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5th December 2018

RE: Planning Application F18A/0618 - The construction of strategic open spaces, upgrades to the public road, reconfiguration of the existing car park serving Smyths Bridge House (A Protected Structure), upgrade of existing entrance onto Main Street, new access from Balcarrick Road, internal access roads, water services and a pumping station, and utilities. These proposed works are to facilitate future residential development including reserved sites for new primary school and local neighbourhood centre at Corballis East, as provided for in the Donabate Local Area Plan 2016

Dear Mr O'Brien,

We would like to submit an observation/submission/objection to the Planning Application registered under Ref: F18A/0618 pertaining to lands at Corballis East. Please find enclosed the prescribed fee of €20.

We object to this proposal being granted permission for the following reasons:

Environmental Impact Assessment Report

Project Splitting

1. The entire EIAR proceeds on a completely flawed premise. The development is considered as being merely what permission is currently being sought for; namely infrastructure, roads and landscaping to facilitate future development.

2. This constitutes project splitting of the most egregious type.
3. This proposed development is, firstly, part of a larger development of the entire Corballis lands (of which Phase 1 already has planning permission and which is under construction). The manner in which the Corballis development has been split into three parts, with no EIA conducted in respect of the entire, constitutes project splitting in contravention of the EIA Directive. Such predatory project splitting constitutes an egregious breach of the fundamental tenets of European environmental law (this is discussed further below).
4. Secondly, it is entirely disingenuous to take the approach that this development consists merely of the infrastructure in respect of which permission is being sought. The actual development is the development of a housing estate with school, crèche and some retail units. This instant application comprises merely enabling works for the development.
5. This is a blatant attempt to minimise the impacts which have to be considered as part of the Environmental Impact Assessment for the development.
6. This is made abundantly clear throughout the EIAR where the “operational phase” is treated as being when the services, roads and landscaping are complete. This is unsustainable. The operational phase is when all the housing, school and retail units are complete and occupied. As a particularly blatant example, the traffic impact assessment is conducted on the basis of, not when people are living on the site, but only at when the roads are built which assessment, naturally, does not disclose an impact on traffic in Donabate.
7. In this regard, please refer to the decision of Peart J. of 12 December 2014 in *Ó Grianna v. An Bord Pleanála* where it was held that a failure to consider an electricity grid connection as part of an EIA for a windfarm invalidated the EIA as it was an integral part of a two part project and as such should have been assessed together.
8. The facts in the instant application are much stronger than those which pertained in the *Ó Grianna* case as there is no basis in reality in seeking to content that part 1 (the construction of infrastructure and roads) and part (2) the constructions of buildings are two separate projects which have to be treated separately and assessed separately for the purposes of EIA.
9. Further, while lip service is paid to the consideration of the impacts of the Donabate Distributor Road (currently under construction), Phase 1 of the Corballis lands (Corballis West) (currently under construction) and the Tilberry site (currently under appeal to An Bord Pleanála), when the EIAR is considered, there is actually no consideration whatsoever of the cumulative impacts of these developments when taken in conjunction with the instant proposed development. All that is done is to assert that that they were considered. In the absence of any actual consideration in EIAR, the precautionary principle has to be adopted and the conclusion reached that no such cumulative assessment has been undertaken.
10. As stated by Peart J. in *Ó Grianna*, the fact that all parts of the development are not considered does not “*justify treating phase 1 as a stand-alone project when in truth it is not. Rather, it points to a prematurity in the seeking of permission for the construction...*”
11. Put simply, this application is premature in circumstances where it does not consider the entirety of the development and where all the potential impacts are not assessed and the application must therefore be rejected.

History of Avoidance of EIA – F17A/0113

12. There is a history of avoidance of EIA in respect of the Corballis lands. The history of the planning permission granted in respect of Phase 1 of this Development (Ref: F17A/0113) is a stark warning of the cavalier manner in which environmental law is being repeatedly flouted on the Donabate Peninsula.
13. This is a recurring problem in the Donabate area where applicants and the planning authority have to date taken the view that only the potential impacts of an individual project need to be assessed, in breach of European law and of the case law of the Court of Justice of the European Union.
14. Fingal County Council, as the planning authority with responsibility for enforcing compliance with environmental and planning law, is obliged to take its duties in this regard seriously and to prevent reckless development and the continued despoliation of the natural habitat in this area.
15. Fingal Co. Co., in relation to F17A/0113 initially correctly made the decision in respect of this application that an EIAR was required.
16. In its decision of 20 April 2017, where further information was sought from the applicant, Fingal Co. Co., at paragraph 4, stated:

