircom Ltd existing telecommunications and broadband network at Eircom Exchange, Ballyclerihan, Co. Tipperary, is or is not development, or is or is not exempted development.

The referral to the Board was made on behalf of the developer, Eircom Limited. It was noted that the proposed 12m structure would be an upgrade to the existing installation. The County Council had concluded that the development would not constitute exempted development because the development would involve the formation of a vehicular entrance which would create a traffic hazard.

The Board concluded that:

- (a) The construction of a 12-metre pole with one number antenna attached and two number equipment cabinets comes within the scope of the definition of 'works' and 'development' contained in



Section 2 and 3 of the Planning and Development Act 2000 (as amended)

- (b) The construction of a 12 metre pole with one number antenna attached would come within the scope of Article 6 (Exempted Development) and related Class 31 (b) of Schedule 2 (Part 1: Exempted Development – General) the said Regulations, noting the development as described would be carried out by a statutory undertaker authorised to provide a telecommunications service and that it would meet the conditions and limitations set out for this class of development for it to be exempted development.
- (c) The provisions of the ancillary cabinet equipment would come within the scope of Article 6 (Exempted Development) and related Class 31 (f) of Schedule 2 (Part 1: Exempted Development – General) the said Regulations, noting the development as described would be carried out by a statutory undertaker authorised to provide a telecommunications service and that it would meet the conditions and limitations set out for this class of development for it to be exempted development.
- (d) On the basis of the description of the development, none of the restrictions on exemption as set out in Article 9 arise.
- (e) The works which are the subject of this referral are not likely to have significant effects on any European sites,
- (f) The works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended) and therefore are not subject to Environmental Impact Assessment requirements.

The Board therefore determined that the construction of a 12-metre pole and ancillary works constituted development and was exempted development.

5.3 Camp village Telecommunications Mast

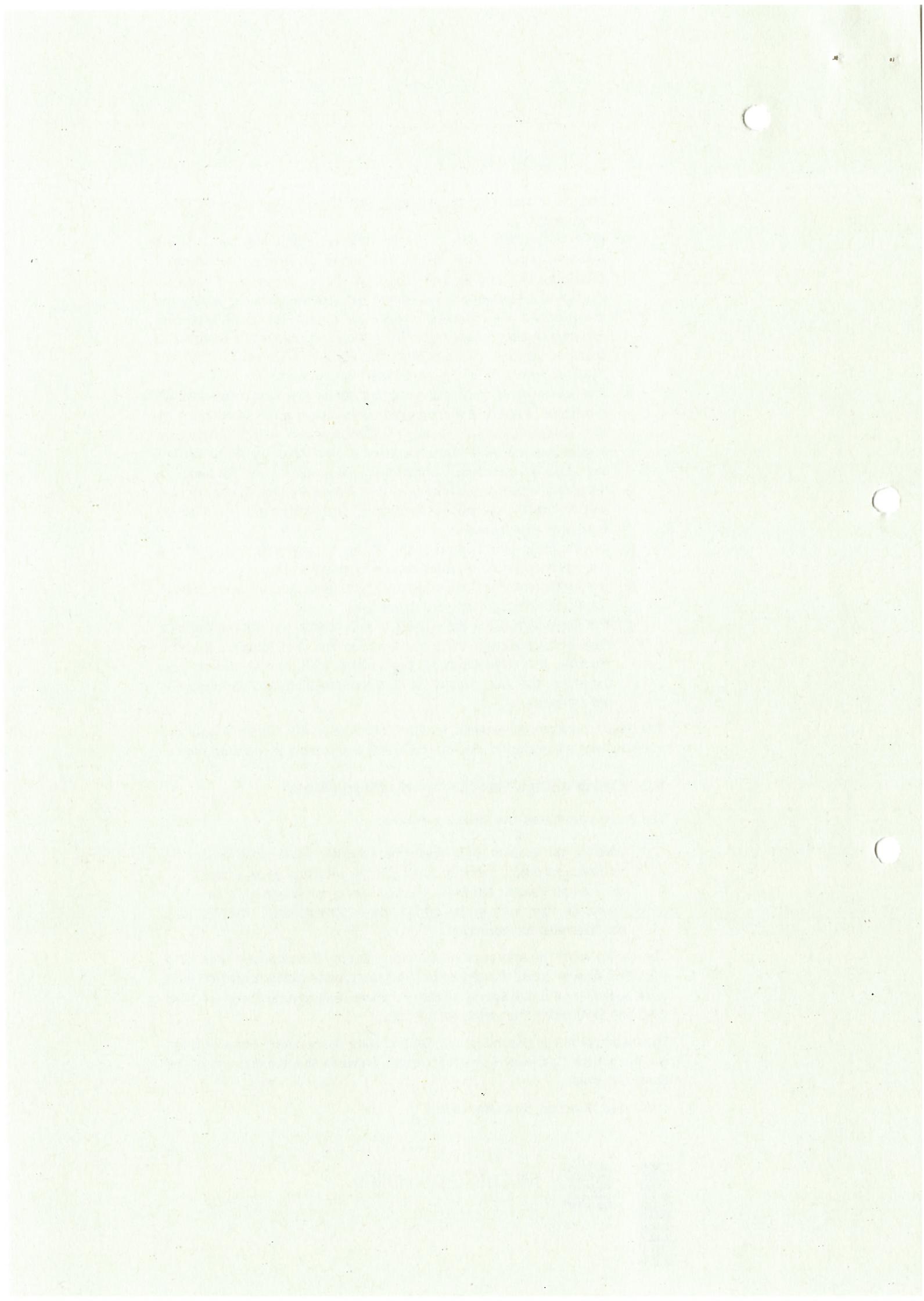
The Board considered the following referral:

Whether the erection of a telecommunications mast, associated telecommunications infrastructure, and the provision of an access route on an elevated site (94m ASL) just west of the village of Camp, Tralee, Co. Kerry with access off the N86 is "development" which is not "exempted development".

The site lay within an area zoned in the Kerry County Development Plan 2015 – 2021 as an area zoned 'Rural General'. Adjacent lands to the south and west were zoned 'Rural Prime Special Amenity'. There were several European sites (SAC and SPA) within the vicinity of the site.

The Inspector noted that no issue of Appropriate Assessment arose as there was no source / pathway / receptor routes between the site and any of the European sites.

The Board Direction concluded that:



- (a) The telecommunications elements of the project are exempt under Class 31 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations.
- (b) The site is not zoned "Rural Prime Special Amenity", and so the telecommunications elements of the project are not de-exempted under Article 9(1)(a)(vi) of the Planning and Development Regulations, 2001, as amended and
- (c) The temporary access track is exempted development under Class 16 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations 2001, as amended.

5.4 Summary

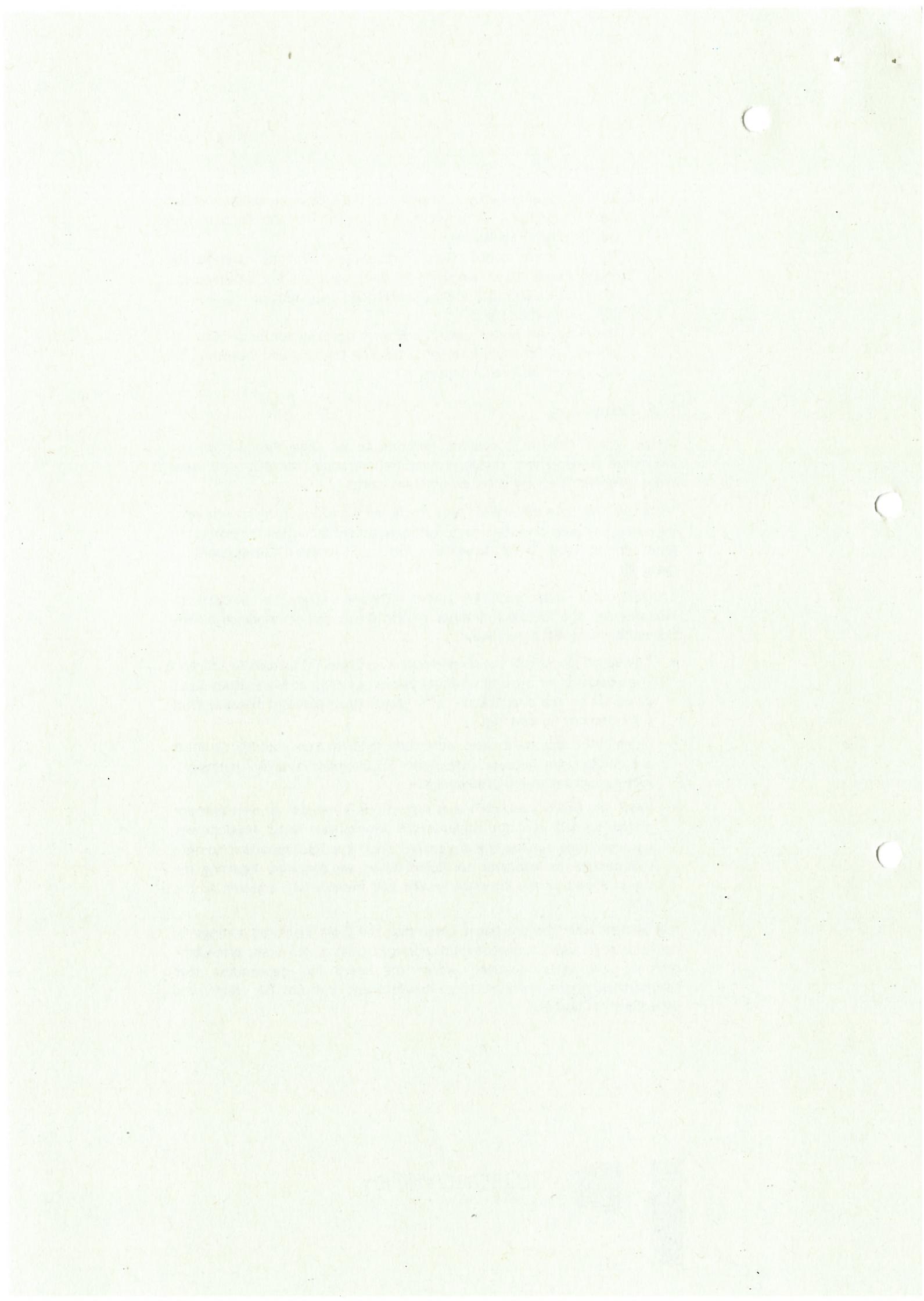
Three recent relevant precedent referrals to An Bord Pleanála on the exempted development status of telecommunications infrastructure have been identified following a review of Board cases.

In each of the three precedent cases the Board found that works which were related to the erection / construction / development fell within the exempted development class 31 of Schedule 2 (Part 1: Exempted Development – General).

The precedent cases each fell within separate paragraphs of class 31. Nonetheless, the following findings of the Board are of relevance to the development at Wellington Road:

- The Board found that the private operator, Cignal Infrastructure Ltd, and the operators of the telecommunications antenna at Monkstown Road came within the classification of a 'statutory undertaker' because they were licenced by ComReg.
- None of the precedent cases were considered to have potential to effect a European site because there were no identified source / pathway / receptor routes to any protected site.
- While the Board concluded that restrictions in respect of development within an ACA did not apply to the Monkstown Road development because it sat outside the designated area, it is also important to note that neither the Inspector nor Board raised any concerns regarding the visual impact of the structure, which was immediately adjacent to the ACA.

It is evident from the precedent cases that the Class 31 covers a range of development related to telecommunications structures. No recent precedent referral cases were identified where the Board had determined that telecommunications infrastructure development did not fall within the provisions of Class 31.



6. Planning Assessment

6.1 Does the project constitute development?

The development consists of the following:

- Excavations for foundation works
- Foundation installation and ducting works
- Installation of new pole and telecommunication equipment
- Remove of existing wooden pole and equipment and reinstatement works.

Section 3 of the PDA states that 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land. Under Section 2 of the PDA 'works' include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

The project includes works of excavation of ground and renewal of an existing pole. By the definitions provided within the PDA, the project therefore constitutes development.

6.2 Exempted Development under the PDA

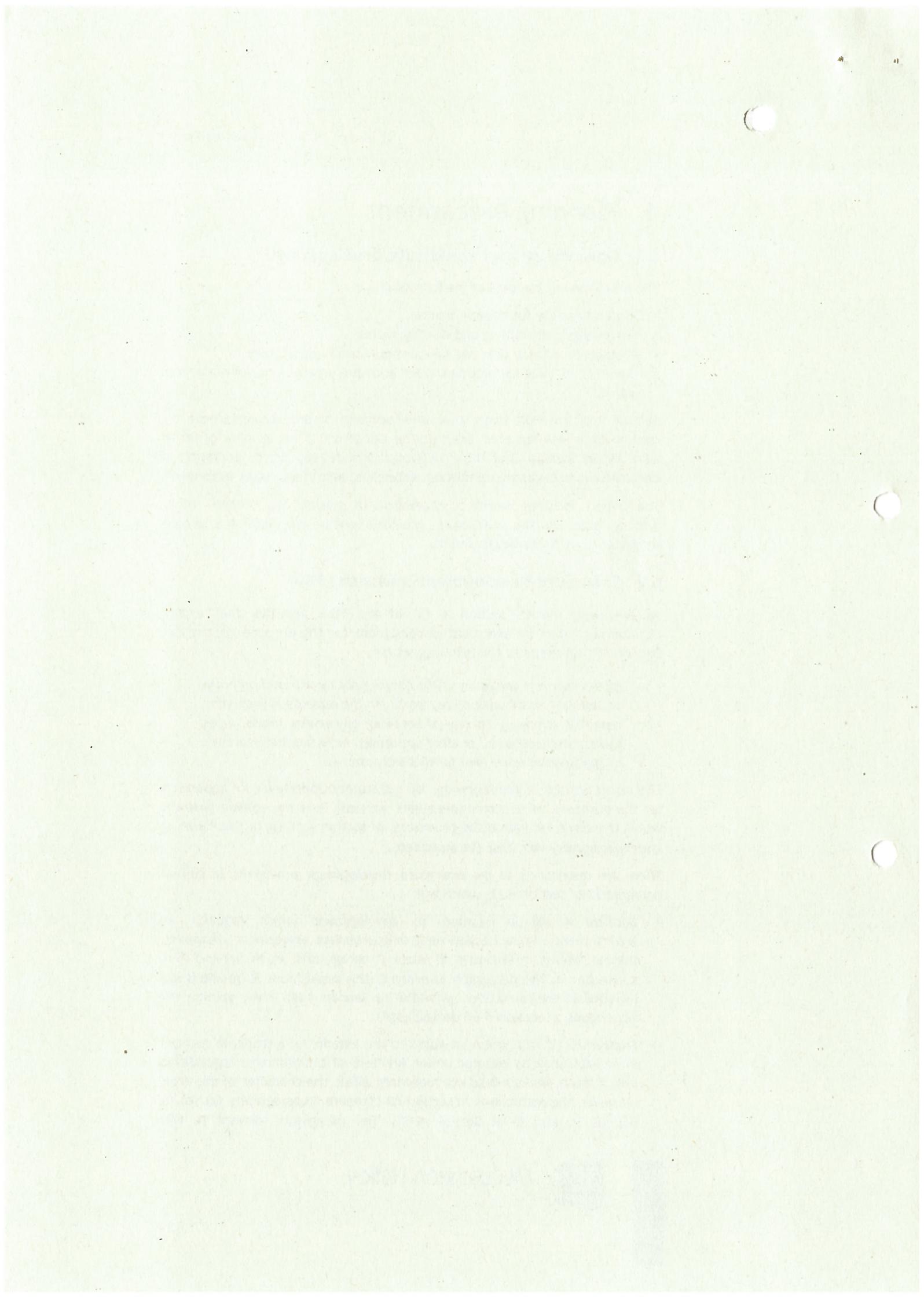
As previously noted, section 4 (1) of the PDA provides that certain development shall be exempted development for the purposes of the Act. Section 4(1) (g) exempts the following works.

(g) development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;

The works consist of the renewing, by a statutory undertaker, of apparatus for the purposes of telecommunications services. It is my opinion that the works therefore fall within the provisions of section 4 (1) (g) of the Planning and Development Act 2002 (as amended).

There are restrictions to the exempted development provisions of certain paragraphs of section 4 (1), which are:

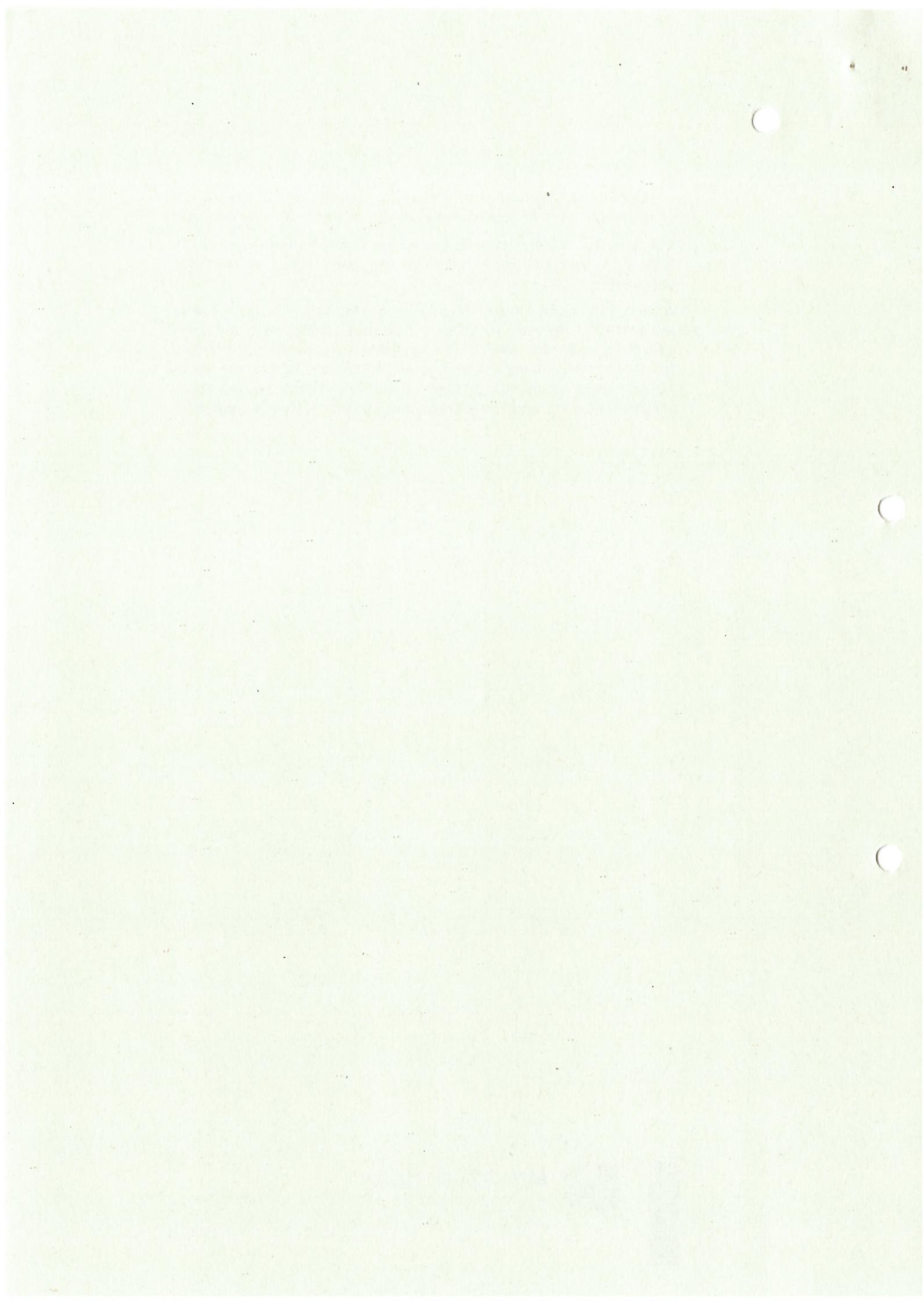
- **Section 4 (4)** in relation to development which requires an environmental impact assessment or appropriate assessment. However, the restrictions in section 4 (2) relate to paragraphs (a), (f), (ia) and (l) of subsection 1. The paragraph relevant to this assessment is (g) and is not included in the restrictions provided by Section 4 (4). In my opinion the restrictions of section 4 (4) do not apply.
- **Section 82 (1)** in relation to works to the exterior of a structure located in an ACA shall be exempt under Article 6 of the Planning Regulations only if those works would not materially affect the character of the area. However, the restrictions in section 82 (1) relate to paragraphs (a), (h), (i), (ia), (j), (k) and (l) of Section 4 (1). The paragraph relevant to this



assessment is (g) and is not included in the restrictions provided by Section 82 (1). In my opinion the restrictions of section 82 (1) do not apply.

