

## **National Paediatric Hospital proposed at Eccles St**

Closing statement to the oral hearing by An Taisce, the national trust for Ireland (presented by James Nix)

For reasons including those set out below, An Taisce submits that the proposed development warrants refusal by An Bord Pleanála:

### **Development Plan and Local Area Plan**

The proposed development, by reason of its bulk, massing, height and scale would have an adverse impact on the O'Connell Street Architectural Conservation Area contrary to the Dublin City Council Development Plan. The prominent visibility of the structure within the conservation area, representing an anomalous presence on the skyline by the admission of the applicant, and an abrupt transition in scale contrary to Dublin City Council Development Plan, would be in contravention of that Plan (cf par. 15.10.14 of the Plan).

It is the policy of Dublin City Council "to protect and conserve" the character of the O'Connell St Architectural Conservation Area (FC41), including the GPO, a protected structure. However, the proposed new building would be a "significant visual interruption"; it "dominates the view, appearing high above the broadly coherent roofline of the principal and iconic boulevard of the capital city" (according to Mr Paul Arnold on behalf of the applicant). Having regard to this, and the view north along O'Connell Street being a "Key View" under the City Development Plan, the proposed development is not in accordance with the Plan.

The proposed development, by reason of its bulk, massing, height and scale would have an adverse impact on a protected structure of national and international importance, St George's Church, on Hardwicke Place. The proposed development, as acknowledged by the applicant would have an adverse impact of the highest order of this protected structure, being in "conflict with the existing dominance of the set-piece of St. George's Church ... notwithstanding the curvilinear modelling" of the super structure of the proposed building.

Having regard to the conflicts outlined above, and those conflicts being acknowledged by the applicant, the proposed development would contravene the objectives set out in the city plan to cherish the landmarks of the capital and "to protect the scale and vitality of city streets" (SC2).

Again, placing reliance on the applicant's own Environment Impact Statement (see above), by reason of its bulk, massing, height and scale, the proposed structure is not in a position to "successfully incorporate into the existing urban grain" (Urban Form and Spatial Criteria; section 17.6.3).

Relying again on the applicant's own Environment Impact Statement (see quotes above), and the acknowledgment that the structure would be an anomaly on the skyline, the proposal is not in a position to "create a positive relationship with the immediate surroundings, both

existing and proposed buildings and prominent features in the vicinity, as well as streets and existing open spaces” (Urban Form and Spatial Criteria; section 17.6.3).

Again, relying on the applicant’s own Environment Impact Statement, the “monumental scale” of the proposed building will have an adverse impact of the highest order on the Mater Misericordiae hospital building on Eccles St, a protected structure of national significance. The impact on protected structures in surrounding streets, including Nelson St, St. Joseph’s Parade, St Joseph’s Place and Blessington Place will be highly adverse. Therefore, the objective “to protect the built and natural heritage of the city” is not met, and neither is the objective to ensure that building are constructed on sites “of an appropriate size and context” (Urban Form and Spatial Criteria; section 17.6.3).

Again, by reason of its bulk, massing, height and scale, the objectives set out in the local area plan to “ensure that the height of new development responds to the receiving environment”, and that “height and massing of proposed new development does not impact negatively on ... protected structures and the social and historic heritage of the area” are not met (key objectives of the Mountjoy / Phibsborough LAP, 2008).

Similarly, and having regard to the bulk, massing, height and scale of the proposed structure, and that it would be an anomaly on Dublin’s skyline according to the applicant, the objective to ensure that “high buildings create a visually and architecturally coherent ... contribution to the skyline in terms of slenderness ratio and height” is not met. Neither are the objectives to “ensure proposals for high buildings will have no negative local or city-wide impacts” and “to protect and frame important views and vistas” (see par 16.4.2(6) of the City Development Plan), the latter having relevance also to St George’s Church, where the adverse impact will be of the highest order.

Objectives defined in the Local Area Plan described as key, or “non-negotiable”, are not met. All new development must be “sympathetic to the established character” under Key Mixed Use Objective 8 of the Local Area Plan. A wide range of other objectives are not met, specifically in terms of

- “Slenderness ratio (minimum 3:1) and height (maximum 50m)”;
- “Avoid monolithic buildings which overpower their surroundings”; and the requirement to be
- “sensitive to local context”.

The development parameters in terms of slenderness and plot ratio have not been met. The applicant acknowledged that in the event such tenets were respected working under the brief “then the building simply would not work” (Mr Sean Mahon, Tue 1 Nov 2011, responding to the written statement of BLEND Residents). This should, in An Taisce’s view, have prompted a deeper examination of alternatives. However, it appears the development project became somewhat committed to an unsuitable site at an early stage without fully appreciating

the stark implications in terms of bulk, massing, height and scale, and that this early and misguided commitment detracted from the examination of alternatives.