“The Applicant is requested to undertake EIA with respect to this development in accordance with Article 103 of the Planning and Development Regulations 2001 (as amended). The Planning Authority is concerned that the quantum of development proposed and the piecemeal nature of its delivery gives rise to project splitting.”
17. Thus, Fingal Co. Co. made a clear decision, pursuant to Art. 103 of the Planning and Development Regulations 2001 (as amended) that an EIAR was required to be submitted by the applicant.
18. Art. 103(1) states:

“Where a planning application for sub-threshold development is not accompanied by an EIS, and the likelihood of significant effects on the environment cannot be excluded by the planning authority, the planning authority shall make a determination as to whether the development would be likely to have significant effects on the environment and where it determines that the development would be likely to have such significant effects it shall, by notice in writing, require the applicant to submit an EIS and to comply with the requirements of article 105.”
19. Compliance with this is a mandatory requirement and, in the absence of compliance with same, the planning application cannot be further processed.
20. Upon giving this notification to the applicant, there was a mandatory obligation on the applicant to submit an EIAR and to comply with the provisions of Art. 105 of the Planning and Development Regulations 2001 (as amended) which, *inter alia*, provide for public participation in the EIA process.
21. None of this happened.

22. In its response to the request for further information of 20 April 2017 by the applicant on 19 October 2017, the response by the applicant to the mandatory request for the submission of an EIAR was, at numbered paragraph 4:
- “An Environmental Impact Assessment has been carried out by Fingal County Council for both the Development Plan and the LAP for Donabate. This planning application is at a level that is just over 50% of the threshold for an EIAR. It is noted that the applicants [sic] entire land holding west of the railway is included in this application. Following discussion, the Planning Authority have [sic] agreed that an EIAR is not required and that an Environmental Report should be included. Please refer to DBCL Planning Consultants Environmental Report attached.”*
23. It should be noted at this juncture that the obligation to submit an EIAR was mandatory and that it was not open to the applicant to refuse to comply with same. Further, the reference to an EIA being carried out as part of the Fingal County Development Plan and the Donabate Local Area Plan preparation process is spurious as such cannot equate to the obligation on the applicant in the instant case.
24. The applicant then made reference to discussions had with Fingal Co. Co., which culminated in an agreement between the applicant and Fingal Co. Co. that no EIAR was required to be submitted.
25. With respect, it was not open to Fingal Co. Co., having determined that an EIAR was required and, having notified same to the application pursuant to Art. 103 of the Planning and Development Regulations 2001 (as amended) to, in oral discussions (or for that matter in any manner) simply decide to ignore its own determination that an EIAR was required. The statutory context could not be clearer in this regard. Once the planning authority has made its determination, it must be complied it and there is no legal basis upon which the planning authority was permitted to withdraw such a notification once it has been issued.
26. What occurred here was that the applicant, in flagrant breach of its obligations to assess the potential environmental impacts of this proposed development, situated in an environmentally sensitive area, simply failed to comply with the provisions of the Planning and Development Regulations 2001 (as amended) (and by extension, the Planning and Development Acts 2000 to 2016 and the EIA Directive) and the public, as a consequence, was deprived, from an opportunity of participating in the process in breach of the EIA Directive, the Public Participation Directive and the Aarhus Convention.
27. In the Planning Officer’s Report of 1 December 2017 (on foot of which planning permission was granted by Fingal Co. Co. on 1 December 2017) (which planner’s report is marked as having been typed-up on 4 December 2017), the issue of the failure to submit an EIAR was dealt with as follows:
- “The response notes that An [sic] EIA has been carried out by Fingal Co. Co. for both the Development Plan and the Donabate LAP. The subject application is below the threshold for an EIAR in terms of site area and quantum of housing proposed. As such thresholds are not exceeded it is agreed with the Applicant that the current proposal does not require EIAR. Furthermore it should be noted that a detailed Environmental Report prepared by Declan Brassil and Associates has been lodged by the Applicant as an aid to assessment. While the response is noted, it is important that subsequent applications for housing development on LAP [sic], either by the Applicant or third parties, may require the preparation of EIAR.”*