It is my opinion that the restrictions of section 4 (4) and section 82 (1) do not apply to Section 4 (1) (g) and therefore the works constitute exempted development.

While it is my opinion that the works are exempt under the provisions of section 4 (1) of the PDA, I note that the previous assessment of the works constituting exempted development has relied on Class 31 (j) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended). The next section of this Planning Report therefore considers the applicability of Class 31 (j), which would be relevant should Section 4(1) not be applicable.



6.3 Exempted Development under the Planning Regulations

Section 4 (2) of the PDA provides that the minister may, by regulation, provide for any class of development to be exempted development.

Article 6 of the Planning and Development Regulations 2001 (as amended), provides that, subject to Article 9, development of a class specified in Part 1 of Schedule 2 shall be exempted development, provided that the development complies with the conditions and limitations specified in column 2.

Class 31 (j), Part 1 of Schedule 2 is relevant to the works as it provides exemptions for an antenna support structure in place of an existing antenna support structure.

Column 2 Conditions and Limitations: Table 2 provides a summary of the assessment of the development against the conditions and limitations. None of the Conditions and Limitations of Column 2 have been reached, therefore the exemption under Class 31 (j) is applicable.

Article 9 Restrictions: Table 3 provides a summary of the Article 9 restrictions to exemptions and an assessment against each of the restrictions. None of the restrictions specified in Article 9 are known to apply, therefore the exemption under Class 31 (j) is applicable. Article 9(1)(a)(vi) is relied on by the Applicants to de-exempt Class 31 (j). This provides that development shall not be exempt if it would interfere with the character of a landscape, or a view or prospect of special amenity value or of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan. As detailed in Table 3:

- There are four protected views to the south of the site. These views are oriented from and to Trinity Presbyterian Church and do not extend to site or to Wellington Road. The development does not interfere with the character of these views as it is minor in nature, replacing an existing long-established structure and is likely to be barely visible from the viewpoints south of the River Lee.
- The site is located within an architectural conservation area (ACA). The development involves the replacement of an existing structure and does not interfere with the character of the area.

Section 4 (4) of the PDA applies to regulations under section 4 (2). This means that any development exempted under Article 6 of the Planning Regulations shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. In terms of the applicability of Section 4 (4) it is noted that:

- The works do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended) and therefore are not subject to Environmental Impact Assessment requirements.

- There are no known source / pathway / receptor routes between the site and any of European sites.

The restrictions under Section 4 (4) therefore do not apply to the development.

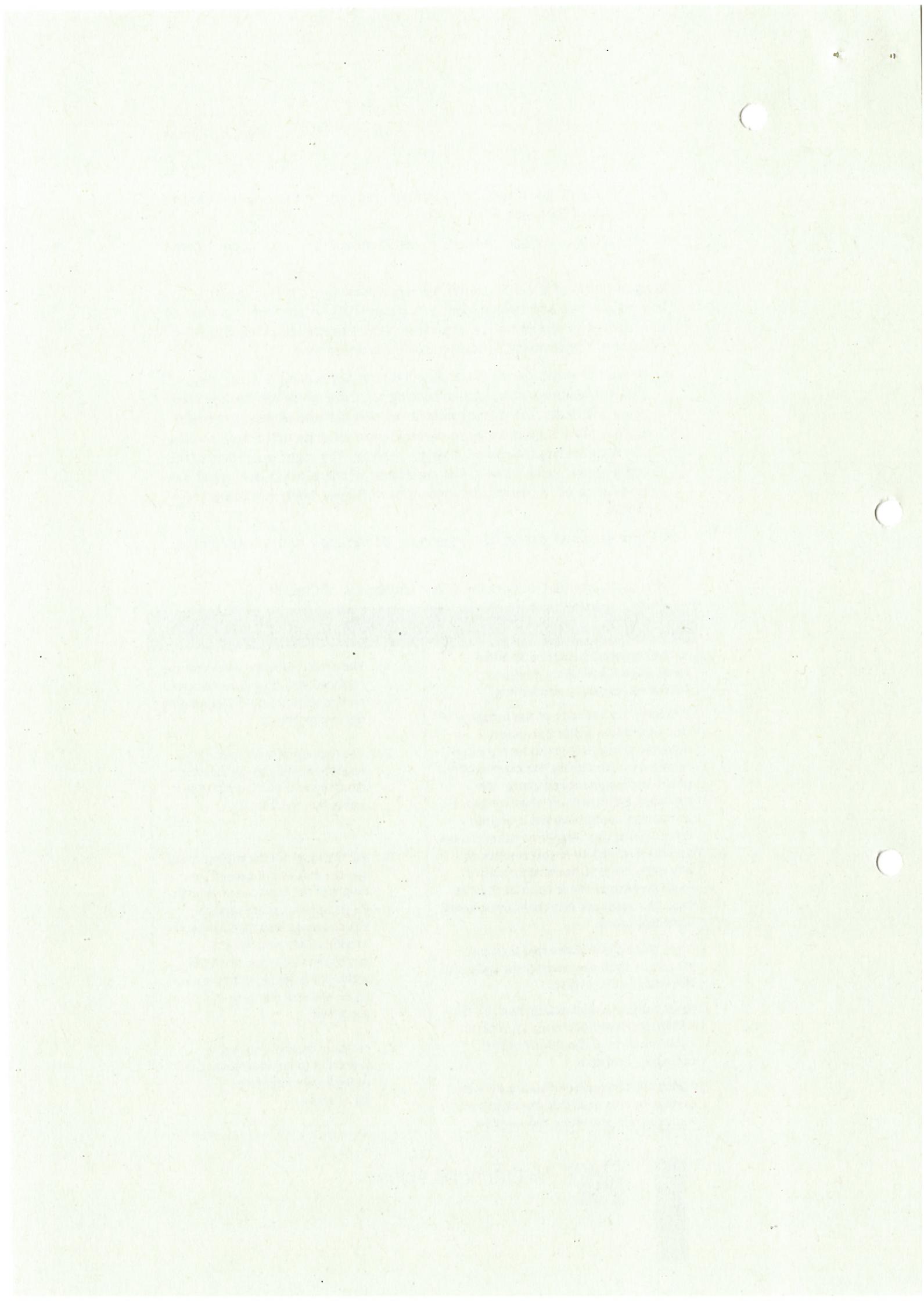
Section 82 (1) of the PDA applies to regulations made under section 4 (2). This means that any development which materially affects the character of an Architectural Conservation area shall not be exempted development. In terms of the applicability of Section 82 (1) it is noted that:

- 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.

The restrictions of section 82 (1) therefore do not apply to the development.

Table 2: Assessment of Conditions and Limitations of Class 31 (j)

Column 2 Conditions and Limitations	Assessment
<p>1. The replaced structure shall be removed no later than 4 weeks following its decommissioning.</p> <p>2. Where, for reasons of the integrity of the network or other operational reasons, the structure to be replaced remains in use during the construction of the replacement structure, the replacement structure shall be located as near as possible to the existing structure having regard to construction activity and safety requirements and, in any case, no replacement structure shall be located more than 20 metres from the replaced structure (measured from the base).</p> <p>3. (a) The height of the replacement structure shall not exceed the height of the replaced structure.</p> <p>(b)(i) Subject to sub-paragraph (ii), the width of the replacement structure shall not exceed the width of the replaced structure.</p> <p>(ii) Where the replaced structure was 2 metres or less in width, the width of the replacement structure may not be</p>	<p>1. The project timeline allows for the replaced structure to be removed no later than 4 weeks following its decommissioning.</p> <p>2. The replacement structure is as near as possible to the existing structure and at 3.5m distance is well within the 20m limit.</p> <p>3. (a) The height of the replacement structure does not exceed the height of the replaced structure. (b) (ii) applies, as the replaced structure was less than 2 meters in width. The replacement structure is less than twice the width of the replaced structure. (c) no antenna platform is proposed.</p> <p>4. (a) No additional antenna is proposed to be attached to the replacement structure. (b) as above.</p>



Column 2 Conditions and Limitations	Assessment
<p>more than twice the width of the replaced structure, all measurements to be taken at the widest point.</p> <p>(c) Where the replaced structure did not incorporate an antenna platform, the replacement shall not incorporate such a platform.</p> <p>4.(a) Subject to sub-paragraph (b), the antennae to be attached to the replacement structure shall not exceed the number of antennae on the replaced structure.</p> <p>(b) An additional 12 antennae for mobile telephony may be attached to the replacement structure, of which not more than 8 of the additional 12 shall be of the dish type (whether shielded or not).</p> <p>5. (a) The dimensions of any additional antenna for mobile telephony shall not exceed the greatest length, width or depth of any antenna for mobile telephony of corresponding type on the replaced structure.</p> <p>(b) In any other case, the dimensions of any antenna provided shall not exceed:</p> <p>(i) in the case of any panel type antenna, 1.5 metres in length × 0.4 metres in width × 0.15 metres in depth,</p> <p>(ii) in the case of any co-linear type antenna, 5 metres in length × 0.1 metres in diameter, and</p> <p>(iii) in the case of any dish type antenna (whether shielded or not), 1.8 metres in diameter.</p> <p>6. The replacement of an antenna support structure together with any replaced or additional antenna shall not result in the field strength of the non-ionising radiation emissions from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulation.</p>	<p>5. (a) no additional antenna is proposed. (b) the dimensions of the antenna do not exceed the limits.</p> <p>6. There is no change to the field strength of the non-ionising radiation emissions from the radio installations on the site and they do not exceed the limits specified by the Director of Telecommunications Regulation.</p>

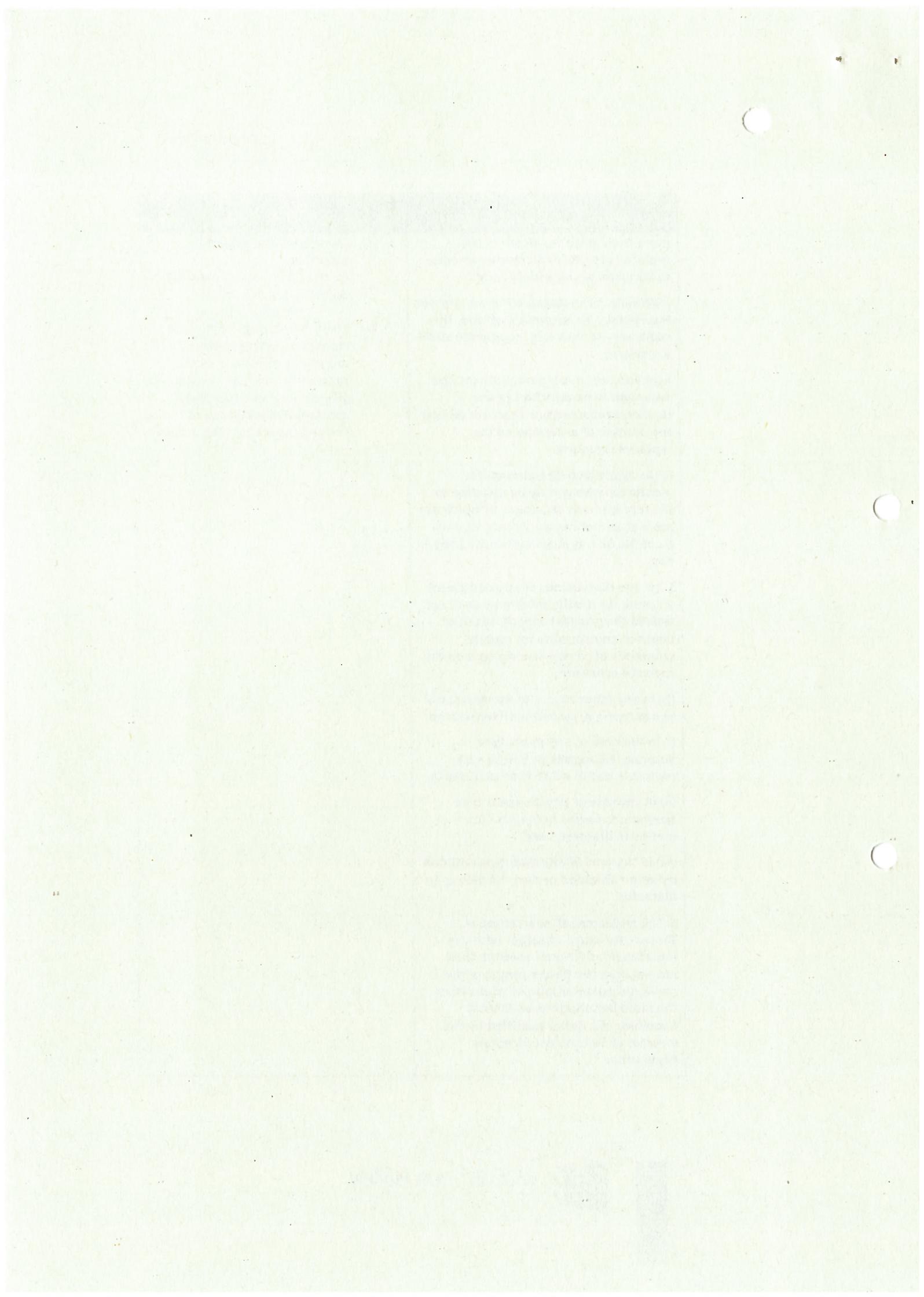
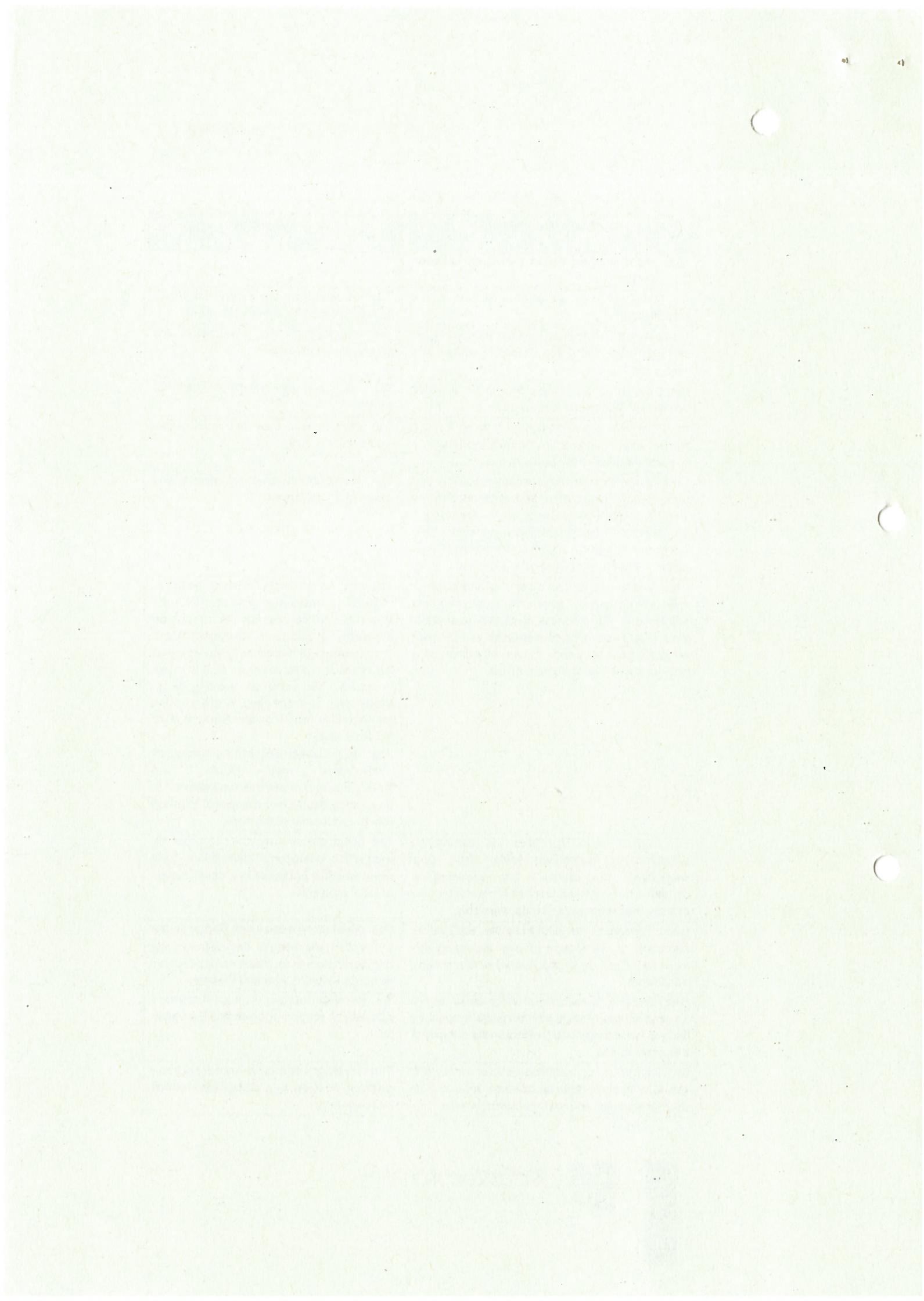
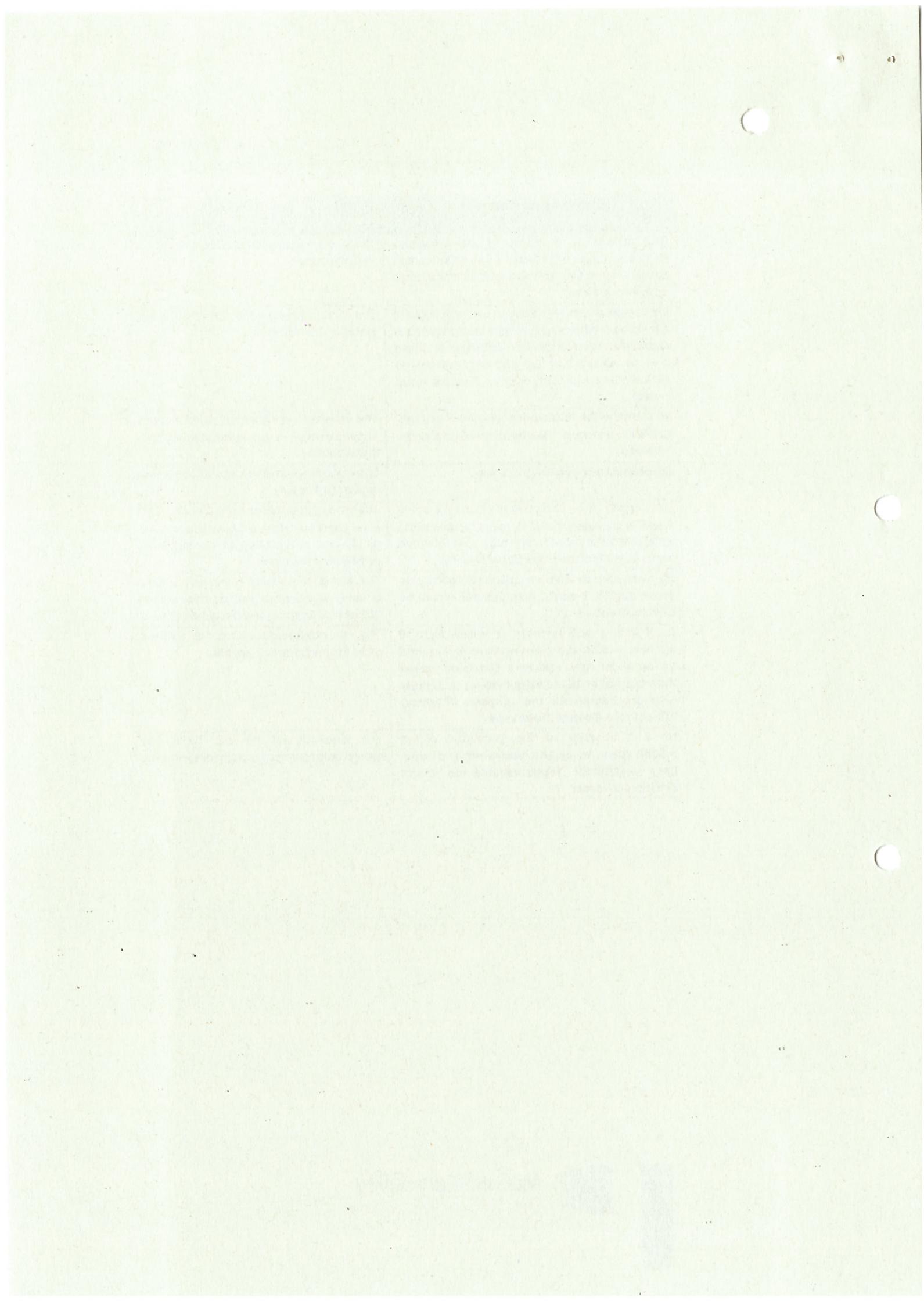


Table 3: Assessment of Article 9 Restrictions.