### World Heritage Site

We are not satisfied that the proposed structure would not pose an unacceptable risk to a bid from Dublin to be recorded on the list of World Heritage Sites. The proposed development may prejudice such an application, or the geographic extent of such an application, to the point of removing much, or all, of the north city. Removal of the north city, or an expansive area north of the Liffey, would have to the potential to hinder economic, social and equality objectives set out the Dublin City Plan and in national policy.

The applicant attempted to make out the proposition that new big buildings need not compromise the capacity of a city to remain registered on the list of World Heritage Sites. However, the bulk, massing, height and scale of buildings shown in Amsterdam, Graz and Bruges proved to be incomparable.

A building of greater similarity in terms of bulk, massing, height and scale to that now before the Board – namely the Centre Monnaie in Brussels - was shown to the hearing by An Taisce, and the adverse impact was apparent.

The key point is this: a modern building by simply being modern won't necessarily detract from a historic core - and An Taisce pointed to many examples in Temple Bar for instance during the hearing - but considerations bulk, massing, height and scale, are critical (see further above).

### Alternatives

There is no evidence that even a screening process in respect of Strategic Environmental Assessment took place in 2006. The proposal involves significant environmental effects in terms of land-use as well as town and country planning, and both of these headings are set out in the Directive (at Article 3). Ireland's plan or programme, in seeking to consolidate paediatric hospitals, bring it under Directive 2001/42.

It is worth taking a moment to map out what mature and considered reflection of significant environmental effects would have – and does - entail.

The price of failing to observe SEA is high. Whatever assessment took place in 2006, it occurred behind closed doors. Moreover, it is not clear that the predecessors of the applicants understood the implications in terms of land-use, planning and environmental impact, of the decision they were making. In fact the evidence points the other way, and that the forerunners of the applicant had an insufficient appreciation of the constraints that the size of their preferred site would have regarding urban form and the built environment.

The decision in mid 2006 is surrounded by unseemly haste. As shown in submissions before the Board (e.g. BLEND residents), unreliable reasoning entered the process with the use of ill-founded criteria with an advantage of the St James's location being perversely cast as a disadvantage. That, and another dubious factor, the notion that the selection of Eccles St would deliver a completed building by 2010, were selected, strangely, as deciding factors.

Where were considerations of "significant environmental effects"? According to the former CEO of the applicant, the selection of the instant site was "a political decision, a northside job" (Mr Philip Lynch, March 2011). However, in the midst of these matters circling above the decision-making process, the Board must look to a simple issue: were the requirements of SEA followed?

It is clear in 2006 they were not. Again, in 2008, reasonable alternatives were not assessed as the 2006 decision was taken as *fait accompli*. In July 2011, and again this October, we witness a failure to follow SEA. The only real counter-argument that An Taisce has recorded is a suggestion by the applicant that it should have entered the judicial process in 2008, pointing out the failure to observe SEA by that stage.

Is this argument real? Let us imagine, for a moment, going to the High Court in 2008 as a litigant seeking judicial review against the risk that at some point in the future a structure of undue bulk, scale, height and mass might be the subject of a planning application – because an inadequate SEA left open that possibility. Is the applicant really suggesting such an approach?

A case along these lines would have been met with the sound and realistic conclusion that such a case was wholly premature. The building envisaged might never be designed – in fact, tall slender structures would lie in the place of whatever anomaly imagined by our would-be litigants. In short, the High Court would give short shrift to a request of it to adjudicate on fears and premonitions. Litigation is not entertained in such vacuums. The proper course, as long-established authority shows, is to first ventilate the issue within the planning process – if and when the eventuality materialises - and to enter the High Court in the event the law is not respected.

Our hope is that the law will be respected.

Why does respecting the SEA Directive matter? As conveyed by the view of Mr Lynch (noted above), failure to follow the approach set down under European Law has left former Minister Harney and former Taoiseach Ahern haplessly open to the very accusations that respecting the law would have avoided.

Legal protections are there for a reason, and they can act to protect decision-makers as well as the public concerned. With the failure on SEA, both decision-makers and the public risk being thrown into a deep financial and planning morass. The consequences are grave.

As the applicant knows, and as medical witnesses have intimated, we are only at the beginning of a wave of hospital consolidations. (Mr Brendan Drum (former CEO of the HSE)

has stated Birmingham's new hospital, the Queen Elizabeth, could cater for the entire area of Dublin "without taking a deep breath" and that "huge consolidation" is on the way.)

Clearly, the Eccles St site could never provide the area required for the scale of medical consolidation that is in prospect. A site too small remains too small. Proper planning and sustainable development is not being respected. In planning a paediatric hospital, Ireland cannot afford to lock itself into a location that does not offer a platform for coming development.