28. This is, quite frankly, an astonishing statement by the Senior Executive Planner in Fingal County Council.
29. Firstly, the contention by the applicant that the explicit requirement for the submission of an EIAR (and the consequent public participation in the process) can be ignored is accepted, in the absence of any legal basis for doing so.
30. Secondly, it is noted that the generic Environmental Report submitted is an aid to assessment. What assessment that might be is not recorded. It is certainly not an Environmental Impact Assessment as is required.
31. Thirdly, and most egregiously, the statement not only explicitly endorses project splitting by stating that an EIAR may be required in respect of other phases of this development but posits the possibility that the absence of an EIAR which was required to be carried out in respect of this development could be cured by a subsequent EIAR in respect of a later phase of the development.
32. This could not constitute a clearer breach of Art. 2(1) of the EIA Directive which states:
*“Member States shall adopt all measures necessary to ensure that, **before development consent is given**, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment.”* (emphasis added)
33. It is simply not possible to conduct an EIA after the fact when development has already taken place.
34. In summary, the decision by which planning permission was purported to be granted by Fingal Co. Co.:
- (i) in the absence of a statutorily required EIAR,
 - (ii) in circumstances where there appears to have been some oral arrangement whereby Fingal Co. Co. agreed to somehow ignore their statutory obligations,
 - (iii) where Fingal Co. Co. explicitly endorsed project splitting in order to seek to avoid the obligation to submit an EIAR and to undertake an EIA pursuant to the EIA Directive (and national implementing legislation), and
 - (iv) where Fingal Co. Co. appears to suggest that an EIAR can be undertaken in respect of this proposed development after the fact as part of an application for permission to develop a further phase of this development
- was void and ultra vires the powers of Fingal Co. Co.
35. And of course, this brings us neatly to the instant application where, of course, there is no EIA of the F17A/0113 site in terms of cumulative impacts when taken together with the instant application.
36. It is imperative that Fingal Co. Co. puts a stop to the routine disregard for environmental law being perpetrated on the Donabate area and takes its obligations in this regard seriously.

Appropriate Assessment Screening Report and Natura Impact Statement

37. As will become clear from the below, the Appropriate Assessment Screening Report and Natura Impact Statement (the “Report”) submitted as part of this application is fundamentally flawed, incomplete and does not provide a basis upon which the competent authority can reach a conclusion that the development will not adversely affect the integrity of the two SACs/SPAs (at Rogerstown Estuary and Malahide Estuary) adjacent to the development and thus the competent authority cannot agree to this development and must refuse permission for same.
38. The slapdash, cut and paste nature of the AA Screening Report and NIS is clearly illustrated from the outset by the reference to the competent authority for this application being An Bord Pleanála rather than Fingal Co. Co.
39. The Report purports to follow best practice as set out in the European Commission guidance note for the “*Assessment of plans and projects significantly affecting Natura 2000 sites Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC*” (2001).
40. However, it fails to take in account significant developments in the approach of the European Commission in this area up to and including its most recent guidance document of 21 November 2018 entitled “*Managing Natura 2000 sites - The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*”. While it should be noted that this document post-dates the preparation of the Report to hand, it is merely the latest iteration, of which there have been many since 2001, of the evolving consideration of this area of European Environmental Law. It is certainly not best practice for an expert to continue to rely on a guidance document some 17 years old in such a rapidly evolving area of law and practice.
41. Reliance is also placed on the 2009 Guidelines from the then Department of the Environment, Heritage and Local Government on “*Appropriate Assessment of Plans and Projects in Ireland*” and, while this is the most up-to-date iteration of these guidelines, they date from 9 years ago and are outdated and have not been updated to take account of the latest developments in this area.

Article 6(3) of the Habitats Directive

42. To turn then to the obligations under the Habitats Directive:
43. Article 6(3) of the Habitats Directive states:
*“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, **either individually or in combination with other plans or projects**, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”* (emphasis added)
44. The Report undertakes firstly a screening and correctly (albeit for incomplete reasons) concludes that it cannot be ruled out that significant effects could occur to the Malahide Estuary SAC/SPA.

45. Having done so, the Report proceeds to step two of the process which it states is to assess whether the effects identified are significant and to assess, whether in light of proposed mitigation measures, the integrity of the European Site will be adversely affected. The Report concludes that it will not be if three suggested mitigation measures are adopted. It states that “[t]his conclusion is based on best scientific knowledge.” As we will see below, that is not a sustainable conclusion.