Exception (summarised)	Assessment
(a) If the carrying out of such development would:	
(i) contravene a condition attached to a permission;	There is no known condition which would be contravened by the development.
(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road	The development will not impact any access to a public road.
(iii) endanger public safety by reason of traffic hazard or obstruction of road users;	There development will not result in a traffic hazard.
(iv) (except in specified cases) to bring forward the building, or any part of the building, beyond a line determined as the building line.	The development does not involve any works to a building.
(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Par 1 of Schedule 2 applies.	The development does not involve any works to a public road.
(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan.	There are four protected views to the south of the site. These views are oriented from and to Trinity Presbyterian Church and do not extend to site or to Wellington Road. The development does not interfere with the character of these views as it is minor in nature, replacing an existing long-established structure and is likely to be barely visible from the viewpoints south of the River Lee. The site is located within an architectural conservation area (ACA). The development involves the replacement of an existing structure and does not interfere with the character of the area.
(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, the preservation, conservation or protection of which is an objective of a development plan or local area plan.	The development does not comprise the excavation, alteration or demolition of any place which is protected in a development or local area plan.
(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.	The development does not comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.
(viiB) comprise development which would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,	The development has no known source / pathway or route to a protected European site.
(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area	The development has no known source / pathway or route to a designated natural heritage area.



Exception (summarised)	Assessment
(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,	There is no indication that the structure is unauthorised.
(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use ...where it is an objective of the planning authority to ensure that the building or other structure would in use...	The development does not involve any works to a building.
(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years	The development does not consist of any fencing or enclosure of land habitually open to the public.
(xi) obstruct any public right of way,	The development does not obstruct any public right of way.
(xii) consist of or comprise the carrying out of works to the exterior of a structure located within an architectural conservation area ... which would materially affect the character of the area.	The development does not materially affect the character of the ACA, as it is minor in nature and is replacing an existing long-established structure.
(b) in an area to which a special amenity area order relates, if such development would be development: — ...	The site is not located within any special amenity area as designated under section 202 of the Planning and Development Act
(c) If it is a development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directives	The development does not fall within a class to which Part 10 applies.
(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.	The development will not have any repercussions on major accident hazards.



7. Summary and Conclusion

The purpose of the report is to prepare an assessment of whether the development commenced at Eir Exchange, Wellington Road, Saint Lukes, Cork, to replace a structurally unstable communications pole with a new pole, constitutes development and whether the development constitutes exempted development under the provisions of the Planning and Development Act 2000 (as amended).

The development consists of the following works undertaken by Towercom Ltd as a statutory undertaker:

- Excavations for foundation works
- Foundation installation and ducting works
- Installation of new pole and telecommunication equipment
- Remove of existing wooden pole and equipment and reinstatement works.

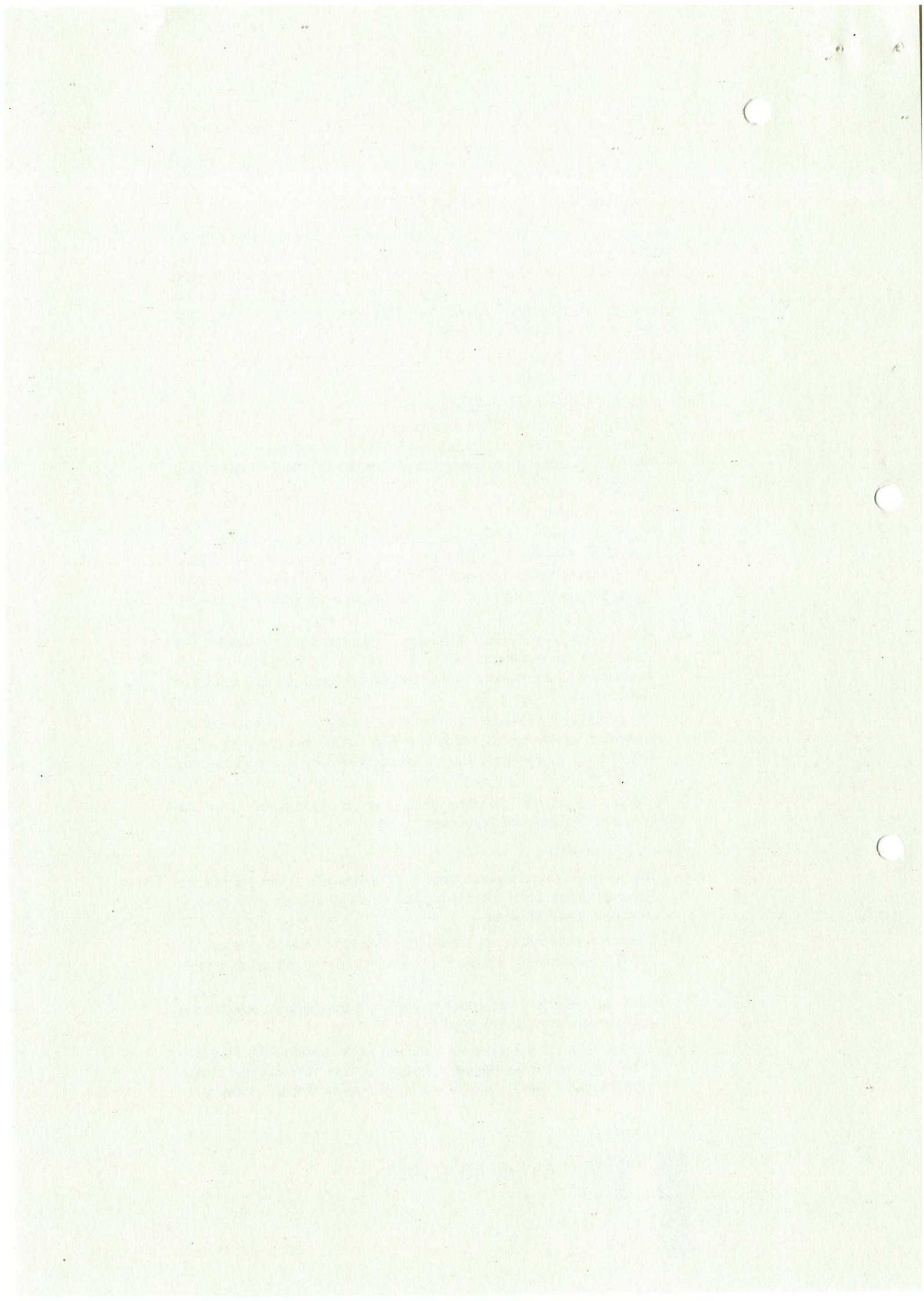
It is my opinion that:

- The development constitutes exempted development under the provisions of Section 4 (1) (g) of the Planning and Development Act 2000 (as amended) because it consists of the renewing of existing apparatus by a statutory undertaker, for the purpose of telecommunication services.
- The restrictions of Section 4 (2) of the Planning and Development Act related to developments which require an environmental impact assessment or appropriate assessment do not apply to paragraph (g) of section 4 (1).
- The restrictions of Section 82 (1) of the Planning and Development Act related to developments which materially affect the character of an architectural conservation area do not apply to paragraph (g) of section 4 (1).

I have also considered the alternative scope for exemption under the Planning and Development Regulations,

It is my opinion that:

- The development falls within Class 31 (j) of Schedule 2, Part 1 as it is for the construction of an antenna support structure in place of an existing antenna support structure.
- None of the conditions and limitations relevant to Class 31 (j) in column 2 of Part 1 of Schedule 2 apply to the development, as discussed in table 2.
- None of the Article 9 restrictions to exempted development apply to the development, as discussed in table 3
- The restrictions to exempted development under Section 4(4) of the PDA 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 of the development affecting a protected European site.

- The restriction to exempted development under Section 82 (1) of the PDA 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 for over 30 years. 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.

It is therefore my opinion that the development, as well as being exempt under Section 4 (1) (g) of the Planning and Development Act 2000 (as amended), is also exempt under the provisions of Class 31(j) of the Planning and Development Regulations 2001 (as amended).

8. Statement of Independence and Duty to the Court

I, Màiri Henderson, McCutcheon Halley Planning Consultants, 6 Joyce House, Barrack Square, Ballincollig, declare that:

1. Independence

I have prepared this report independently and impartially in accordance with my professional obligations. My analysis and conclusions are based on my professional expertise, knowledge, and an objective assessment of the facts and evidence available to me. I confirm that I have no personal or financial interest in the outcome of this case that could affect the objectivity of my report.

2. Duty to the Court

I understand that my primary duty is to assist the Court by providing my professional opinion within the scope of my expertise. This duty overrides any obligations to the party who has engaged me to prepare this report. I confirm that this report is my honest, independent opinion and that it reflects the facts and professional judgment to the best of my ability.

3. Compliance with Standards

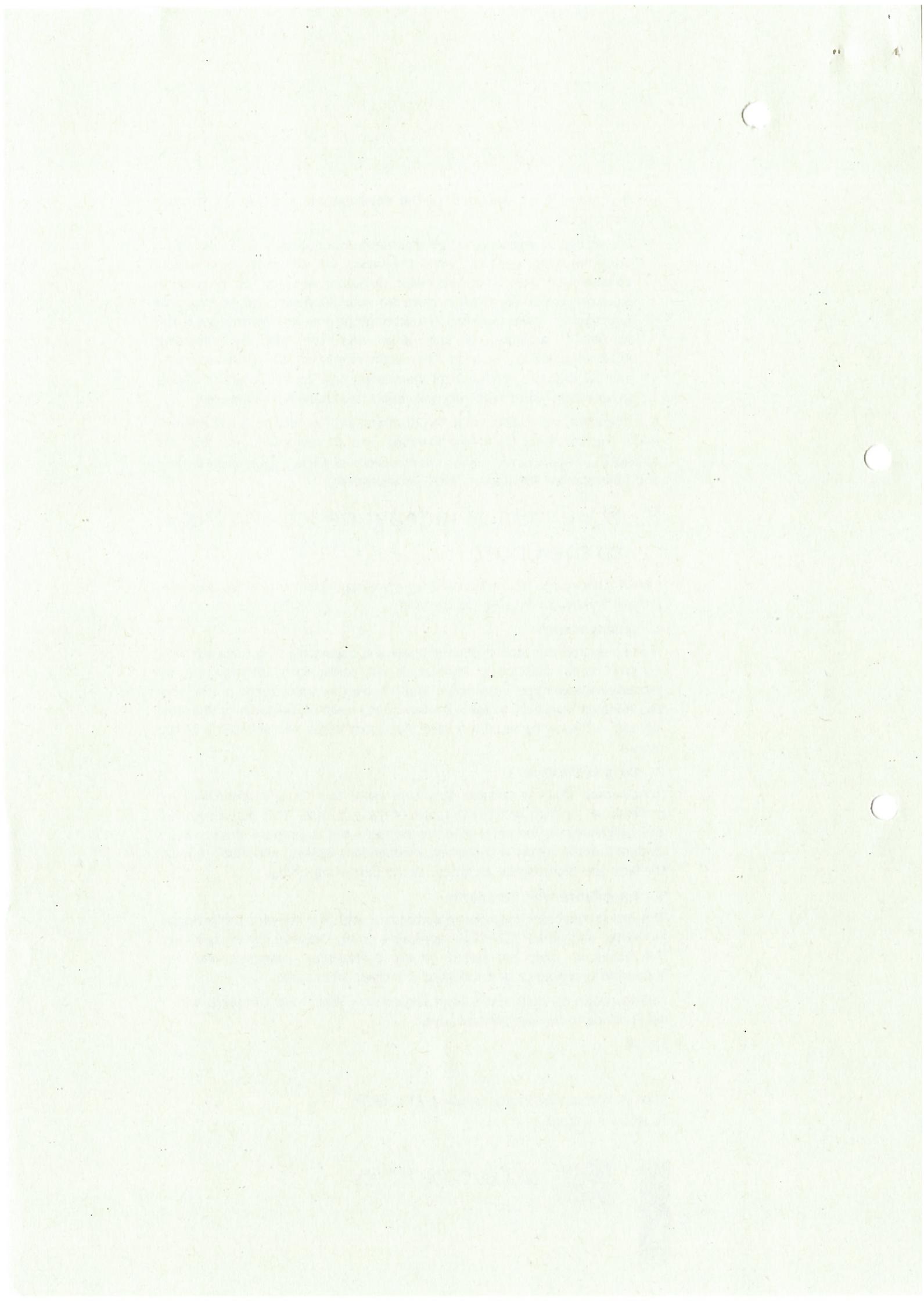
This report has been prepared in accordance with the relevant professional guidelines and ethical standards applicable to my practice. Where opinions are expressed, they are based on my professional judgment and are supported by evidence or established principles of practice.

I acknowledge my duty to the Court and confirm that I have complied, and will continue to comply, with this duty.

