

Consultative Committee (CC)
to review negative impacts of seagull colonies
in urban areas

Minority Report

of the Balbriggan Community Committee
to be read in conjunction with
the CC's First Interim Report

To the Minister
cc Secretary General
Department of Culture, Heritage and the Gaeltacht (DCHG)
23 Kildare Street
Dublin 2

Monday 20th April, 2020

Minority Report (MR)

of the Balbriggan Community Committee (BCC)
to be read in conjunction with
the CC's First Interim Report (CCFIR)
(delivered to the Minister on 17th April 2020)

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Preamble

Like the rest of the country, the Balbriggan Community is in a quiet state of shock and no little trepidation regarding the sheer magnitude and severity of the COVID-19 crisis for our people and our nation which, in truth, is impossible to grasp.

All kinds of heretofore plans, objectivities, priorities, and pressures are cast in a very different and sobering light in the shadow of the existential threat to our society that is posed by the virus. We must wait and hope to see a change for the better soon and send all of our good will and support to those serving our nation on the front line of this momentous struggle.

For substantive reasons set out in this Report we as a committee representing our community were not in a position to accept the CC's FIR as submitted on Friday 17th April. We are therefore compelled to submit this Minority Report which should be read in conjunction with the CC's FIR.

In submitting our Minority Report we seek to achieve priority for the needs of communities negatively impacted by the urban seagull issues, thereby aligning Irish policy with the principles and policies routinely applied in all of our neighbouring jurisdictions. We also submit our Report for reasons of thoroughness, completeness, and in order to respect and reflect the effort and commitment invested in the project in good faith by all concerned since June 2019.

The Balbriggan Community Committee. *

Tom Cardiff, Gerry Coffey, Don Costigan, Gene McKenna, Dave Sorensen, Tony Everitt, Peadar O'Kelly
Email addresses and c/o Postal Address already provided.

** (Ink signatures were previously provided by BCC on documents and correspondence and cannot be given on this occasion due to compliance with COVID-19 social distancing measures.)*

1. Executive Summary:

1. BCC acknowledges and respects the Chair's efforts to make progress on the urban seagull issue. We are very disappointed to have been obliged to submit this MR. As the Chair will have reported his assessment of matters addressed by the CC since June 2019 in the CCFIR, we are not covering the same ground here. The Chair has been aware since early February of our divergence, and of our need to submit this MR due to the continuing absence of any real progress on the issue for citizens.
2. Taken together, **Key Background** set out in section 2, the summary of **Negative Impacts of Urban- living Seagull Colonies on Communities** in section 3, and our **Points of Concern with and Divergence from the CC** in section 4 convey the reasons for which we are compelled to submit our MR.
3. The CC was set up in June 2019, following a major Review of the Derogations Process in 2018. Its brief is to review the negative impacts of urban-living seagull colonies on communities and to make recommendations. After nine months of CC work, in our view, impacts on communities are neither properly understood nor acknowledged in the CC, and have only been lightly considered. Having taken four years to reach this point, BCC has not seen any evidence of urgency in DCHG or in the CC, other than from us, towards achieving meaningful mitigations for communities in a timely manner.
4. It would be wholly counter-intuitive based on our detailed knowledge of the issue, and on four years to date of work towards a proper public administration response to the issue, for us to sign the FIR. In our view its recommendations in the fall seriously short of meeting the urgent '**here and now**' needs of citizens impacted by urban-living seagull colonies. Specifically, the overriding priority of public health and safety is not articulated, and therefore we believe, not accepted. Our sense is that implementation of the FIR recommendations will stretch out far into the future and further delay necessary mitigations. In fact, the FIR does not even commit to mitigations happening at the end of its recommended processes and actions – while the urban seagull problem continues to escalate.
5. The next opportunity to mitigate in the interests of citizens arises on 1st May in the State-wide Declaration. Another opportunity will not arise until May 2021. In our view, the 2020.21 Declaration should be used to substantively mitigate negative impacts on urban communities.
6. Therefore, based on our experience to date in the CC, on what, in our view, remains lacking in the FIR, on recent statements to BCC by the Chair that "this is a long term issue", and on DCHG's handling of this issue since 2016, it seems clear to BCC that continued prevarication and delay, potentially for several more years, is what can be expected. This is not justifiable or acceptable.
7. As an MR essentially focusses on points of concern and divergence, we realise that we may seem to be overly negative. If that is so, it is by dint of the circumstances that exist. We have, therefore, made twelve carefully considered evidence-based recommendations in section 5, including our rationale for each one. We believe our recommendations are positive and comprehensive. They were provided to the Chair on 19th March for sharing with the members of the CC.
8. The FIR addresses long-term development of policy that may include e.g. research elements, targeting of hotspots and serious impacts from seagull colonies on communities and on other species, and holistically

informed conservation measures. BCC fully understands and respects the strategic approach being considered. This work can, we hope, ensue at a pace commensurate with resources and priorities in DCHG and other organisations that might be involved. **Many urban communities have very serious and escalating issues in the ‘here and now’ that are not being acknowledged in the CC or in the FIR.** This is unacceptable from a human perspective and needs to change now, not in one, two or more years’ time as seems likely to us based on the FIR.