Extent of Assessment

46. As regards geographical scope, it should be noted that the provisions of *Article 6(3)* are not restricted to plans and projects that exclusively occur in or cover a protected site; they also target plans and projects situated outside the site but likely to have a significant effect on it regardless of their distance from the site in question (see cases *C-98/03 Commission v. Germany* paragraph 51 and *C-418/04 Commission v. Ireland* paragraphs 232, 233).
47. In fairness to the report, the lands adjacent to the Malahide SAC/SPA are considered briefly.
48. The Report states (at pp. 6 and 11) that, while the site does not encroach onto the Malahide Estuary SAC and SPA, the site boundary will be approximately 10m from the boundary of the SAC/SPA albeit separated from it by a public road. This is perilously close to the SAC/SPA.
49. The Report notes that birds do feed and roost on the lands outside of the SAC/SPA which form part of this proposed development and the Stage 1 Screening concludes that there will be a loss of feeding/roosting areas for birds on the lands in question and, as such significant effects on the birds cannot be ruled out. This is a key finding, particularly in light of the fact that it cannot be mitigated against, as discussed below.

Other Plans or Projects

50. As is stated in *Art. 6(3)* the assessment must include the cumulative potential impacts of other plans and projects, together with the project in question.
51. A series of individually modest impacts may, in combination, produce a significant impact. As the Court of Justice of the European Union has pointed out:
“the failure to take account of the cumulative effect of projects in practice leads to a situation where all projects of a certain type may escape the obligation to carry out an assessment, whereas, taken together, they are likely to have significant effects on the environment” (see cases *C-418/04 Commission v. Ireland*, *C-392/96 Commission v. Ireland* paragraphs 76, 82).
52. It is important to note that the underlying intention of this in-combination provision is to take account of cumulative impacts, and these will often only occur over time. In that context, one can consider plans or projects which are completed, approved but uncompleted, or proposed.
53. There has been a complete failure to consider any other plans or projects in the area in the assessment undertaken.

54. The extraordinary statement is made on page 28 of the Report “*that the likelihood of significant effects to the Rockabill to Dalkey SAC, the Rogerstown Estuary SAC/SPA and the Malahide Estuary SAC/SPA can be ruled out. **No significant effects are likely to occur to these areas either along [sic] or in combination with other plans and projects.***” (emphasis added)
55. With the greatest of respect for the author of this Report, **nowhere** in the report is there any mention, let another any consideration or analysis of any other plans or projects in the area.
56. This is simply extraordinary.
57. The project description given at p. 9 is as follows:
*“The project will require clearance of land within the red line boundary, including internal hedgerows. The construction phase will include the installation of surface water, foul wastewater and water mains infrastructure (including the construction of a foul pumping station), followed by the building of the internal roads with standard materials and methods. Post-construction the site will be landscaped, to include artificial lighting... **Although this application does not include any housing units, it is designed to facilitate such development.**”* (emphasis added)
58. Even the most cursory analysis of the current development would lead one to realise, as the author points out, that this development is not a stand-alone development but is rather step one of a housing development.
59. Given this, how the author blithely fails to even mention, let alone consider, the potential impacts of the housing elements of the development which (as should not even need to be pointed out) will have impacts of much great import on the SAC/SPA than the mere construction of the facilitatory infrastructure applied for here is of grave concern and undermines the entire basis of the Report and assessment.
60. Not only does the Report fail to consider that the proposed development is only a small part of the larger plan to construct housing on the site, it fails to consider any of the multitude of other developments taking place in the area.
61. For example, the Donabate Distributor Road is currently under construction (and planned to be completed in 2019). This major road, which will be a dual carriageway when the project is fully completed (only a single carriageway is currently under construction) runs alongside the boundary of this proposed development on the side closest to the Malahide Estuary SAC/SPA and indeed serves this development. Yet, remarkably, it is not even mentioned in the report and its potential cumulative impacts with those of the proposed development are not considered or assessed.
62. Further, the proposed development is the commencement of Phase 2 of development of what are called the Corballis lands, pursuant to the Donabate Local Area Plan. Phase 1 of the development is currently under construction (Ref: F17A/0113) adjacent to the proposed development and a portion of Phase 2 of the development is at pre-planning stage. Again, these developments are completely ignored.
63. There is also a development under appeal to An Bord Pleanála called Tilberry for 151 units (Ref: F17A/0373) to the North of the site.