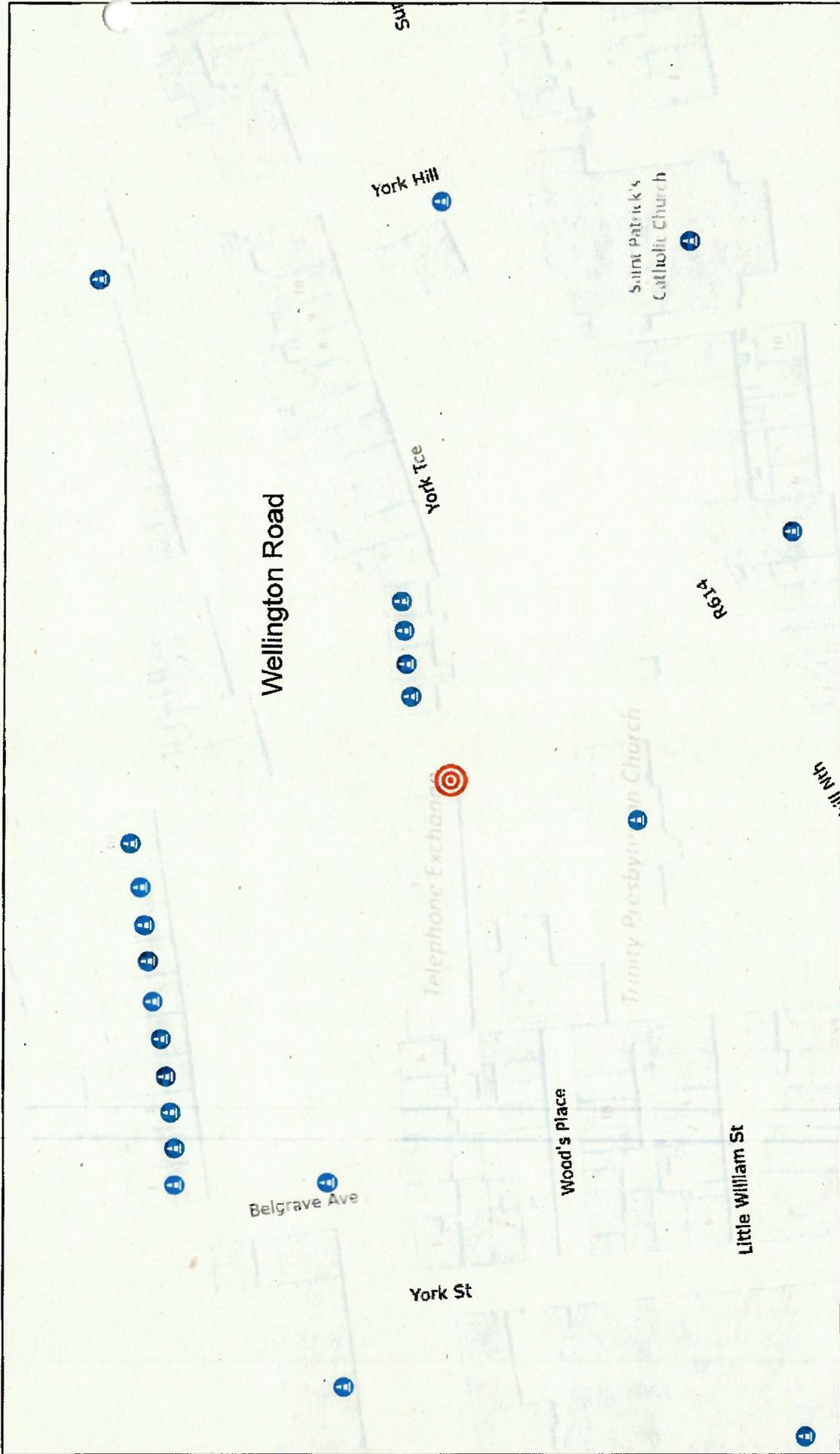
Signed,

Màiri Henderson BA (Hons) Housing, RTPI, MCIH

15 November 2024



Site Location Map

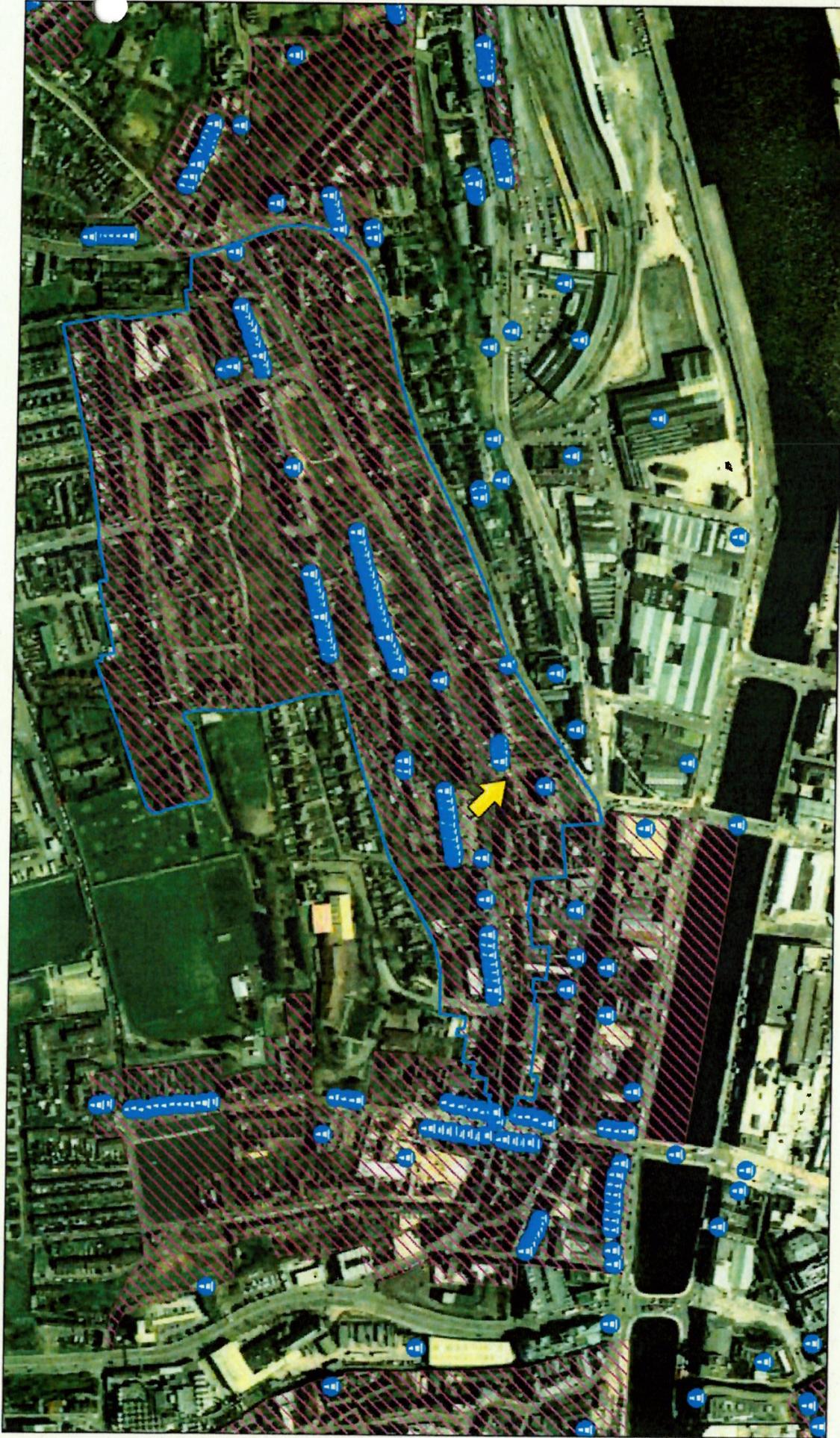


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Record Protected Structure

© Taithe Éireann

St Luke's ACA

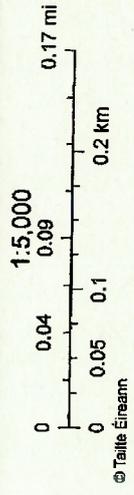


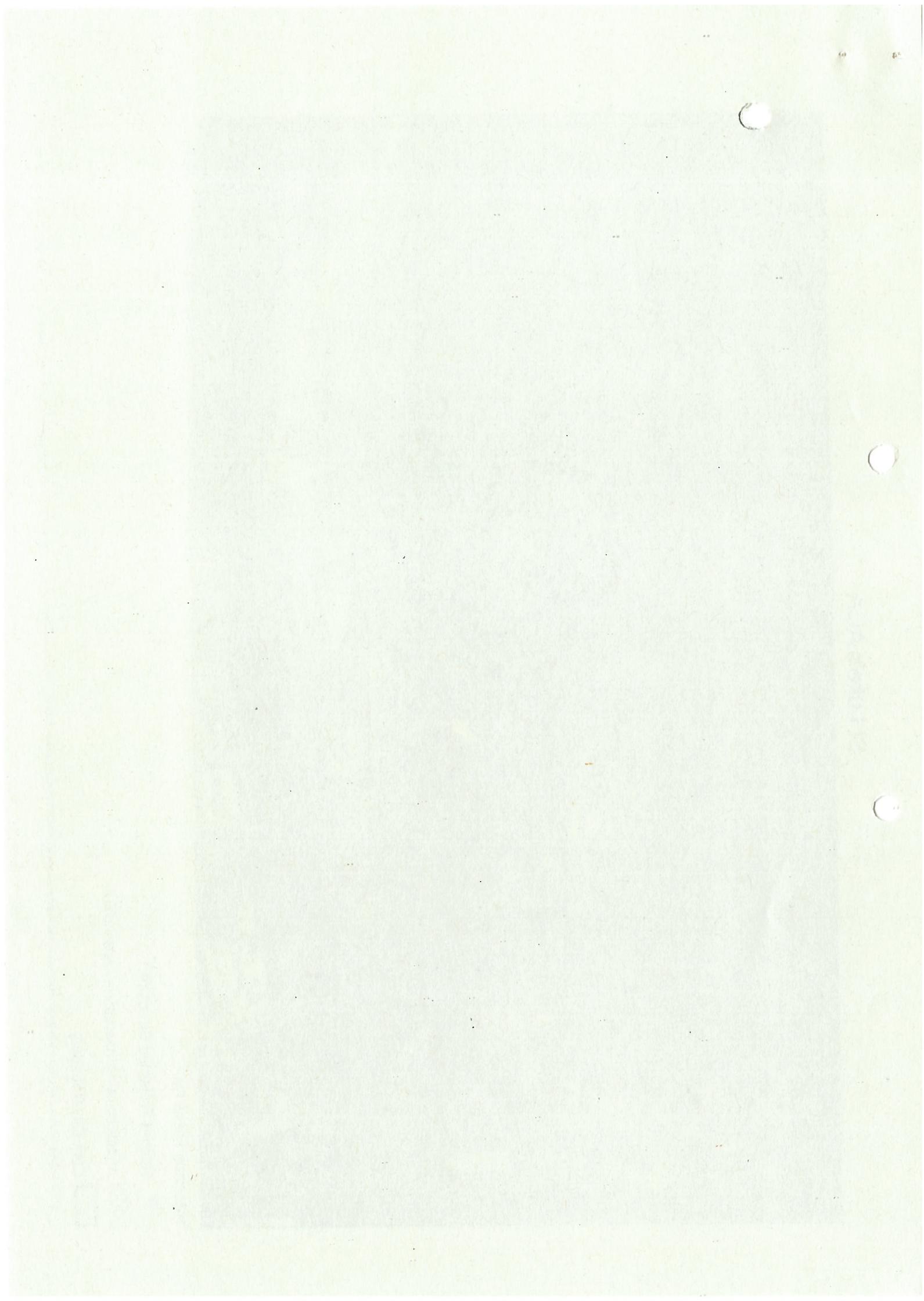
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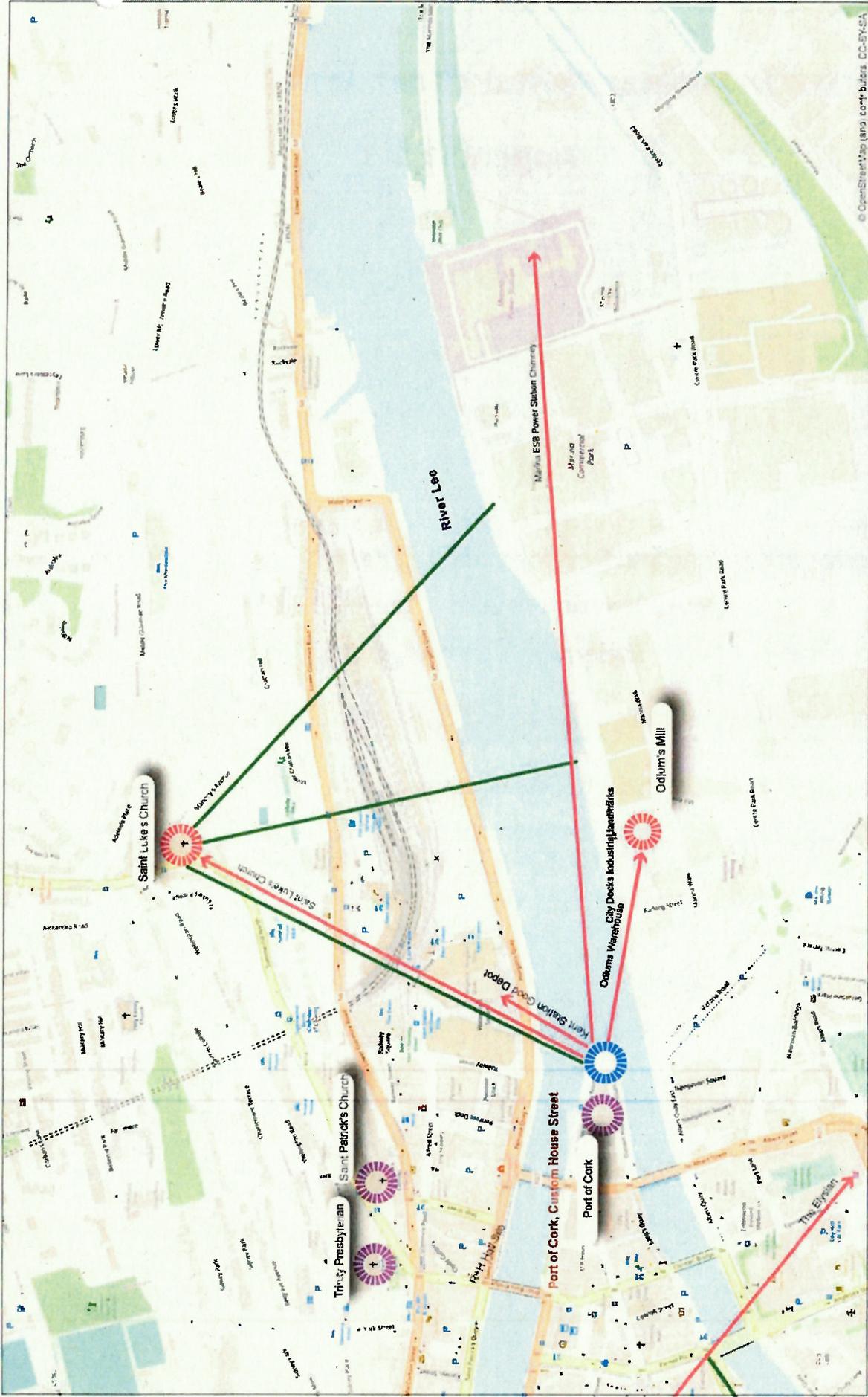
● Record Protected Structure

▨ Architectural Conservation Areas 2022

□ Cork City Boundary







- Legend
- Strategic Landmark Buildings
 - Local Landmark Buildings
 - Strategic Viewing Locations
 - Strategic Linear Views
 - Viewing Location of special amenity value

View Management Framework - Map 02

Works at Eir Exchange, Wellington Road, Saint Lukes, Cork City

Appendix 1

Extract of Planning and Development Regulations 2001 (as amended)

Consolidation Version, September 2024

Schedule 5, Parts 1 and 2

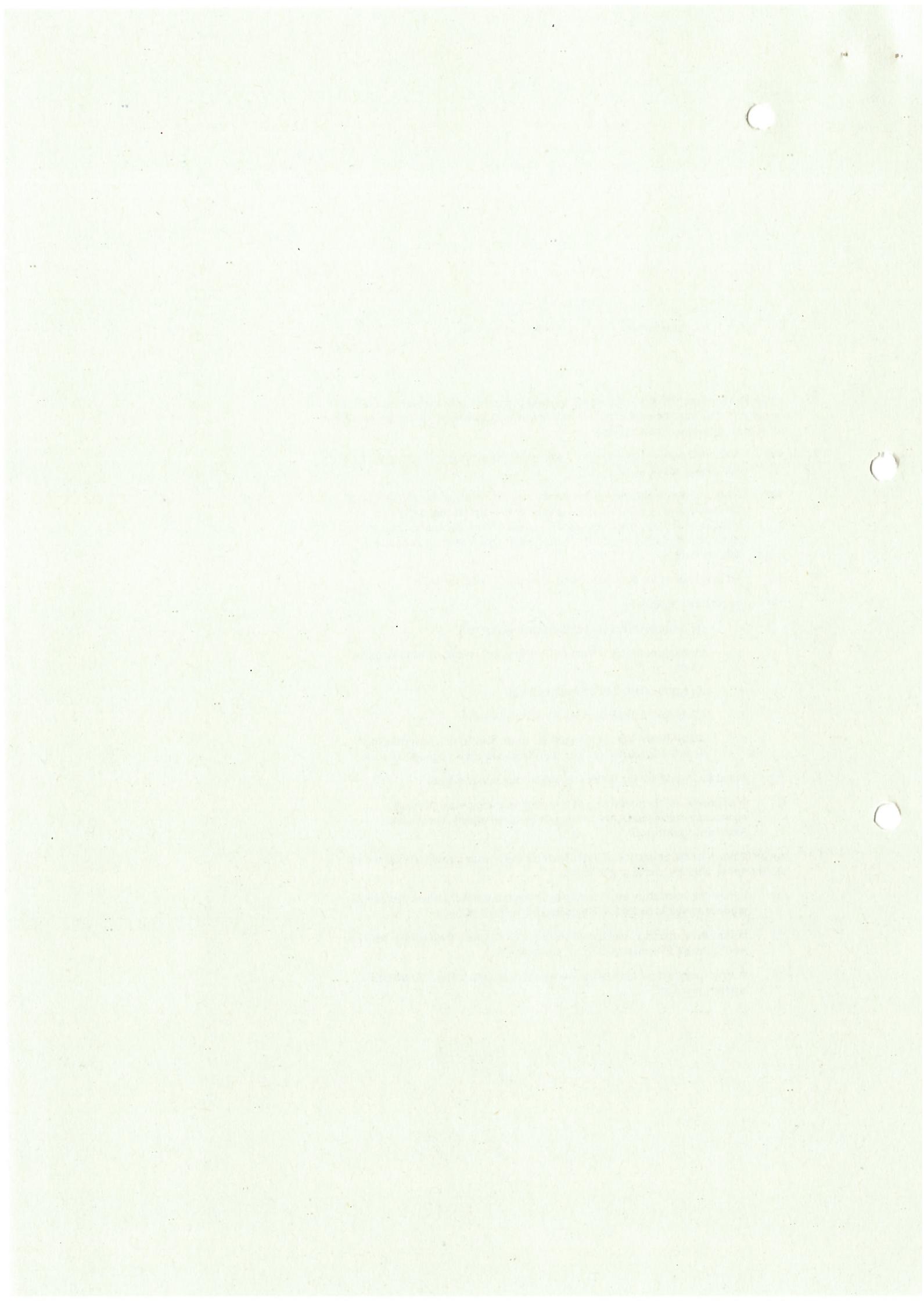
SCHEDULE 5

DEVELOPMENT FOR THE PURPOSES OF PART 10

Article 93

PART I

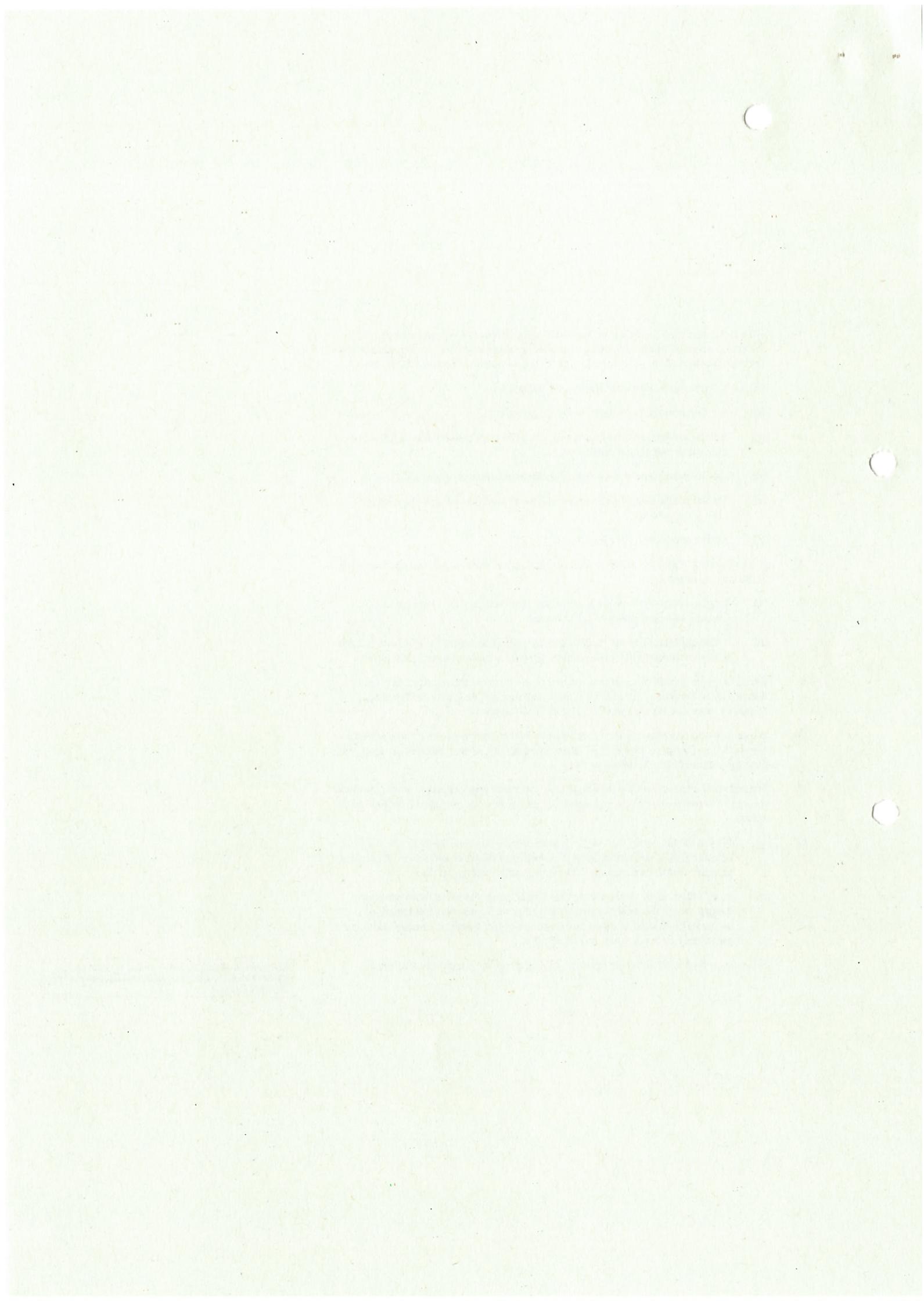
1. A crude oil refinery (excluding undertakings manufacturing only lubricants from crude oil) or an installation for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
2. (a) A thermal power station or other combustion installation with a heat output of 300 megawatts or more.
(b) A nuclear power station or other nuclear reactor including the dismantling or decommissioning of such a power station or reactor¹ (except a research installation for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. (a) All installations for the reprocessing of irradiated nuclear fuel.
(b) Installations designed -
 - for the production or enrichment of nuclear fuel,
 - for the processing of irradiated nuclear fuel or high level radioactive waste,
 - for the final disposal of irradiated fuel,
 - solely for the final disposal of radioactive waste,
 - solely for the storage (planned for more than 10 years) of irradiated fuels or radioactive waste in a different site than the production site.
4. (a) Integrated works for the initial smelting of cast iron and steel.
(b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.
5. An installation for the extraction of asbestos or for the processing and transformation of asbestos or products containing asbestos-
 - (a) in case the installation produces asbestos-cement products, where the annual production would exceed 20,000 tonnes of finished products,
 - (b) in case the installation produces friction material, where the annual production would exceed 50 tonnes of finished products, or
 - (c) in other cases, where the installation would utilise more than 200 tonnes of asbestos per year.



6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are-
 - (a) for the production of basic organic chemicals,
 - (b) for the production of basic inorganic chemicals,
 - (c) for the production of phosphorous, nitrogen or potassium based fertilisers (simple or compound fertilisers),
 - (d) for the production of basic plant health products and of biocides,
 - (e) for the production of basic pharmaceutical products using a chemical or biological process,
 - (f) for the production of explosives.
7. A line for long-distance railway traffic, or an airport² with a basic runway length of 2,100 metres or more.
8.
 - (a) Inland waterways and ports for inland waterway traffic which permit the passage of vessels of over 1,350 tonnes.
 - (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.
9. Waste disposal installations for the incineration, chemical treatment as defined in Annex IIA to Directive 75/442/EEC³ under heading D9, or landfill of hazardous waste (i.e. waste to which Directive 91/689/EEC⁴ applies).
10. Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9, of non-hazardous waste with a capacity exceeding 100 tonnes per day.
11. Groundwater abstraction or artificial groundwater recharge schemes, where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
12.
 - (a) Works for the transfer of water resources between river basins, where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.
 - (b) In all other cases, works for the transfer of water resources between river basins, where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5 per cent of this flow.

[In the case of (a) and (b) above, transfers of piped drinking water are excluded.]

Commented [901]: Inserted by article 15 of S.I. No. 454/2011 Planning and Development (Amendment) (No 2) Regulations 2011



13. Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2, point (6), of Directive 91/271/EEC⁵.
14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.
15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
16. Pipelines with a diameter of more than 800mm and a length of more than 40km:
 - for the transport of gas, oil, chemicals, and,
 - for the transport of carbon dioxide (CO₂) streams for the purposes of geological storage, including associated booster stations.
17. Installations for the intensive rearing of poultry or pigs with more than-
 - (a) 85,000 places for broilers, 60,000 places for hens,
 - (b) 3,000 places for production pigs (over 30 kilograms), or
 - (c) 900 places for sows.
18. Industrial plants for the-
 - (a) production of pulp from timber or similar fibrous materials,
 - (b) production of paper and board with a production capacity exceeding 200 tonnes per day.
19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares.
20. Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.
21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200,000 tonnes or more.
22. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.
23. Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide⁶.
24. Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Part, or where the total yearly capture of CO₂ is 1.5 megatonnes or more.

Commented [1902]: 16 is substituted by article 16 of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

Commented [1903]: Inserted by article 17 of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

Commented [1904]: 22 is inserted by article 5(a) of S.I. No. 364/2005 Planning and Development Regulations 2005

Commented [1905]: 23 is inserted by article 18(a) of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

Commented [1906]: 24 is inserted by article 18(a) of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site
 For the purposes of this Directive, 'airport' means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14)
 OJ No L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 94/3/EC (OJ No L 5, 7.1.1994, p. 15)
 OJ No L 377, 31.12.1991, p. 20. Directive as last amended by Directive 94/3/EC (OJ No L 168, 2.7.1994, p. 28)
 OJ No L 135, 30.5.1991, p. 40. Directive as last amended by the 1994 Act of Accession
 OJ No L 140, 5.6.2009, p. 114]

PART 2

1. *Agriculture, Silviculture and Aquaculture*

- (a) Projects for the restructuring of rural land holdings, undertaken as part of a wider proposed development, and not as an agricultural activity that must comply with the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011, where the length of field boundary to be removed is above 4 kilometres, or where re-contouring is above 5 hectares, or where the area of lands to be restructured by removal of field boundaries is above 50 hectares.
- (c) Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.
- (d)
 - (ii) Replacement of broadleaf high forest by conifer species, where the area involved would be greater than 10 hectares.
 - (iii) Deforestation for the purpose of conversion to another type of land use, where the area to be deforested would be greater than 10 hectares of natural woodlands or 70 hectares of conifer forest.
- (e)
 - (i) Installations for intensive rearing of poultry not included in Part 1 of this Schedule which would have more than 40,000 places for poultry.
 - (ii) Installations for intensive rearing of pigs not included in Part 1 of this Schedule which would have more than 2,000 places for production pigs (over 30 kilograms) in a finishing unit, more than 400 places for sows in a breeding unit or more than 200 places for sows in an integrated unit.
- (f) Seawater fish breeding installations with an output which would exceed 100 tonnes per annum; all fish breeding installations consisting of cage rearing in lakes; all fish breeding installations upstream of drinking water intakes; other freshwater fish breeding installations which would exceed 1 million smolts and with less than 1 cubic metre per second per 1 million smolts low flow diluting water.
- (g) Reclamation of land from the sea, where the area of reclaimed land would be greater than 10 hectares.