We re-emphasise the points made during the hearing that the applicant told the Board that it wasn't going to assess alternatives. This was met plainly by the Board which pointed out that the applicant ran the risk of non-compliance with EU law.

### EIA Directive

Again, by way of counter-argument, the applicant quoted from the Klohn judgment, noting the loose and forgiving language of the Directive and its low threshold. That is precisely An Taisce's point. Even within that loose and forgiving language, the applicant here does not even meet that low threshold. The decision in Klohn is built upon the facts of that case. There alternative locations were studied. Alternative designs were also assessed.

Here, confining ourselves to the EIA process in 2011, the applicant studied different building forms. But is the study of alternatives under under Irish planning law and practice to be reduced to this? A study of different building forms is all that's needed? We submit that the low threshold laid down in Klohn must be respected – with the confined of the EIS a study of alternative locations, examined as part of that process – must taken place. To decide otherwise is to render EU law devoid of meaning.

The High Court, the Environmental Protection Agency and An Taisce are all of the same view: "Alternative Locations" as well as "Alternative Designs" are to be studied (see An Taisce written submission).

A final point regarding Cost Benefit Analysis is provided below.

### Cost Benefit Analysis

The Board's own decisions show that Cost Benefit Analysis is a relevant consideration (its decision on Metro North, for example). As pointed out previously, the submission by the applicant fails to provide an NDP-complaint cost-benefit analysis, and hence does not accord with the NDP itself.

It was never suggested that a cost benefit analysis will be the sole criterion by which a relevant application, namely an applicant entailing more than €30m of taxpayers' money is judged. But, as previous decisions of the Board show, cost benefit is a relevant consideration regarding proper planning and sustainable development.

In the Metro North decision, An Bord Pleanála found that the benefits of the project would outweigh its costs. However, this was not the case for all of the proposed rail line, and so the Board shortened the proposal, omitting a number of stations and 3 – 4 kilometres of rail line.

To respect the NDP, only an NDP-compliant submission should be put before the Board.

Consider, for a moment, situations – and this is one of them - where the Board is not provided with a NDP-compliant cost benefit analysis showing that the project is feasible and delivers on its financial objectives.

Imagine further that An Bord Pleanála were to decide to grant this application. And then 2 or 3 months down the road it was shown that the cost benefit analysis (undertaken as per the NDP) proves the project makes a negative return.

This would, in the first instance, cause considerable embarrassment to the Board. It would, in short, have given the green light to a project that never had a chance of making economic sense in the first place. For Ireland's national trust, the public credibility of An Bord Pleanála is critical – and failing to respect all of the NDP risks placing that reputation in jeopardy.

On the other hand, insistence of the requirements of chapter 12 of the NDP helps protect and ensure this. Whatever about 2006 and the height of the Celtic Tiger, these are more sober times, and important matters of public policy arise.

For the first time in 90 years Ireland has lost its fiscal independence and, in all decisions with economic impact, must answer to a programme decided not by our electorate but by entities beyond the State.

Expending a great deal of time and energy considering and debating proposals which may not make basic financial sense is a luxury we can no longer afford. Or put simply, if there ever was a cushion to contemplate projects which do not add up, that cushion is long gone. Submission of a NDP-compliant cost benefit analysis as part of an EIS avoids the waste of time and administrative energy that could otherwise result.

Sustainable planning is about sequential planning. If it does not add up to build, it does not add up to drag the public concerned into a highly-demanding process. The Railway Procurement Agency has long been providing CBAs as part of its EISs, as has the National Roads Authority.

Since 2008 carbon dioxide emissions and other pollutants are weighed into an NDP-compliant cost-benefit analysis. In this way information required under indent 3 of the EIA Directive is now being provided to the public concerned. This hearing heard nothing on these

matters, and so whether or not the proposal before us will save or raise CO2 emissions was never even broached. This is an increasingly vital consideration in the decision-making process.

In short, decision-makers and the public are missing information which should be provided.

Prescribed bodies, local residents and others have raised important questions with regard to ICT (Information Communications Technology) and sterilisation of medical equipment at the proposed hospital. Regarding ICT the hearing was informed that it was a matter of internal space allocation – that space would be found within the building, without itemising where. With regard to sterilisation the hearing was told there would be a shared facility with another hospital.

But, again, because there is no NDP-compliant cost benefit analysis in which these costs are itemised there is a stifling of public debate, increasing the risk of under-informed decision making.

If for example provision for off-site sterilisation increases costs by €8m, and provision for ICT raises costs by €72m, the proposal has suddenly risen from a €650m venture to a €730m proposal.

And this is even before additional theatres in Tallaght are considered which would bring costs to in excess of three quarters of a billion euro. With an EIS that contained an NDP-standard CBA we would actually see the full outline of the project, and its cost. Without even so much as a cost schedule we can't.