64. This is just a selection of the developments most contiguous to the proposed development. There are numerous other projects underway in Donabate which also should have been assessed.
65. For this reason alone, the Report is fundamentally flawed and the competent authority must refuse permission for the proposed development.

Nature of the Assessment

66. Assessments that confine themselves to general descriptions and a superficial review of existing data on ‘nature’ within the area cannot therefore be considered as ‘appropriate’ for the purposes of Article 6(3). According to the Court of Justice of the European Union, the appropriate assessment should contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the site concerned (see case *C-304/05 Commission v. Italy* paragraph 69, 53). It cannot be held that an assessment is appropriate where information and reliable updated data concerning the habitats and species in the site are lacking (see case *C-43/10 Aitoloakarnanias v. Perivallontos* paragraph 115).
67. Yet, that is precisely what has happened here in that the Report confines itself to general descriptions and a superficial review of existing data.
68. The Report states, on page 8, that “*there is **no evidence** that species listed in Annex II of that [the Habitats] Directive are present*” (emphasis added) on the site. This again calls into question what, if any, field surveys were undertaken as it appears that the author of the Report merely relied on the conservation objectives published by the NPWS in respect of the SACs in the area (the Report states that two site visits were undertaken on 2 August 2017 and 21 March 2018).
69. The otter (*lutra lutra*) is an Annex II and Annex IV protected species under the *Habitats Directive* and enjoy the highest level of protection. While it has been omitted from the list of species for which the SACs are designated, this appears to have been an oversight.
70. A young otter pup was knocked down and killed by traffic on the Portrane Road on 29 November 2018, around 2-3km from the subject site. This was notified to the Biodiversity Officer in Fingal Co. Co. and to the NPWS.
71. Otter territories range from 2km (at coastal locations) to more than 20km at upland streams (see <https://www.mammals-in-ireland.ie/species/otter>). The Report has failed to even identify the existence of otters on the Donabate Peninsula and, as they are not even identified, they have not been assessed as part of the AA Screening Report and NIS.
72. The existence of otters in the area is not something which is unknown within the scientific community. The *Fingal Biodiversity Plan 2010-2015* (published in December 2010 – it is the current Plan with a new plan currently being drafted) (available at www.fingalbiodiversity.ie/res_general.html) notes, at paragraph 3.1 – EU Habitat & Bird Directives that:
*“The **most important annexed species in Fingal are the Otter, Atlantic Salmon, several bat species and various cetaceans** (see Appendix VIII for more detail)... The lands surrounding the designated sites are also of key importance, particularly for birds, as feeding or roosting grounds. The farmlands and amenity grasslands surrounding the estuaries are of prime importance to Brent Goose for example.*

However these lands are subject to pressures from development, infilling and land use changes, which in return may affect the Brent Goose population in the estuaries.” (emphasis added)

73. The list of Biodiversity Actions set out in Chapter 9 of this Plan includes:
“1. *Implement masterplan for Rogerstown Inner Estuary and develop and implement plan for Rogerstown Outer Estuary.*”
Among the target species for this action is the otter.
“26. *Prepare and implement masterplan for Malahide Estuary SAC and SPA.*”
Again, amount the target species for this action is the otter.
74. Thus, it is clear that the presence of otters in the area is well known in the scientific community and the failure to consider the potential impact on the otter population in the area renders the entire Report nugatory and permission for the proposed development must be refused.
75. Somewhat extraordinarily, the Biodiversity section of the EIAR which was produced by the same author as the Report, briefly discusses the Fingal Biodiversity Plan at section 6.3.3.2 but again, fails to notice the reference to otters contained in same. Section 6.3.4.2 – Fauna – does mention otters but does not go on to state that there are otters in the area, which is a clear error.
76. An assessment under Art. 6(3) may not have *lacunae* and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned (see *Case C-323/17 People Over Wind and Sweetman v. An Bord Pleanála* and *Case C-164/17 Sweetman v. An Bord Pleanála*). This has not occurred here. The assessment is replete with holes and utterly lacking in detail and thus it cannot conclude, particularly given the facts as set out above, that all scientific doubt has been removed in respect of the effects of the proposed works on the protected areas concerned.