Commented [1907]: Footnotes substituted by article 18(b) of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

Commented [1908]: Paragraphs 1(a) and 1(b) were deleted by article 19(a) of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

Commented [1909]: Paragraph 1(a) is substituted by article 4 of S.I. No. 383/2023 Planning and Development (Amendment) (No. 2) Regulations 2023

Commented [1910]: Paragraph 1(c) was substituted by article 19(b) of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011, and further substituted by article 5 of S.I. No. 464/2011 European Communities (Amendment to Planning and Development Regulations) Regulations 2011

Commented [1911]: Sub-paragraph 1(d)(i) is deleted by article 19(c) of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

2. *Extractive Industry*

- (a) Peat extraction which would involve a new or extended area of 30 hectares or more.
- (b) Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.
- (c) All extraction of minerals within the meaning of the Minerals Development Acts, 1940 to 1999.
- (d) Extraction of stone, gravel, sand or clay by marine dredging (other than maintenance dredging), where the area involved would be greater than 5 hectares or, in the case of fluvial dredging (other than maintenance dredging), where the length of river involved would be greater than 500 metres.

(e) With the exception of drilling for investigating the stability of the soil, deep drilling, consisting of—

- (i) geothermal drilling,
- (ii) drilling for the storage of nuclear waste material,
- (iii) drilling for water supplies, where the expected supply would exceed 2 million cubic metres per annum, or
- (iv) any other deep drilling, except where, in considering whether or not an environmental impact assessment should be carried out—

(I) a planning authority or the Board—

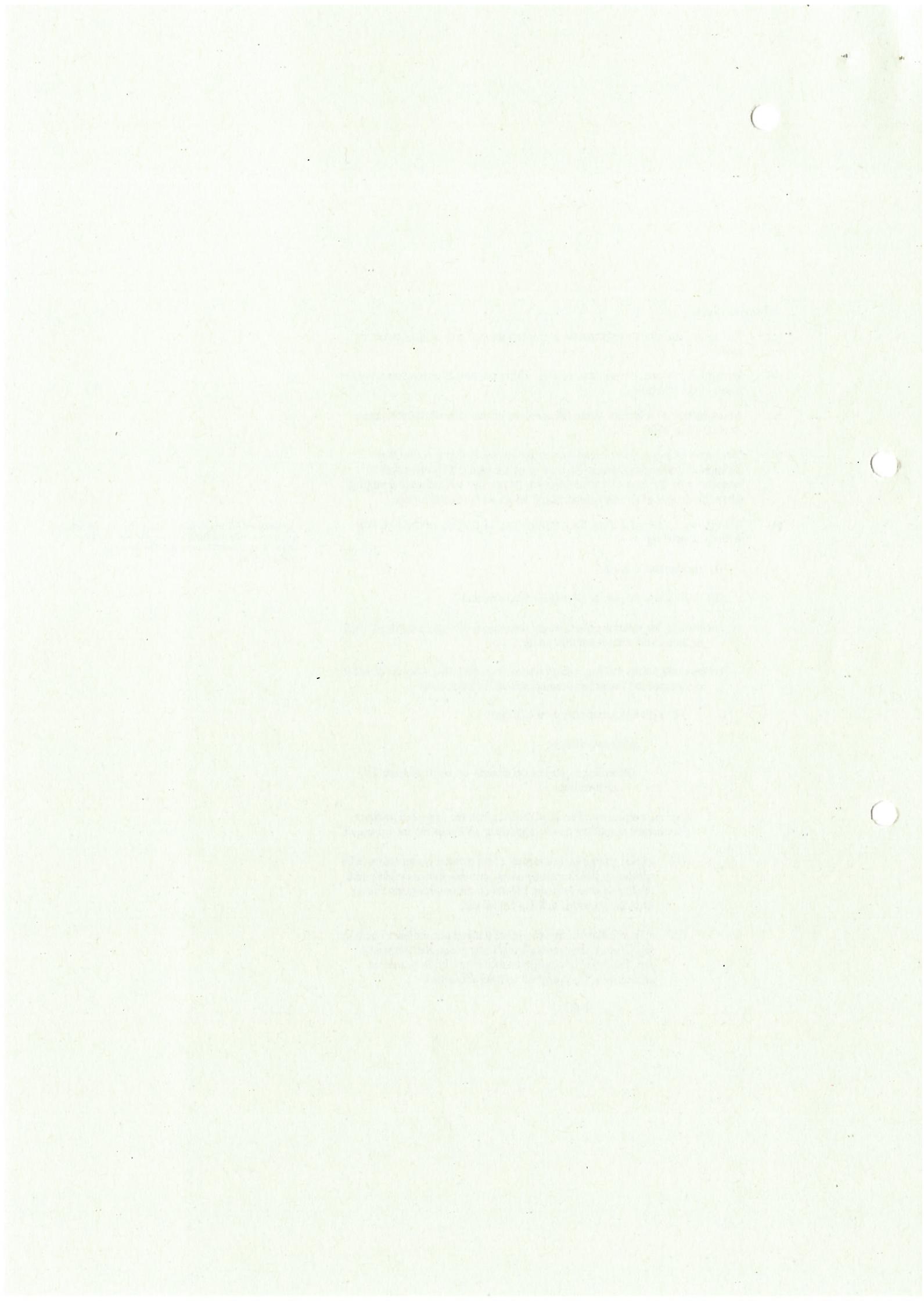
(A) concludes, or

(B) having regard to the criteria set out in Schedule 7, determines,

for the purposes of Part X of the Act, that the proposed drilling concerned would not have a significant effect on the environment,

- (II) a local authority, in exercise of the powers conferred on it by regulation 120, concludes or determines that there is no real likelihood of significant effects on the environment arising from the proposed drilling concerned,
- (III) a State authority, in exercise of the powers conferred on it by regulation 123A, concludes or determines that there is no real likelihood of significant effects on the environment arising from the proposed drilling concerned,

Commented [1912]: Paragraph 2(e) is substituted by article 3 of S.I. No. 543/2014 European Union (Environmental Impact Assessment) (Planning and Development) Regulations 2014



- (IV) it is decided, in accordance with section 13A of the Foreshore Act 1933 (No. 12 of 1933) (in this subparagraph referred to as the “Act of 1933”), by the appropriate Minister (within the meaning of the Act of 1933) that the drilling concerned would not have a significant effect on the environment,
- (V) the appropriate Minister (within the meaning of the Act of 1933) confirms—
 - (A) in accordance with paragraph (a) of subsection (2) of section 13B of the Act of 1933, that the authorisation of the Minister for Communications, Climate Action and Environment records that a screening or assessment referred to in that paragraph has been carried out by the Minister for Communications, Climate Action and Environment in respect of the underlying project to which the petroleum activity relates, or
 - (B) in accordance with paragraph (b) of the said subsection (2), that the Minister for Communications, Climate Action and Environment will carry out such a screening or assessment in respect of that project, or
- (VI) the Minister for Communications, Climate Action and Environment—
 - (A) in accordance with section 8A of the Minerals Development Act 1940 (No. 31 of 1940), determines that a screening determination for environmental impact assessment is not required,
 - (B) when making a screening determination for environmental impact assessment in accordance with subsection (8) of the said section 8A of the Minerals Development Act 1940 (No. 31 of 1940), determines that the drilling concerned would not be likely to have significant effects on the environment.
- (f) All surface industrial installations for the extraction of coal, petroleum (excluding natural gas), ores or bituminous shale not included in Part 1 of this Schedule.
- (g) All extraction of petroleum (excluding natural gas) not included in Part 1 of this Schedule.

Commented [j913]: Sub-paragraph 2(e)(iv) is substituted by article 3 of S.I. No. 404/2018 European Union (Environmental Impact Assessment) (Planning and Development) (No. 2) Regulations 2018

- (h) All onshore extraction of natural gas and offshore extraction of natural gas (where the extraction would take place within 10 kilometres of the shoreline) not included in Part I of this Schedule.

3. *Energy Industry*

- (a) Industrial installations for the production of electricity, steam and hot water not included in Part I of this Schedule with a heat output of 300 megawatts or more.
- (b) Industrial installations for carrying gas, steam and hot water with a potential heat output of 300 megawatts or more, or transmission of electrical energy by overhead cables not included in Part I of this Schedule, where the voltage would be 200 kilovolts or more.
- (c) Installations for surface storage of natural gas, where the storage capacity would exceed 200 tonnes.
- (d) Installations for underground storage of combustible gases, where the storage capacity would exceed 200 tonnes.
- (e) Installations for the surface storage of fossil fuels, where the storage capacity would exceed 100,000 tonnes.
- (f) Installations for industrial briquetting of coal and lignite, where the production capacity would exceed 150 tonnes per day.
- (g) Installations for the processing and storage of radioactive waste not included in Part I of this Schedule.
- (h) Installations for hydroelectric energy production with an output of 20 megawatts or more, or where the new or extended superficial area of water impounded would be 30 hectares or more, or where there would be a 30 per cent change in the maximum, minimum or mean flows in the main river channel.
- (i) Installations for the harnessing of wind power for energy production (wind farms) with more than 5 turbines or having a total output greater than 5 megawatts.
- (j) Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Part I of this Schedule.

4. *Production and processing of metals*

- (a) All installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting.
- (b) Installations for the processing of ferrous metals-

Commented [1914]: Paragraph 3(j) is inserted by article 19(d) of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

- (i) hot-rolling mills and smitheries with hammers, where the production area would be greater than 500 square metres,
- (ii) application of protective fused metal coats, where the production area would be greater than 100 square metres.
- (c) Ferrous metal foundries with a batch capacity of 5 tonnes or more or where the production area would be greater than 500 square metres.
- (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining foundry casting etc.), where the melting capacity would exceed 0.5 tonnes or where the production area would be greater than 500 square metres.
- (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process, where the production area would be greater than 100 square metres.
- (f) All installations for manufacture and assembly of motor vehicles or manufacture of motor-vehicle engines.
- (g) Shipyards, where the area would be 5 hectares or more, or with capacity for vessels of 10,000 tonnes or more (dead-weight).
- (h) All installations for the construction of aircraft with a seating capacity exceeding 10 passengers.
- (i) Manufacture of railway equipment, where the production area would be greater than 100 square metres.
- (j) Swaging by explosives, where the floor area would be greater than 100 square metres.
- (k) All installations for the roasting and sintering of metallic ores.

5. *Mineral Industry*

- (a) All coke ovens (dry coal distillation).
- (b) All installations for the manufacture of cement.
- (c) All installations for the production of asbestos and the manufacture of asbestos based products not included in Part 1 of this Schedule.
- (d) Installations for the manufacture of glass, including glass fibre, where the production capacity would exceed 5,000 tonnes per annum.
- (e) All installations for smelting mineral substances including the production of mineral fibres.
- (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity

exceeding 75 tonnes per day, or with a kiln capacity exceeding 4 cubic metres and with a setting density per kiln exceeding 300 kilograms per cubic metre.

6. *Chemical Industry (development not included in Part 1 of this Schedule)*

- (a) Installations for treatment of intermediate products and production of chemicals using a chemical or biological process.
- (b) All installations for production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides using a chemical or biological process.
- (c) Storage facilities for petroleum, where the storage capacity would exceed 50,000 tonnes.
- (d) Storage facilities for petrochemical and chemical products, where such facilities are storage to which the provisions of Articles 9, 11 and 13 of Council Directive 96/82/EC¹ apply.

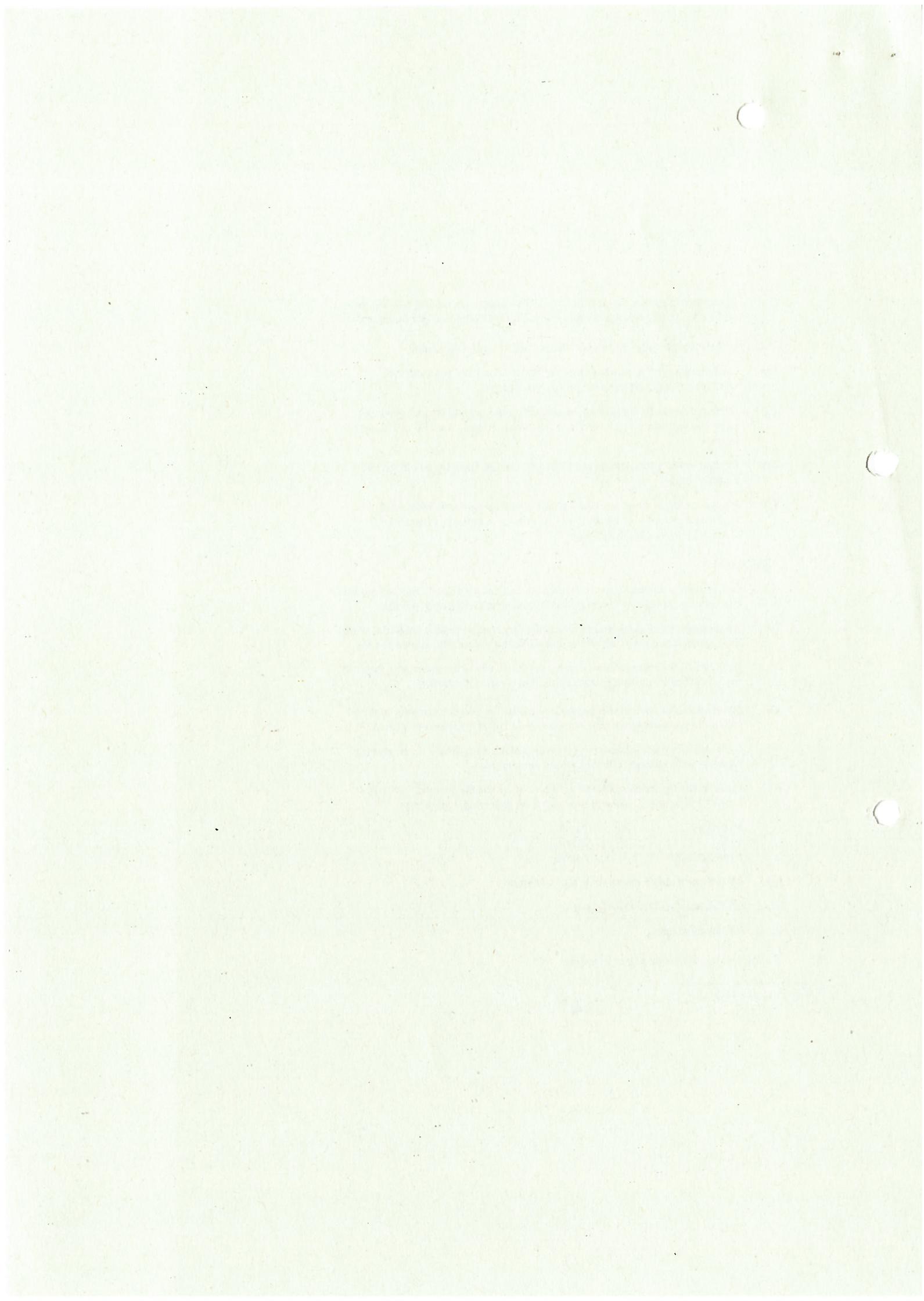
7. *Food Industry*

- (a) Installations for manufacture of vegetable and animal oils and fats, where the capacity for processing raw materials would exceed 40 tonnes per day.
- (b) Installations for packing and canning of animal and vegetable products, where the capacity for processing raw materials would exceed 100 tonnes per day.
- (c) Installations for manufacture of dairy products, where the processing capacity would exceed 50 million gallons of milk equivalent per annum.
- (d) Installations for commercial brewing and distilling; installations for malting, where the production capacity would exceed 100,000 tonnes per annum.
- (e) Installations for confectionery and syrup manufacture, where the production capacity would exceed 100,000 tonnes per annum.
- (f) Installations for the slaughter of animals, where the daily capacity would exceed 1,500 units and where units have the following equivalents:-

1 sheep	=	1 unit
1 pig	=	2 units
1 head of cattle	=	5 units
- (g) All industrial starch manufacturing installations.
- (h) All fish-meal and fish-oil factories.
- (i) All sugar factories.

8. *Textile, leather, wood and paper industries*

¹ OJ No. L 10, 14.1 1997, p.13.



- (a) All installations for the production of paper and board not included in Part 1 of this Schedule.
- (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation or dyeing of fibres or textiles), where the treatment capacity would exceed 10 tonnes per day.
- (c) Plants for the tanning of hides and skins, where the treatment capacity would exceed 100 skins per day.
- (d) Cellulose-processing and production installations, where the production capacity would exceed 10,000 tonnes per annum.

9. *Rubber Industry*

Installations for manufacture and treatment of elastomer based products, where the production capacity would exceed 10,000 tonnes per annum.

10. *Infrastructure projects*

- (a) Industrial estate development projects, where the area would exceed 15 hectares.
- (b)
 - (i) Construction of more than 500 dwelling units.
 - (ii) Construction of a car-park providing more than 400 spaces, other than a car-park provided as part of, and incidental to the primary purpose of, a development.
 - (iii) Construction of a shopping centre with a gross floor space exceeding 10,000 square metres.
 - (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.

(In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)

- (c) All construction of railways and of intermodal transshipment facilities and of intermodal terminals not included in Part 1 of this Schedule which would exceed 15 hectares in area.
- (d) All airfields not included in Part 1 of this Schedule with paved runways which would exceed 800 metres in length.
- (dd) All private roads which would exceed 2000 metres in length.
- (e) New or extended harbours and port installations, including fishing harbours, not included in Part 1 of this Schedule, where the area, or additional area, of water enclosed would be 20 hectares or more, or which would involve the

Commented [1915]: Paragraph 10(dd) is inserted by article 7 of S.I. No. 235/2008 Planning and Development Regulations 2008

reclamation of 5 hectares or more of land, or which would involve the construction of additional quays exceeding 500 metres in length.

- (f) (i) Inland waterway construction not included in Part 1 of this Schedule which would extend over a length exceeding 2 kilometres.
- (ii) Canalisation and flood relief works, where the immediate contributing sub-catchment of the proposed works (i.e. the difference between the contributing catchments at the upper and lower extent of the works) would exceed 100 hectares or where more than 2 hectares of wetland would be affected or where the length of river channel on which works are proposed would be greater than 2 kilometres.
- (g) Dams and other installations not included in Part 1 of this Schedule which are designed to hold water or store it on a long-term basis, where the new or extended area of water impounded would be 30 hectares or more.
- (h) All tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport.
- (i) Oil and gas pipeline installations and pipelines for the transport of CO₂ streams for the purposes of geological storage (projects not included in Part 1 of this Schedule).
- (j) Installation of overground aqueducts which would have a diameter of 1,000 millimetres or more and a length of 500 metres or more.
- (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dikes, moles, jetties and other sea defence works, where the length of coastline on which works would take place would exceed 1 kilometre, but excluding the maintenance and reconstruction of such works or works required for emergency purposes.
- (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Part 1 of this Schedule where the average annual volume of water abstracted or recharged would exceed 2 million cubic metres.
- (m) Works for the transfer of water resources between river basins not included in Part 1 of this Schedule where the annual volume of water abstracted or recharged would exceed 2 million cubic metres.

Commented [1916]: Substituted by article 19(e) of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

Commented [1917]: Substituted by article 19(e) of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

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11. Other projects

- (a) All permanent racing and test tracks for motorised vehicles.
- (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.
- (c) Waste water treatment plants with a capacity greater than 10,000 population equivalent as defined in Article 2, point (6), of Directive 91/271/EEC not included in Part 1 of this Schedule.

- (d) Sludge-deposition sites where the expected annual deposition is 5,000 tonnes of sludge (wet).
- (e) Storage of scrap metal, including scrap vehicles where the site area would be greater than 5 hectares.
- (f) Test benches for engines, turbines or reactors where the floor area would exceed 500 square metres.
- (g) All installations for the manufacture of artificial mineral fibres.
- (h) All installations for the manufacture, packing, loading or placing in cartridges of gunpowder and explosives or for the recovery or destruction of explosive substances.
- (i) All knackers' yards in built-up areas.

12. *Tourism and leisure*

- (a) Ski-runs, ski-lifts and cable-cars where the length would exceed 500 metres and associated developments.
- (b) Sea water marinas where the number of berths would exceed 300 and fresh water marinas where the number of berths would exceed 100.
- (c) Holiday villages which would consist of more than 100 holiday homes outside built-up areas; hotel complexes outside built-up areas which would have an area of 20 hectares or more or an accommodation capacity exceeding 300 bedrooms.
- (d) Permanent camp sites and caravan sites where the number of pitches would be greater than 100.
- (e) Theme parks occupying an area greater than 5 hectares.

13. *Changes, extensions, development and testing*

- (a) Any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:-
 - (i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and
 - (ii) result in an increase in size greater than –
 - 25 per cent, or
 - an amount equal to 50 per cent of the appropriate threshold,
 whichever is the greater.

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Commented [1920]: Substituted by article 5(b) of S.I. No. 364/2005 Planning and Development Regulations 2005

- (b) Projects in Part 1 undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than 2 years.

(In this paragraph, an increase in size is calculated in terms of the unit of measure of the appropriate threshold.)

- (c) Any change or extension of development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, which would result in the demolition of structures, the demolition of which had not previously been authorised, and where such demolition would be likely to have significant effects on the environment, having regard to the criteria set out under Schedule 7.

14. *Works of Demolition*

Works of demolition carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.

15. Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.

Commented [1921]: Paragraph 13(c) is inserted by article 7 of S.I. No. 235/2008 Planning and Development Regulations 2008

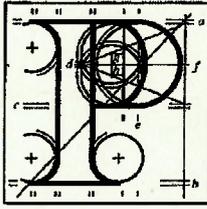
Commented [1922]: Paragraphs 14 and 15 are inserted by article 19(h) of S.I. No. 454/2011 Planning and Development (Amendment) (No. 2) Regulations 2011

Works at Eir Exchange, Wellington Road, Saint Lukes, Cork City

Appendix 2

Relevant An Bord Pleanala Referrals Precedent

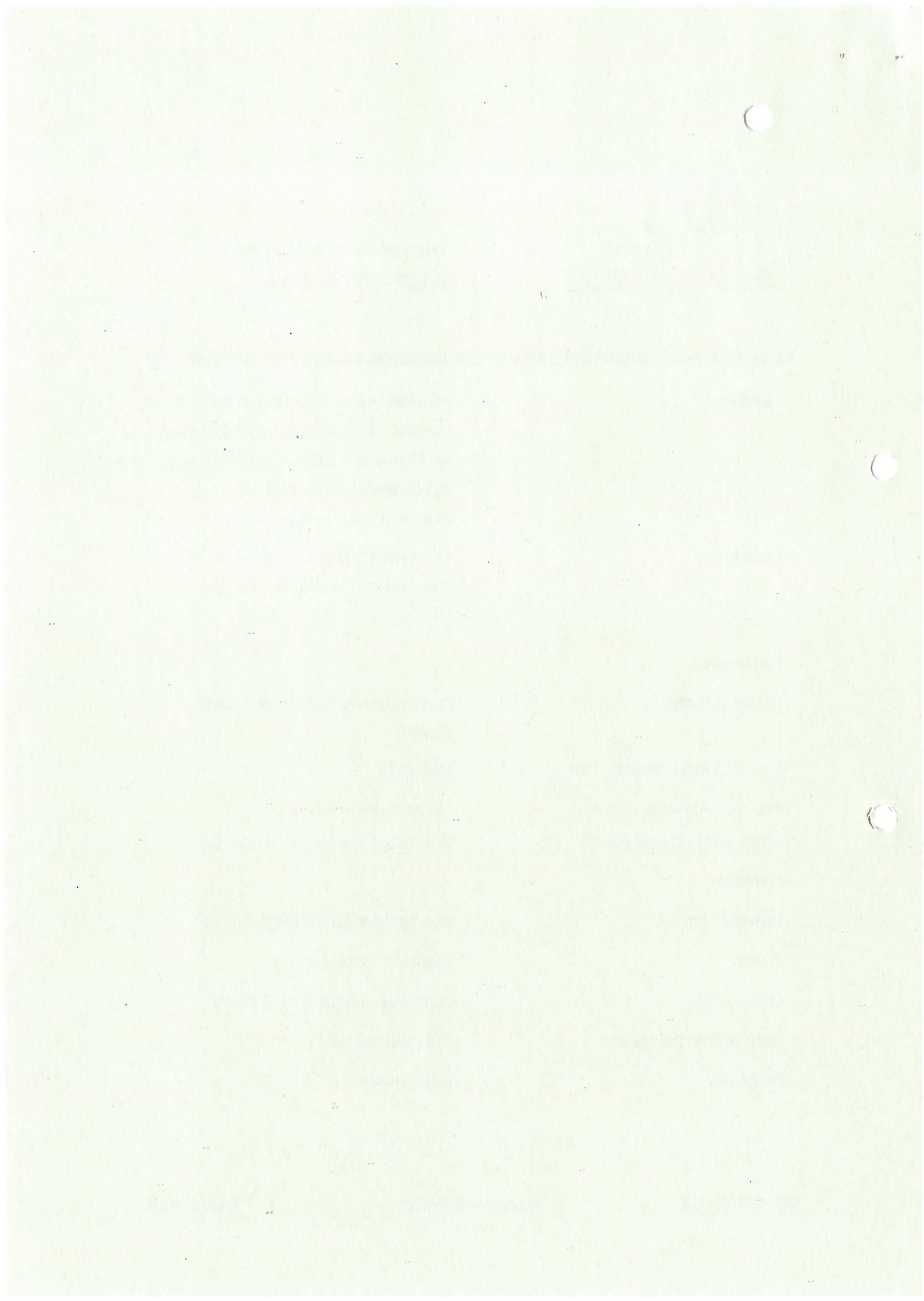
- a. APB-302441-18, Monkstown Road, Co. Dun Laoghaire Rathdown
- b. ABP-312012-21, Ballyclerihan, Co. Tipperary
- c. ABP-310361-21, Camp, Tralee, Co. Kerry



**An
Bord
Pleanála**

Inspector's Report ABP-302441-18

Question	Whether works consisting of the erection of a telecommunications mast on Monkstown Road is or is not development and is or is not exempted development.
Location	Monkstown Road at the junction of Alma Road & Montpelier Parade
Declaration	
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	Ref. 8118
Planning Authority Decision	No declaration issued
Applicant for Declaration	Dun Laoghaire Rathdown Co. Co.
Referral	
Referred by	Dun Laoghaire Rathdown Co. Co.
Owner	Signal Infrastructure Ltd.
Observer(s)	John Ryan and Angela O' Floinn
Date of Site Inspection	6 th November 2018
Inspector	Erika Casey



1.0 Site Location and Description

- 1.1. The lamppost structure is located on the Monkstown Road in close proximity to the junction with Alma Road. Development in the vicinity is primarily residential. The lamppost structure is located in a small area of incidental open space adjacent to the public footpath. It is located in close proximity to Mountpellier Parade, a terrace of three storey over basement period properties.
- 1.2. The proposed development comprises telecommunications equipment and antennas installed on a lamppost with internal cable continuing underground to adjacent exchange cabinets. Six antennas are facilitated behind detachable shrouds, providing mobile and high speed broadband services for two operators. The antennas are painted to mimic the steel lamppost and are located above and below the lantern on the lamppost. They are connected via underground ducting to two equipment cabinets, abutting an existing wall, at a distance of 30 metres from the lamppost. The overall height of the structure is 12.5 metres. The equipment cabinets have a height of 1.45 metres, a width of 1.3 metres and a depth of 0.72m.

2.0 The Question

- 2.1. A declaration on *"whether works consisting of the erection of a telecommunication mast on Monkstown Road is or is not development and is or is not exempted development"* was requested by John Ryan and Angela O' Floinn to Dun Laoghaire Rathdown County Council on the 3rd of August 2018. Under Section 5 (4) of the Planning and Development Act 2000, as amended, Dun Laoghaire Rathdown County Council have referred this request to An Bord Pleanála on the 29th of August 2018.
- 2.2. Noting the information on file and from observations on site, it is considered appropriate that the question referred to the Board be reworded as follows:

"Whether the attachment of telecommunications antennae to a lamppost supporting structure and erection of ancillary equipment is or is not development and is or is not exempted development."

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1 The Planning Authority did not issue a declaration and the question was referred directly by the Planning Authority to the Board for a decision under the provisions of Section 5 (4) of the Planning and Development Act 2000, as amended.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- None on file.

3.2.2. Other Technical Reports

- None on file.

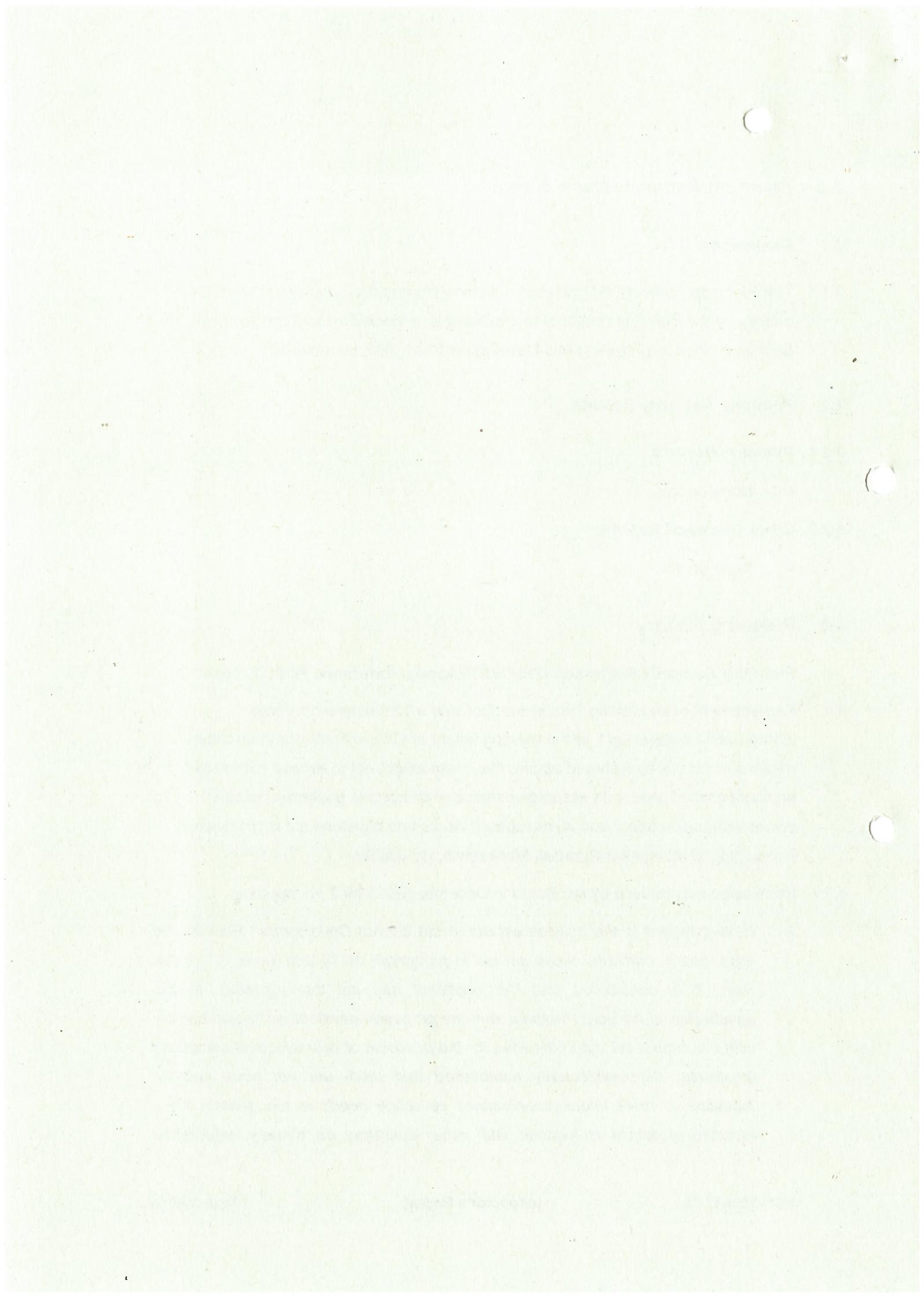
4.0 Planning History

Planning Authority Reference D15A/0373/Appeal Reference PL 06D.245357

4.1 Replacement of an existing 10m street light with a 13m streetworks pole incorporating a street light, at the existing height of 10m, with telecommunications antenna enclosed by a shroud above, maximum height not to exceed 13m above adjacent ground level, with associated telecommunications equipment cabinet, power distribution board and all associated works and development at Monkstown Road, (adj. to Montpellier Parade), Monkstown, Co. Dublin.

4.2 Permission was refused by the Board in December 2015 for 2 no. reasons:

1. *Having regard to the policies set out in the current Development Plan for the area, and in particular those set out in paragraph 16.14 and Table 6.1 of this Plan, it is considered that the applicant has not demonstrated, to the satisfaction of An Bord Pleanála, that the proposed development would comply with the criteria set out in the Plan for the provision of new telecommunications structures, nor satisfactorily established that there are not more suitable locations to meet telecommunications coverage needs in the general area, including potential co-location with other operators on already established*



telecommunications structures, or through the use of existing traffic-related infrastructure. The proposed development would, therefore, contravene the provisions of the Development Plan and would be contrary to the proper planning and sustainable development of the area.

2. *Having regard to the nature, design and height of the proposed development, and its location set within Monkstown Architectural Conservation Area and in close proximity to a number of Protected Structures within the Georgian Terraces at Montpelier Parade, it is considered that the proposed development would form a visually intrusive feature which would detract from the character and setting of the protected structures within Montpelier Parade and would adversely affect the character of Monkstown Architectural Conservation Area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area."*

5.0 Policy Context

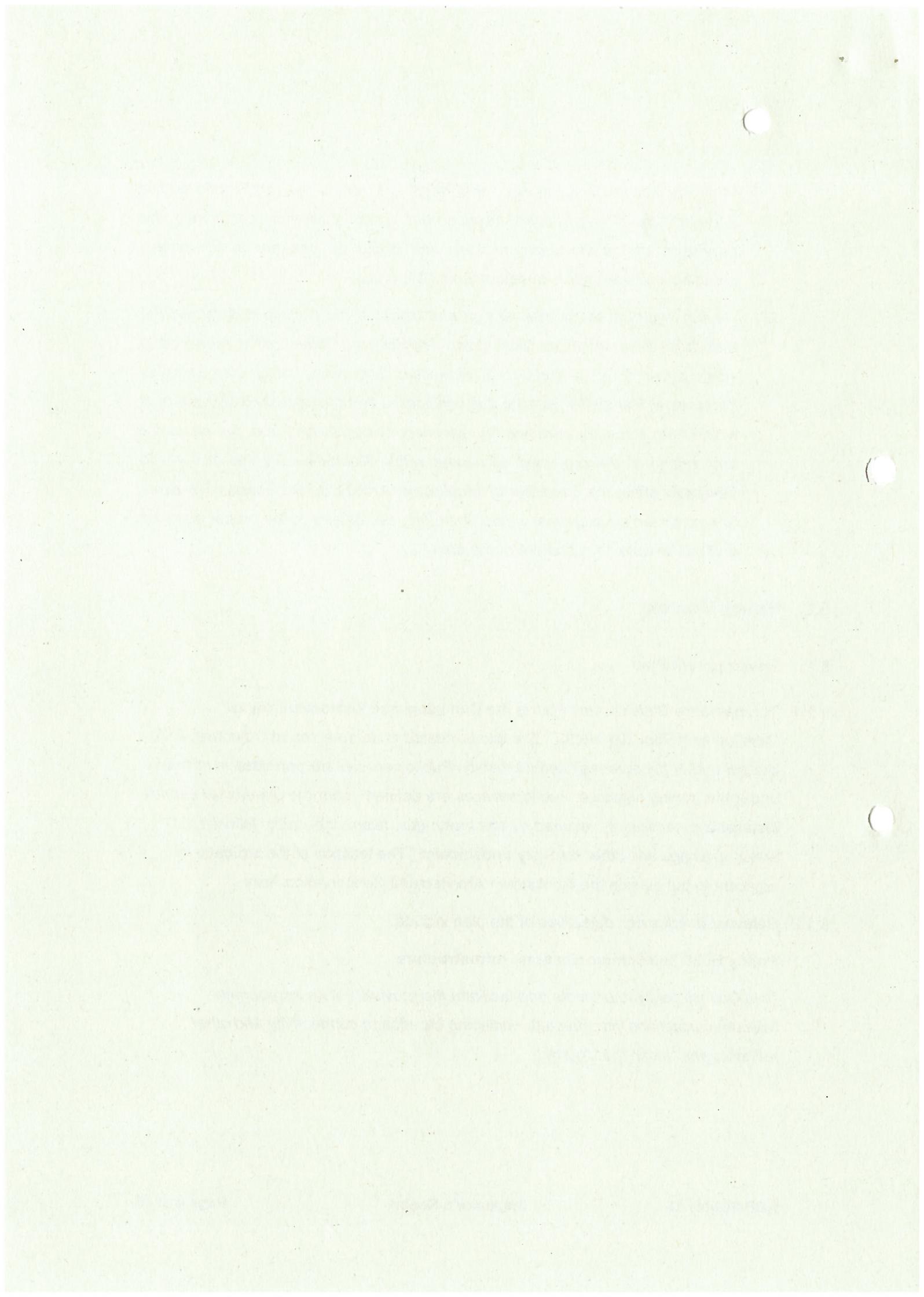
5.1. Development Plan

- 5.1.1 The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is located in an area zoned Objective A: *To protect and-or improve residential amenity*. Public services are permitted in principle under this zoning objective. Public services are defined under the plan as *"all service installations necessarily required by electricity, gas, telephone, radio, television, water, drainage and other statutory undertakers."* The location of the structure is adjacent to but outside the Monkstown Architectural Conservation Area.

- 5.1.2 Relevant policies and objectives of the plan include:

Policy E128 Telecommunications Infrastructure

"It is Council policy to promote and facilitate the provision of an appropriate telecommunications infrastructure, including broadband connectivity and other technologies, within the County."



5.2 Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (DoE 1996)

5.2.1 The appropriate national guidelines for consideration in relation to the proposed development are Guidelines for Planning Authorities prepared by the Department of the Environment, July 1996:

5.3 Natural Heritage Designations

5.3.1 The South Dublin Bay SAC and the South Dublin Bay and River Tolka Estuary SPA are located c. 0.5km to the north east of the site.

Appropriate Assessment

5.3.2 Having regard to the nature and extent of the development within an established urban area, and the distance of the site to nearest European site, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

6.0 The Referral

6.1. Referrer's Case

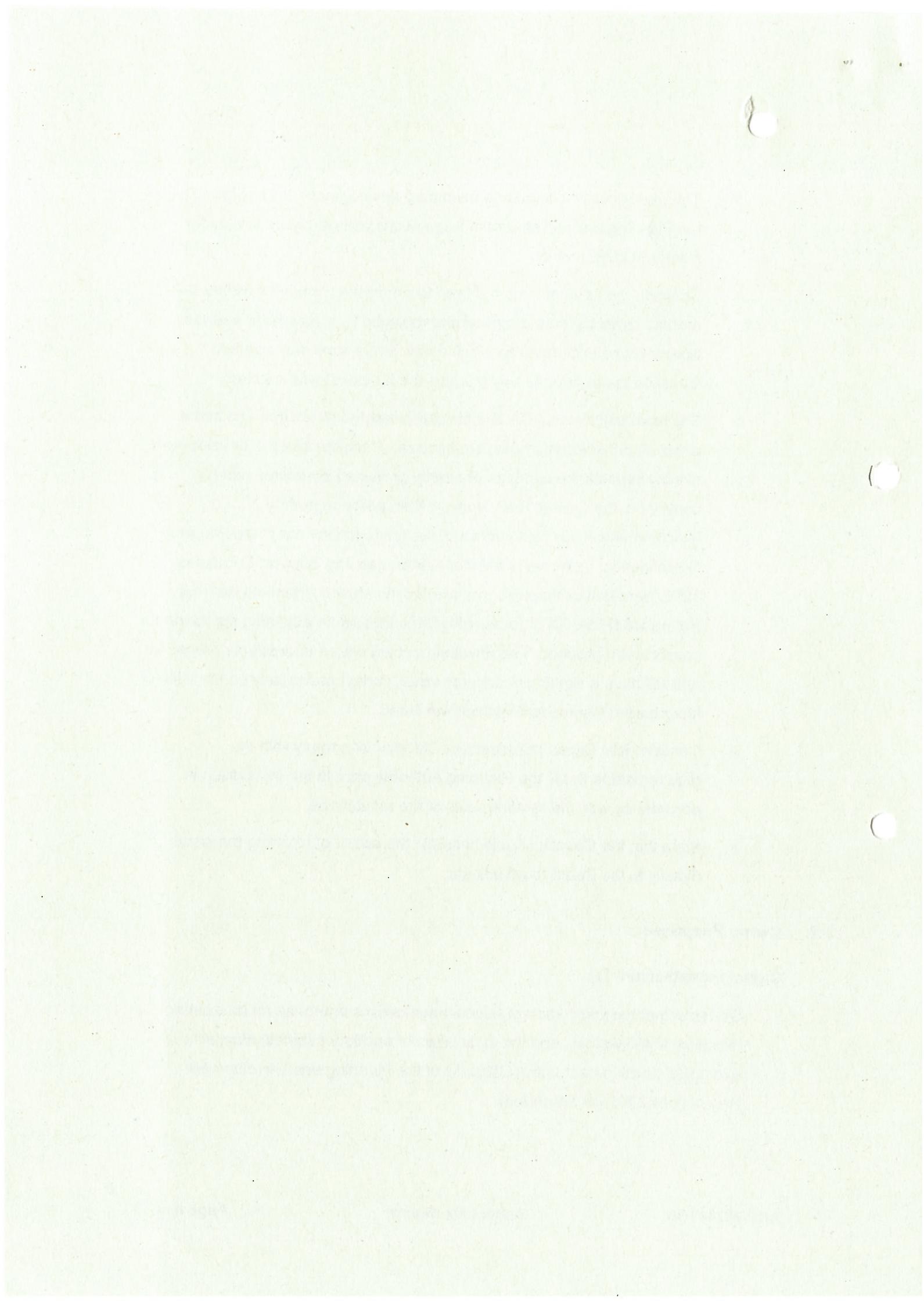
- The Planning Authority note in their application to the Board that to date they have considered the structure to be a lamppost with telecommunications antennae attached to it.
- The documentation submitted by the Planning Authority includes the original referral made to them by John Ryan and Angela O' Floinn. The principal points raised in the referral can be summarised as follows:
 - Consider that the works do not come under Section 4(1) (f) of the Planning Acts. There is no contract in place between Signal Infrastructure and DLRCC for the provision of this telecommunication mast, nor is the mast development carried out for the benefit of the Council. There is no satisfactory evidence of a contract. It is considered that Signal Infrastructure is not a statutory undertaker.