Mitigation Measures

77. Mitigation measures must be directly linked to the likely impacts that have been identified in the appropriate assessment and can only be defined once these impacts have been fully assessed and described in the appropriate assessment. Thus, mitigation measures can only be considered at this stage and not at the screening stage. This raises the question as to how can you can propose to mitigate for something (otters) which were not even assessed.
78. Mitigation measures, which aim to avoid or reduce impacts or prevent them from happening in the first place, must not be confused with compensatory measures, which are intended to compensate for any damage that may be caused by the project. Compensatory measures can only be considered under Article 6(4) if the plan or project has been accepted as necessary for imperative reasons of overriding public interest and where no alternatives exist.
79. For the competent authority to be able to decide if the mitigation measures are sufficient to remove any potential adverse effects of the plan or project on the site (and do not inadvertently cause other adverse effects on the species and habitat types in question), each mitigation measure must be described in detail, with an explanation based on scientific evidence of how it will eliminate or reduce the adverse impacts which have been identified. Information should also be provided of how, when and by whom they will be implemented,

and what arrangements will be put in place to monitor their effectiveness and take corrective measures if necessary. The need for definitive data at the time of authorization is also raised in case *C-142/16 Commission v. Germany*, paragraphs 37-45.

80. If the competent authority considers the mitigation measures are sufficient to avoid the adverse effects on site integrity identified in the appropriate assessment, they will become an integral part of the specification of the final plan or project or may be listed as a condition for project approval. If, however, there is still a residual adverse effect on the integrity of the site, even after the introduction of mitigation measures, then the plan or project cannot be approved (unless the conditions set out in Article 6(4) are fulfilled).
81. If we examine the “mitigation measures” proposed, we can see clearly that while the first two can properly be described as such, the third measure is not a mitigation measure but rather a compensatory measure. Further, they are not described in detail, as is required, but merely cursorily noted.
82. What Measure 3 proposes is that, to compensate for the loss of lands which are used by birds for feeding and roosting, other lands will be set aside in the Donabate Nature Park which park will be created and landscaped to provide an alternative feeding and roosting area for the displaced birds.
83. This, quite simply, is impermissible and, again, the Report displays an utter disregard for what is required and permitted under the Habitats Directive.
84. This is made clear in the recent judgment of the Court of Justice of the European Union in *Case C-164/17 Sweetman v. An Bord Pleanála* which considered the question of the permissibility of compensatory measures. It notes that there is a distinction to be drawn between protective measures forming part of a project and intended to avoid or reduce any direct adverse effects that may be caused by the project in order to ensure that the project does not adversely affect the integrity of the area, which are covered by Art. 6(3), and measures which, in accordance with Art. 6(4) are aimed at compensating for the negative effects of the project on a protected area and cannot be taken into account in the assessment of the implications of the project.
85. Where a measure falls under Art. 6(4), as is the case with the proposed Measure 3 in the instant application, where the site concerned hosts a priority habitat or species (as is the case here where the lands provide a feeding and roosting environment for birds on the neighbouring SAC/SPA), only considerations relating to human health or public safety can be taken into account when deciding whether a project can nonetheless proceed. Needless to say, this extremely high bar is not reached in the current proposed development as the development of housing does not benefit from the exemption for matters necessary for human health or public safety.
86. Such a compensatory measure as is proposed here is **not** permitted and the application must therefore be rejected.

Material Breach of Donabate Local Area Plan

87. This application, if approved, would constitute a material breach of the provisions of the Donabate Local Area Plan 2016 (the “LAP”). The proposed development does not accord with the provisions of LAP and, in particular, in relation to the sequencing of development provided for in the LAP.

88. The Corballis lands are to be developed in three phases. Phase 1 is already under construction. Phase 2 is supposed to comprise the remainder of the Corballis West lands and a small portion of the Corballis East lands.
89. What is being proposed here is to entirely ignore the statutory sequencing and to skip the Phase 2 Corballis West lands and to proceed directly to Phase 3 and to develop the entirety of the Corballis East lands.
90. This constitutes a material breach of the LAP and the application should therefore be rejected.

In view of the above, Fingal Co. Co. has no alternative but to reject the application.

Yours sincerely

Corina Johnson
Secretary
Donabate Portrane Community Council