- The mast does not constitute exempted development under Class 31 of the Planning and Development Regulations as it exceeds the height threshold of 10 metres.
- Consider the equipment is not fixed to an existing lamppost, rather the existing lamppost was removed and replaced by a new taller and wider telecommunication mast to which a new street lamp was applied. Question the provisions under which the lamppost was erected.
- The mast adjoins an ACA and several protected structures and has a direct negative visual impact on the area. Consider that the development directly impacts the curtilage of nearby protected structures and is contrary to the County Development Plan policy regarding telecommunications structures and the guidance set out in the Planning Guidelines for Telecommunications Antennae and Support Structures 1996. Note that permission was previously refused (Planning Authority Reference D15A/0373) for a similar structure on an adjoining stanchion on conservation grounds. The development will set an undesirable precedent and will have a significant adverse visual impact particularly on the vista of Mountpellier Parade and Monkstown Road.
- Consider that Signal Infrastructure Ltd. did not comply with the requirement to notify the Planning Authority prior to the installation in accordance with the requirements of the regulations.
- State that the Council should consider the option of referring the issue directly to the Board to adjudicate.

6.2. Owner Response

Signal Infrastructure Ltd.

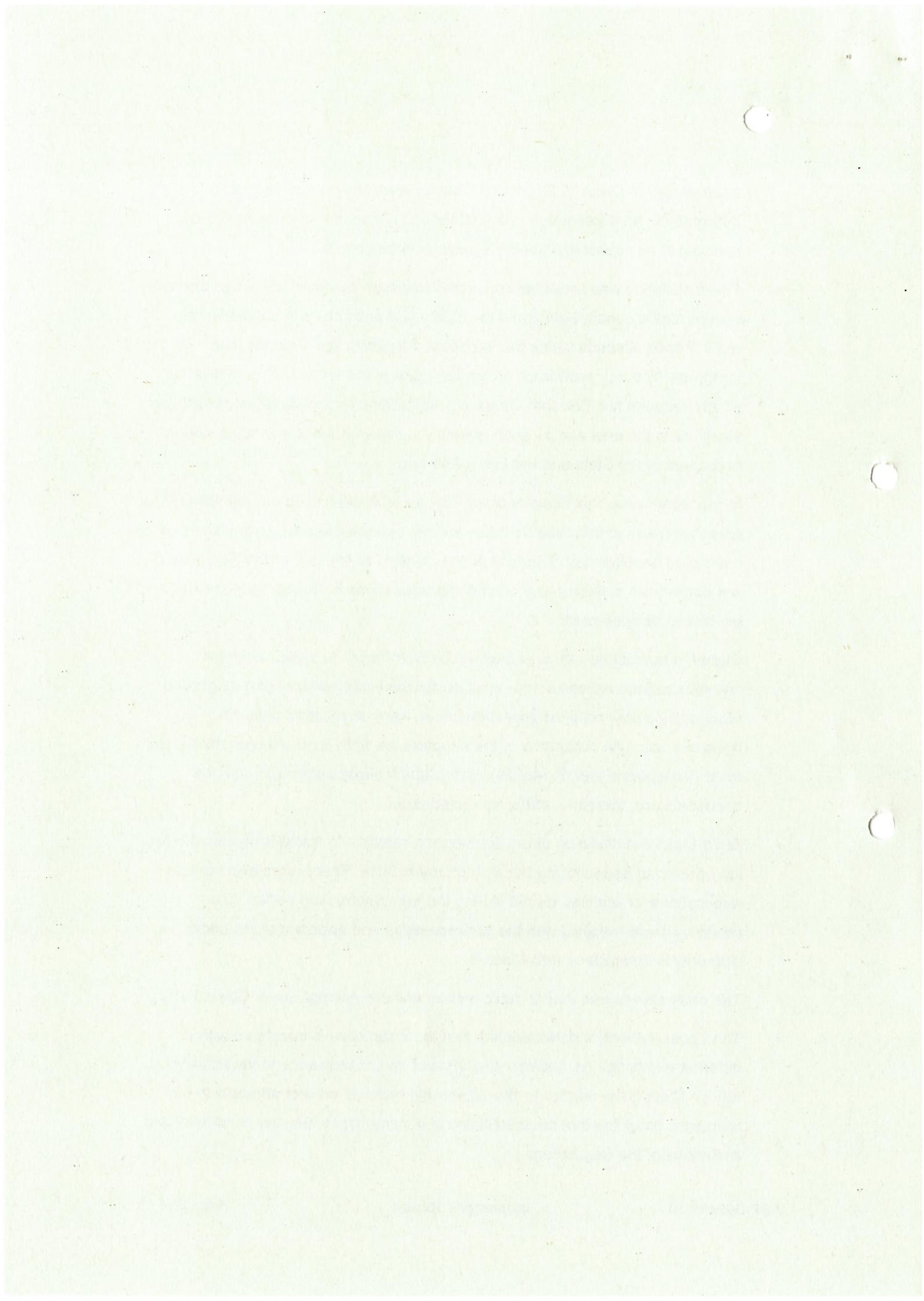
- Consider that the installation of telecommunications antennas on an existing lamppost in Monkstown and the installation of ancillary cabinets alongside is exempted development under Class 31 of the Planning and Development Regulations 2001 (as amended).



- Note that previous enforcement case regarding the development has been closed. Correspondence from the Council's Enforcement Section dated March 2018 has confirmed that the development "*is exempt from the requirement to seek or obtain planning permission.*"
- The development has been installed under Class 31 (k) of the Planning and Development Regulations and the Local Authority considered that the development complied with the conditions and limitation of this class.
- Note that under the Planning and Development (Amendment) (No. 3) Regulations 2018, that Class 31 (k) was amended to create Class 31 (l) for the use of existing lampposts. State however, that the development was carried out under the auspices of Class 31 as it existed in 2017 and as such, the recent amendment is considered irrelevant. Note however, that the attachment of antennas to a lamppost under exemption is still permitted, albeit with changes to the dimensions of the antennas.
- The subject development should not be referred to as a telecommunications mast. It is better described as the installation of an antenna to an existing support structure, a lamppost which is authorised by means of exempted development under Class 31 (k) (ii). While installing a lattice structure, such as a mast, would require planning permission, telecommunications equipment such as the antennas is exempted development. Note that Class 31 (b) which was introduced in 2018, post installation of the antennas to the lighting structure in Monkstown is not relied upon.
- Note that the original referrers claim that the lamppost was a replacement structure and as such does not qualify as an existing structure under Class 31 (k). Whilst the lamppost was replaced, the replacement design is of no consequence to its function. The antennas attached to the structure are subsidiary to the structure's primary function as a lamppost, irrespective of its design. Furthermore, note that the lamppost was insitu at the time the antennas were installed and that if the antennas were ever removed, that it would still function as a lamppost.
- Notes that the position of the lighting structure is outside the ACA demarcation line and thus there are no Article 9 restrictions present on the site. The

assessment of Class 31 Exempted Development should not be treated differently to an assessment of any other exemption at this location, if the concept of an equitable planning system is to be upheld.

- The installation was sensitively designed to lessen its visual impact on the area with particular regard being paid to entirely screening the antennas behind radio friendly shrouds inside the lamppost. All cables are encased in the lamppost. The only protrusion on the lamppost is the lantern. The installation, which supports two Telecom Operators, replaces a requirement for a mast type structure in the area and as such is wholly in line with the telecommunications objectives of the State and the Local Authority.
- In any event note, that Development Plan and ACA objectives are not relevant to an assessment of this case as these are not generally applied to any class of exempted development. The exclusions detailed in Article 9 of the Regulations are considered sufficient to protect designated areas from improper use of exempted development.
- Cignal Infrastructure Ltd. is authorised by ComReg to provide electronic communications networks and services, for the establishment of over ground electronic communications infrastructure and any associated physical infrastructure. The occupants of the structure are both licenced operators in the state (Vodafone and eir Mobile). Both Cignal Infrastructure Ltd. and the occupants are, therefore, statutory undertakers.
- State that the notification of the developer's intention to install antennas on the lamppost was issued to the Local Authority in 2014. There were also several applications for licences issued during the pre-construction period. The equipment was installed with the full knowledge and approval of the Local Authority in compliance with Class 31.
- The cabinets are less than 2 cubic metres and are exempt under Class 31 (f).
- The Local Authority's determination that the installation is compliant with a different exemption i.e. Section 4 (a) (f) is of no consequence to the ability to rely on Class 31 in relation to the equipment installed on and adjacent to the lamppost, providing that the installation is in compliance with the conditions and limitations of the Regulations.



- It is internationally recognised that low impact street solutions are the best way to deliver next generation broadband to local users. The recent amendments to Class 31 were specifically worded to facilitate the location of street solutions across the country. These changes were implemented as a result of the Programme for a Partnership Government, which established a Mobile Phone and Broadband Taskforce, specifically to address Ireland's poor mobile and broadband coverage. The Taskforce has influenced changes in the legislation in order to facilitate the deployment of next generation services on a variety of infrastructure, including state facilities and any action to remove an authorised installation, would be contrary to these objectives.

6.3. Further Responses

John Ryan and Angela O' Floinn

- Signal Infrastructure did not have the necessary licence or authority to take down the existing lamp post and erect this new telecommunication structure. Signal is not a statutory undertaker.
- The development by its detail, scale and nature does not meet the requirements for exempted development as allowed for in the Planning Acts and Regulations.
- The development is inconsistent with the County Development Plan. It will have a detrimental impact on an historic residential neighbourhood.
- The development will set an undesirable precedent.

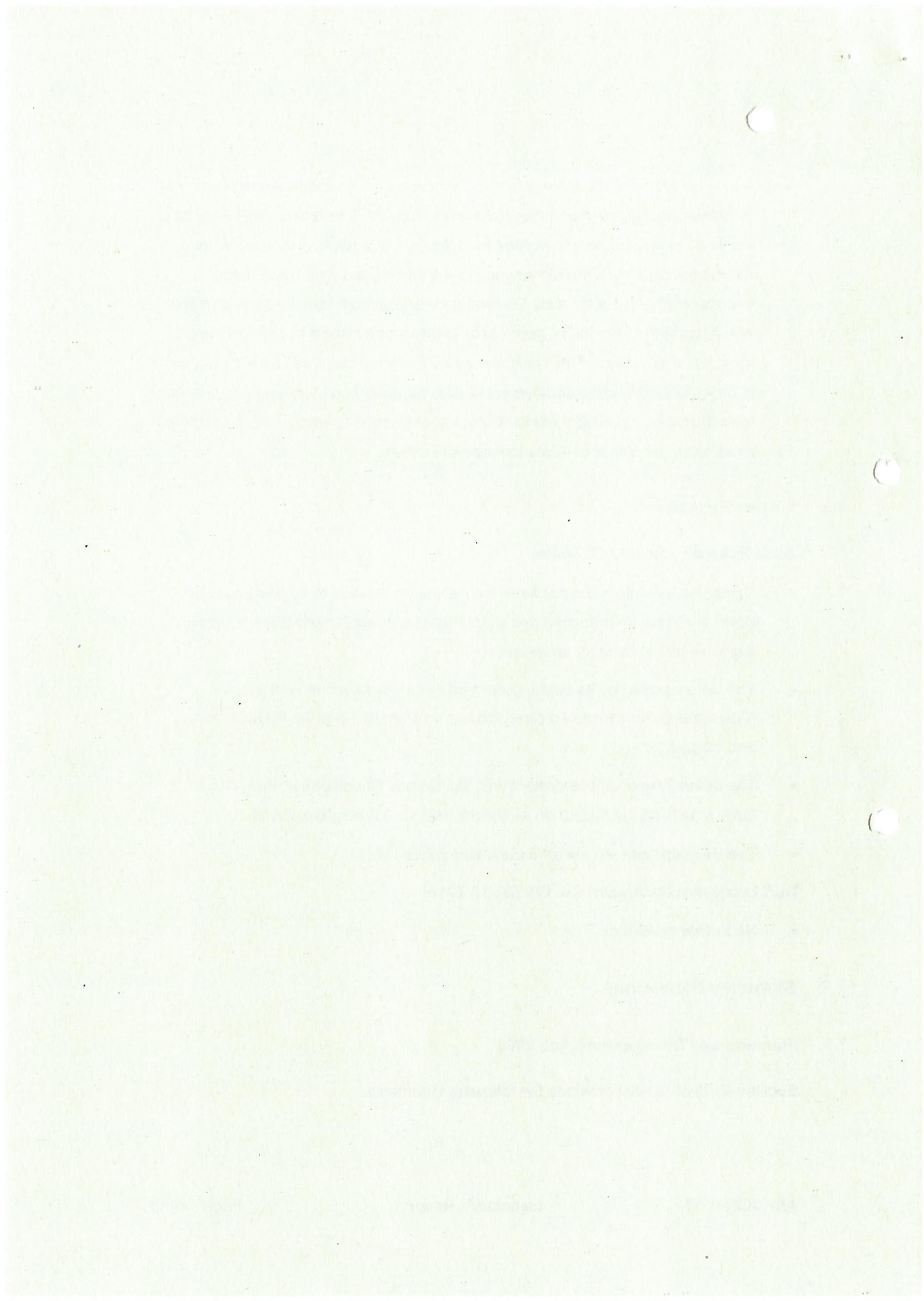
Dun Laoghaire Rathdown Co. Co. (23.10.2018)

- No further comment.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 (1) of the Act provides the following definitions:



"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined."

Section 2 (1) of the Act defines a statutory undertaker as:

"statutory undertaker" means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—

(a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,

(b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or

(c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;"

Section 3(1) of the Act states the following in respect of 'development':

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

- 7.1.2 It is noted that reference is made by the original referrer (John Ryan and Angela O' Floinn) that correspondence from Dun Laoghaire Rathdown Enforcement Department indicated that it was considered the development was exempt under the provisions of Section 4(1) (f) of the Planning and Development Act 2000. This section of the Act states:

"development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity".

- 7.1.3 The referrer made a detailed submission on this issue to the Council setting out that in their view, the provisions of Section 4(1) (f) of the Act are not applicable to the subject case. The submission by Cignal Infrastructure Ltd. in response to the referral notes that in their view,

the development is exempt under the provisions of Section 31 of the Planning and Development Regulations. Having reviewed the documentation on file, I am satisfied that it is this provision of the legislation rather than Section 4 (1) (f) of the Act that is the most pertinent when considering the subject referral.

7.1.4 I also note that in their submission dated the 25th of October 2018, their original referrers state that the development falls within the category of overground telecommunications infrastructure and can only take place subject to a license under section 254 of the Planning and Development Act 2000. It is alleged that Cignal have not established whether the development was erected in accordance with the mandatory licensing requirement. I consider this issue however, is not pertinent to a determination of whether the subject lightpost and telecommunications antennae is development and whether it is or is not exempted development and is outside the scope of this assessment. The requirement to obtain a license under section 254 of the Act is not a predetermining factor that planning permission is required.

7.2. **Planning and Development Regulations, 2001**

Article 6(1), subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with certain conditions and limitations.

Article 9 (1) of the regulations sets out various restrictions on works that would otherwise be exempted development under Article 6. Subsection (xii) states the following restriction:

“further to the provisions of section 82 of the Act, consists of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.”

7.2.1 The Board should be aware that the Planning and Development (Amendment) (No. 3) Regulations 2018 made a number of amendments regarding aspects of Class 31 relating to exemptions from the requirement to obtain planning permission for certain works undertaken by a statutory undertaker authorised to provide a

telecommunications service. This included amendments relevant to the exemptions pertaining to small cell antennae attached to lampposts. It is noted however, that the subject telecommunications structure was erected in 2017 and thus these regulations adopted in February 2018 are not applicable. The operative regulations in place at the time were as follows:

Class 31 of Part 1 of Schedule 2: The relevant sub-paragraphs are (f) and (k) and these state the following:-

Column 1 (1) Description of Development	Column 2 (2) Conditions and Limitations
<i>The carrying out by a statutory undertaker authorised to provide telecommunications service of development consisting of the provision of—</i> (f) Cabinets forming part of a telecommunications system	The volume above the ground level of any such cabinet shall not exceed 2 cubic metres measured externally.
<i>The carrying out by a statutory undertaker authorised to provide telecommunications service of development consisting of the provision of—</i> (k) Antennae attached to the following existing structures - (i) public or commercial buildings (other than education facilities, childcare facilities or hospitals) by way of attachment to roofs, facades, chimneys, chimney pots or vent pipes; (ii) telegraph poles, lamp posts , flag poles, CCTV poles; (iii) electricity pylons	1. The antenna shall be attached directly to the structure (other than a structure with a flat roof) and not by way of a supporting fixture. 5. The planning authority in whose functional area the structure on which the antennae will be attached is situated shall be notified by the statutory undertaker in writing of the proposed location of any such structure at least four weeks before such attachment. 6. The field strength of any such antenna shall not result in the field strength of the non-ionising radiation emission from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulation.

Note: The other "Conditions and Limitations" i.e. Nos. 2-4 omitted in Column 2 above relate to buildings and chimneys, for example, and are not relevant to this Referral.

7.3. Other Similar Section 5 Declarations

RL2271

- 7.3.1 An Bord Pleanála determined that the placing of antennae on existing floodlight columns is development and is exempted development at Edenmore Sports Ground, Edenmore Park, Dublin 5.

RL2255

7.3.2 Referral relating as to whether the erection of antennae and ancillary equipment on a lattice type flood lighting pylon at Oriel Park, Carrick Road, Dundalk, County Louth is or is not development or is or is not exempted development. The Bord concluded that the erection of antennae on a lattice type flood lighting pylon would generally come within the scope of the exempted development provisions of class 31 (k) of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, and (b) in the absence of any evidence that the conditions and limitations of paragraph 5 of Column 2 of Class 31 (k) of the said Regulations had been met, it was considered that the said exempted development provisions of Class 31 (k) cannot be availed of. Therefore, An Bord Pleanála, determined that the said erection of antennae and ancillary equipment on a lattice type flood lighting pylon at Oriel Park, Carrick Road, Dundalk, County Louth is development and is not exempted development.

RL2829

7.3.3 The Board determined that the attachment of telecommunications antennas (panel and dish type) to two 18 metres high floodlight columns and the erection of ancillary equipment at Wicklow Rovers Football Pitch, Whitegates, Dublin Road, Wicklow is development and is exempted development.

8.0 Assessment

8.1 Preliminary Matters

8.1.1 It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the subject lamppost and telecommunications antennas but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

8.2 Is or is not development

8.2.1 Having regard to the definitions of 'development' and 'works', as set out under Sections 3(1) and 2(1) respectively of the Planning and Development Act 2000, as amended, I consider that the works involved are such that the fixing of antennae to a lamppost, together with the installation of the ancillary equipment constitute development within the meaning of the Act. As such it constitutes development. Therefore, it is my opinion that the remaining question in this case is whether or not the proposed works are exempted development.

8.3 Is or is not exempted development

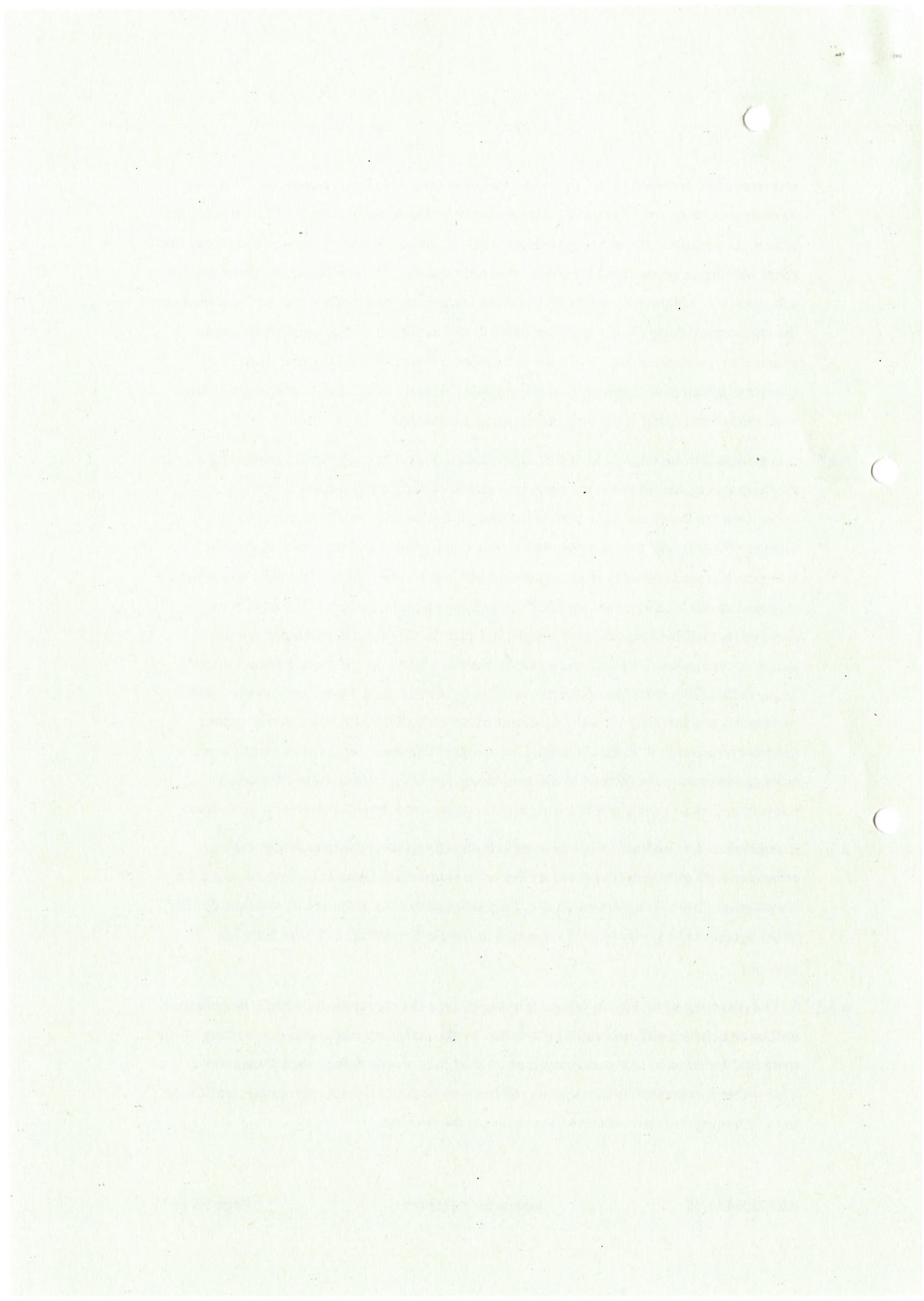
- 8.3.1 In considering Class 31 of Part 1 of Schedule 2, one must first consider whether the developer – Cignal Infrastructure Ltd. is a statutory undertaker for the purposes of the regulations.
- 8.3.2 It is clarified in the response to the referral by Cignal, that telecommunication rights are controlled by the compliance regulator ComReg which issues general authorisation to carry out works for the provision of telecommunications under license. Cignal Infrastructure Ltd. were authorised by ComReg to provide Electronic Communications Networks and Services, for the establishment of over ground electronic communications infrastructure and any associated physical infrastructure in 2016. A copy of their license is appended to their response. It is also noted that the occupants of the structure are both licensed operators in the state – namely Vodaphone and eir Mobile. Having regard to the information submitted, I am satisfied that both Cignal Infrastructure Ltd. and the occupants are statutory undertakers.
- 8.3.3 **(f) Cabinets forming part of a telecommunications system:** The subject development includes 2 equipment cabinets that are connected to the lamppost via underground ducting, some 30 metres away. I consider that the cabinets would come within the scope of Class 31(f), as they are erected by a statutory undertaker authorised to provide a telecommunications service and are an integral and necessary part of the telecommunication system. In relation to the sole condition and limitation of this class, I am satisfied that the volume above ground level of each of the cabinets would not exceed 2 cubic metres, and that, therefore, this condition and limitation is complied with.
- 8.3.4 I note that the original referrer contends (submission dated 25.10.20218) that the underground cables from the lamppost to the cabinets are not exempted development. I consider however, such underground cabling to be exempt under the provisions of Class 31 (a) of the Regulations which state:
- “The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of*
- (a) underground telecommunications structures to other underground telecommunications works (including the laying of mains and cables and the installation underground of any apparatus or equipment).”*

8.3.5 **(K) Antennae attached to the following existing structures - (ii) lamp posts:** This issue has been contested by the original referrer who state that as a new lamp post was erected, that it does not constitute an “existing structure”. The developer in their response have argued that street lighting can comprise a variety of structures and a single area can have several design solutions. It is acknowledged that the previous lamppost at this location was replaced but that the replacement design is of no consequence to its function. It is stated that the antennas attached to the structure are subsidiary to its primary function as a lamppost. It will still operate as a lamppost irrespective of the antennas. It notes that Class 31 only requires the structure to be existing at the time the antennas are attached.

8.3.6 It is evident that the original lamppost at this location was replaced with a replicate light structure that contained technical elements capable of facilitating enhanced wireless connectivity to the area. The design of the lamppost is broadly similar to others in the vicinity. Whilst I note the lamppost was replaced in late 2017 and that the design of the lamppost has been amended from that previously insitu, I am satisfied that there was always a lamppost at this location. I am satisfied that planning permission would not have been required in itself for a replacement lamppost. I note the developer’s statement that the lamppost was insitu at the time the antennas were attached to it and there is no evidence to disprove this. This issue has not been contested by the Planning Authority who state in their correspondence that they view the development as a lamppost with telecommunications antennae attached to it. In this context, I am satisfied that the antennas are attached to an existing structure in the context of the guidelines. The other conditions and limitations relevant to Class 31 (k) of the Planning and Development Regulations are now considered.

8.3.7 **Condition 1. The antenna shall be attached directly to the structure (other than a structure with a flat roof) and not by way of a supporting fixture:** Having reviewed the drawings and from observations on site, I am satisfied that the antennas are attached directly to the structure and not by way of a supporting fixture. Conditions 2, 3, and 4 are not relevant.

8.3.8 **5. The planning authority in whose functional area the structure on which the antennae will be attached is situated shall be notified by the statutory undertaker in writing of the proposed location of any such structure at least four weeks before such attachment:** This matter is contested by the original referrer who consider that no appropriate notification to the Planning Authority occurred in relation to the structure.



- 8.3.9 In response to this matter, the developer has clarified that the telecommunications equipment was installed in support of DLR's Smart City Initiative with a memorandum of understanding being reached between Cignal Infrastructure Ltd. and the Corporate, Communication and Governance Department of DLR CO. Co. in April 2017 (copy of this memorandum is included in the file). It is stated that the Local Authority approved the design in July 2017 and the installation was approved in September that year subject to a Road Opening License. Notification was sent to both the Public Lighting Section and Roads Department within the Council. It notes that the site was developed in conjunction with the Local Authority with their full knowledge and approval.
- 8.3.10 It is evident from the documentation submitted, that the Planning Authority were fully aware of the proposed development. I note an email attached to the original referrer's submission dated the 13th of December 2017 which confirms the development is a pilot scheme done under the Smart Dublin Framework and National Broadband Plan designed to improve broadband capacity in the area. It notes that Public Lighting, Broadband Officer and Parks all gave their consent to this going ahead as did Roads Control. I am satisfied, therefore, that the Planning Authority were notified of the development and were fully aware of its nature, purpose and location.
- 8.3.11 **6. The field strength of any such antenna shall not result in the field strength of the non-ionising radiation emission from the radio installations on the site exceeding the limits specified by the Director of Telecommunications Regulation:** In their response to the referral, it is stated that the field strength of the antennas does not exceed the limits specified by ComReg. The subject site was built in accordance with current Health and Safety Legislation and Emission Guidelines. The transmitted output power, antenna types and mounting configuration are consistent with modern technologies. The cumulative power output of the installation falls well below the IRPA Guidelines. It is also noted that it is ComReg's responsibility to monitor the operator's equipment to ensure compliance. Compliance with emissions limits is regulated by ComReg and this issue is outside the remit of the Board. I am satisfied from the information provided that this condition and limitation is complied with.
- 8.3.12 I note that the original referrer makes reference to a previous referral RL2708 and commentary by the reporting Inspector that a statement by a proposer that the development is designed to meet ICNIRP Guidelines would be insufficient to comply with the condition/limitations of the Regulations. The Board Direction however, in

respect of this case stated *"The Board did not agree with the Inspector that there was insufficient evidence regarding the field strength of the non-ion-ionising radiation emission from the installation."*

8.4 Restrictions on exempted development

8.4.1 Article 9 of the Regulations sets out a number of restrictions on exempted development. Having regard to these restrictions, I am satisfied that none are applicable to the subject site. I note that significant objections are raised to the development by the original referrer on the basis of its proximity to the Monkstown ACA. Reference in particular is made to a previous decision by the Board to refuse a similar development in close proximity on conservation grounds and it is contended that the development is contrary to the provisions of the Dun Laoghaire Rathdown County Development Plan.

8.4.2 Subsection (xii) poses a restriction when development consists of or comprises the carrying out of works to the exterior of a structure, where the structure concerned is located within an Architectural Conservation Area.

8.4.3 Notwithstanding the objections and previous decision of the Board which related to a similar structure within the ACA, I note that the structure is not located within the ACA and is clearly outside it. There is no restriction on exemptions for development occurring close or adjacent to an ACA boundary and in this context, I am satisfied that this restriction does not apply.

9.0 EIA Screening

9.1 Having regard to nature of the development comprising telecommunications antennas on a lamppost supporting structure and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

10.0 Recommendation

10.1 I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to *"Whether the attachment of telecommunications antennae to a lamppost supporting structure and erection of ancillary equipment on Monkstown Road is or is not development and is or is not exempted development."*

AND WHEREAS Dun Laoghaire Rathdown Council requested a Declaration on the said question to An Bord Pleanála on the 29th day of August 2010.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to -

- (a) Sections 2, 3(1) and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Classes 31(f) and 31 (k) of Part 1 of Schedule 2 to the said Regulations.

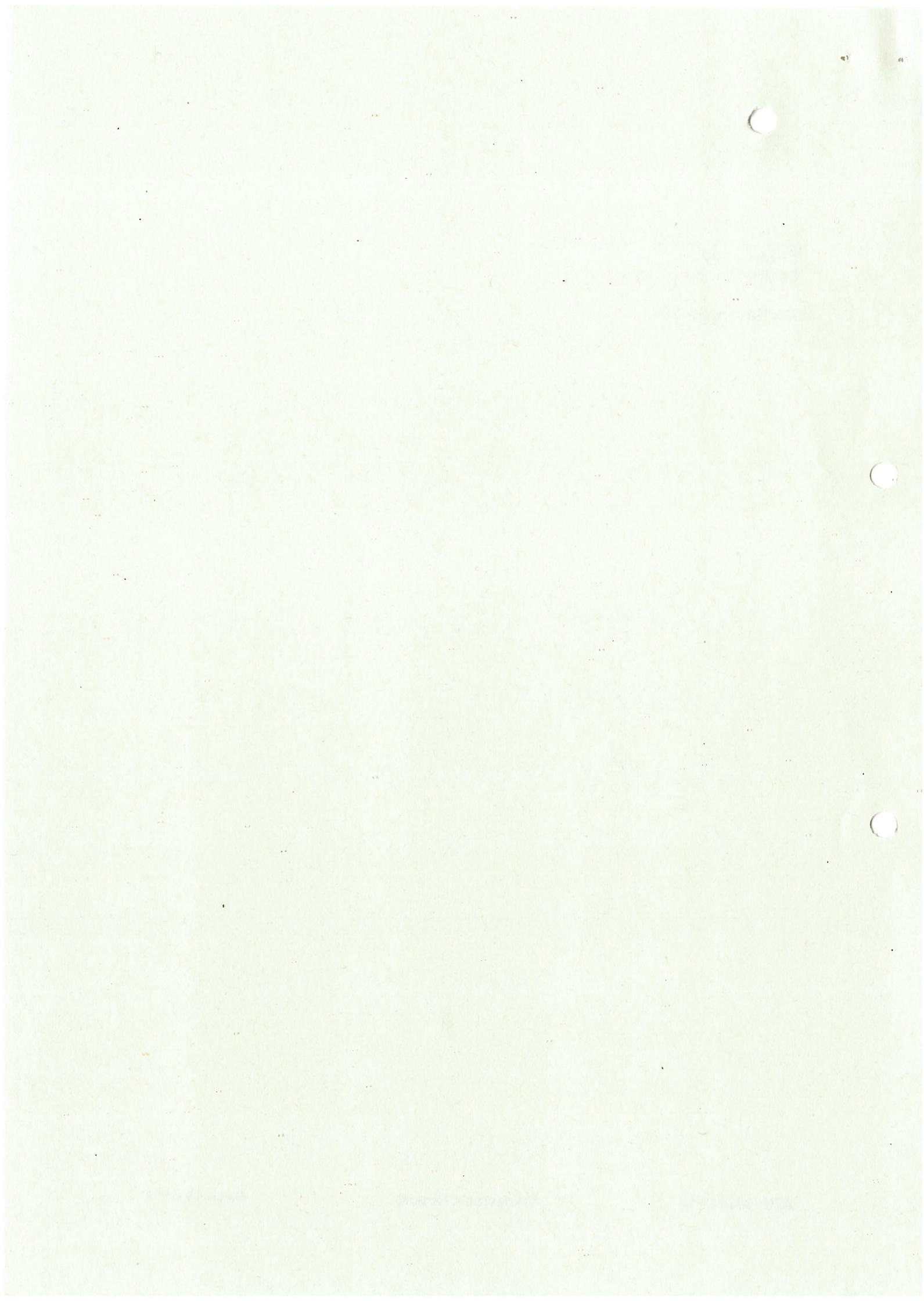
AND WHEREAS An Bord Pleanála has concluded that -

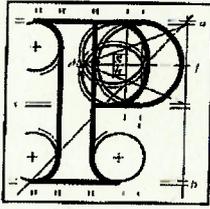
- (a) The works are such that the fixing of antennae to a lamppost supporting structure, together with the installation of the ancillary equipment constitutes development within the meaning of the Act.
- (b) The provision of the ancillary cabinet equipment by a statutory undertaker authorised to provide a telecommunications service would come within the scope of Class 31(f) of the said Regulations,
- (c) The attachment of the antennas directly to the lamppost supporting structure by a statutory undertaker authorised to provide a telecommunications service would generally come within the scope of Class 31(k)(ii) of the said Regulations.
- (d) On the basis of the evidence submitted, the development would comply with the conditions and limitations of the said Class.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the attachment of the telecommunications antennae to a lamppost supporting structure and the provision of the ancillary equipment is development and is exempted development.

Erika Casey
Senior Planning Inspector

7th November 2018





An
Bord
Pleanála

**Board Direction
ABP-302441-18**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 10/05/2019.

The Board decided, as set out in the following Order, that

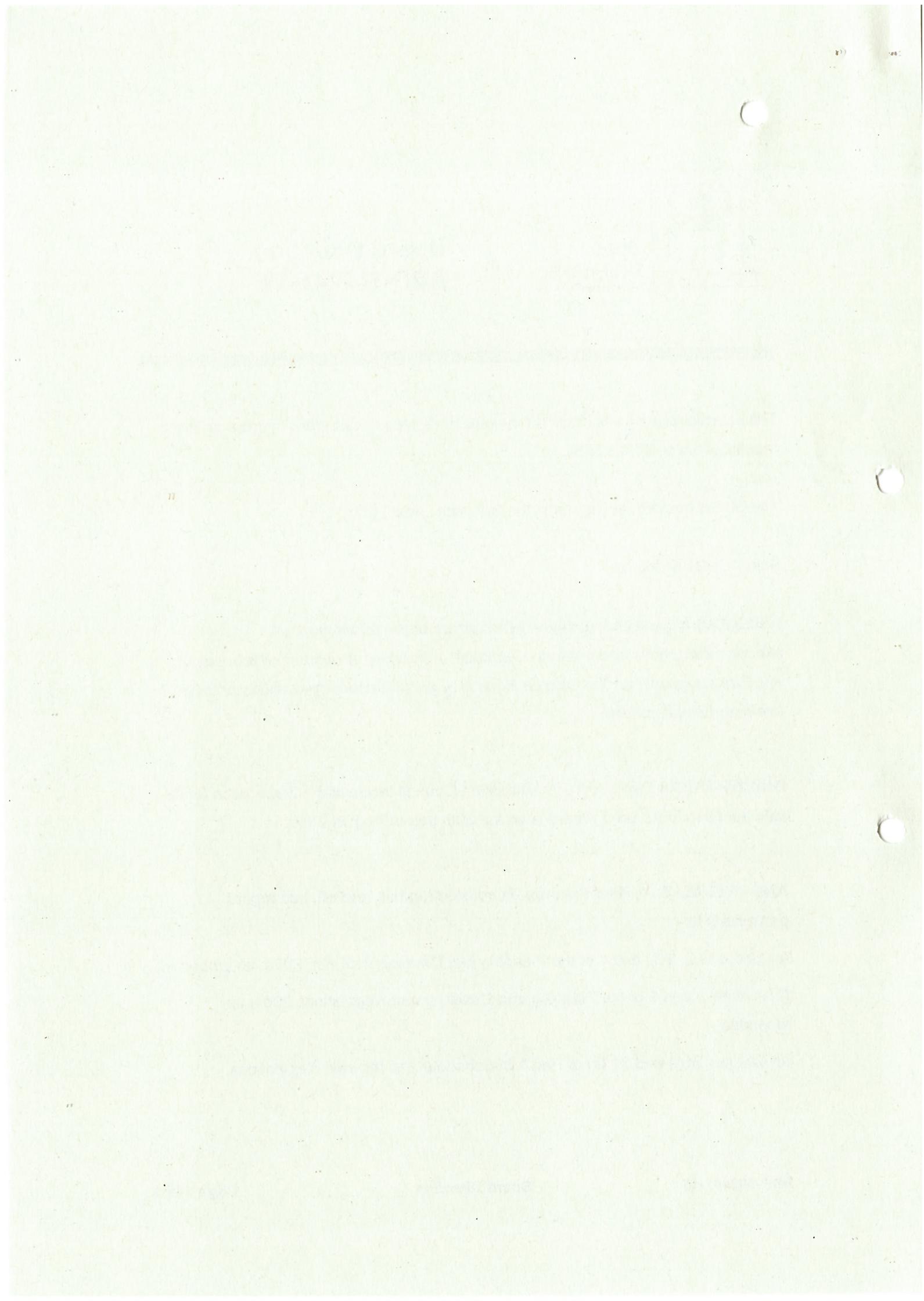
Board Order as follows:-

WHEREAS a question has arisen as to *"Whether the attachment of telecommunications antennae to a lamppost supporting structure and erection of ancillary equipment on Monkstown Road is or is not development and is or is not exempted development."*

AND WHEREAS Dun Laoghaire Rathdown Council requested a Declaration on the said question to An Bord Pleanála on the 29th day of August 2010.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to -

- (a) Sections 2, 3(1) and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Classes 31(f) and 31 (k) of Part 1 of Schedule 2 to the said Regulations.



AND WHEREAS An Bord Pleanála has concluded that -

- (a) The works are such that the fixing of antennae to a lamppost supporting structure, together with the installation of the ancillary equipment constitutes development within the meaning of the Act.
- (b) The provision of the ancillary cabinet equipment by a statutory undertaker authorised to provide a telecommunications service would come within the scope of Class 31(f) of the said Regulations,
- (c) The attachment of the antennas directly to the lamppost supporting structure by a statutory undertaker authorised to provide a telecommunications service would generally come within the scope of Class 31(k)(ii) of the said Regulations.
- (d) On the basis of the evidence submitted, the development would comply with the conditions and limitations of the said Class.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the attachment of the telecommunications antennae to a lamppost supporting structure and the provision of the ancillary equipment is development and is exempted development.

Board Member:

Date: 13/05/2019

Michelle Fagan