9. In making our recommendations to you and also mindful of ideas discussed in the CC, we are acutely conscious that resources will be hugely constrained in coming years due to the unprecedented magnitude of the COVID-19 crisis, on top of many pressing national priorities. The major economic damage to our country being caused by COVID-19 must majorly constrain resource-dependent plans. However, this does not obviate the need for addressing urgent issues that impact on citizens.
10. As mentioned in our preamble, we are proceeding with this piece of work as undertaken for the sake of thoroughness and completeness, and to respect and reflect the effort and commitment invested by the CC members and the Chair since June 2019.
11. BCC’s composite view on the issue is that it is unjustifiable and totally unnecessary to continue to compel impacted communities to continue indefinitely to live with health and safety risks and several other negative impacts from proliferating high-density urban seagull colonies. Yet such unjustifiable compulsion is the indisputable continuing default effect of current DCHG policy and the status quo.
12. We have set out in Section 6 our analysis of policy deficits in Ireland compared to the UK and the EU. The effects of the deficits are a) an urban seagull problem here that is out of control, with escalating impacts on people, and b) in our view, a continuing damaging lacuna in public administration policy.
13. In our view, the lacuna exists in large part because there appears to be a standoff between DCHG and Local Authorities on responsibility for the issue and the resources needed to address it. Unless and until this lacuna is addressed, a General Licence is the minimum needed to enable communities in areas with high density colonies to protect themselves. A case-by-case system will not work unless Local Authorities are involved in providing managed services where high density colonies have established. In fact, a case-by-case system without Local Authorities will guarantee continued un-resisted and unmanaged proliferation of urban-living seagull species, escalation of the associated problems being caused, and a continued denial of protection to communities here compared to all neighbouring jurisdictions.
14. In a separate research strand on this issue, BCC tracked the development of the new seagull management policy for England published by Natural England (NE) in Jan. 2020. We provided the policy with our considered views on it to the Secretaries General of DCHG and the Dept. of an Taoiseach and to the CC Chair on 9th March 2019 - . See Section 7 and Appendix 1.
15. Developed in partnership by Defra and NE in eight months, the policy sets out eight principles, the first of which is **“the overriding priority of public health and safety”** and it repeats emphasis on **“the protection of life and health”**. Importantly, it also distinctly separates the conservation status of urban- and rural-living seagull colonies for policy and species management purposes and it states **“there will be no limits set on removal of nests, eggs and chicks in urban areas, and a sustainable 5% limit on controls will apply in rural**

(natural) habitats". The UK Government and England has recognised and acted on the need to proactively manage urban seagull colonies on public health and safety grounds with a policy based on up to date knowledge of circumstances that seems (at face value) to be well nuanced.

16. BCC's view is that for an august national public authority with impeccable scientific and conservation credentials and competencies, the strength of NE's commitment to public health and safety should be noted and be potentially influential towards solution considerations here. At present, DCHG remains, latterly, inexplicably and (detrimentally to communities) ambivalent on public health.
17. The new seagull management policy for England relies on 'Class' licences for high-density colony situations in urban areas e.g. for Local Authorities, Pest Control companies and contractors. A 'Class' licence is in effect a 'localised' or 'multi-case' regional General Licence for competent, trusted service providers such as Local Authorities. This structure means there are not thousands of individual licences to be processed in the very short (8 -10 weeks) operating window of the breeding season. More importantly, it also means that an important service is provided on a default basis and, by design, it caters for multiple circumstances (e.g. vulnerable people, elderly, uninformed, cash-strapped schools, hospitals and businesses). The UK and EU managed services solutions rely on extensive publicity and are fully transparent.
18. Importantly, a managed services approach run by Local Authorities also ensures a very high standard of observance of legal compliance and data gathering for conservation and monitoring purposes. FCC stated repeatedly to us since 2016 that it does not intend to 'apply for a licence' and will look at this issue when DCHG produces a national policy and addresses resource requirements. DCHG clearly wants to confine its role to issuing licences – nothing has changed since 2016 in our view.
19. It seems to us that Ireland is a long way off the structure and deep organisation needed for managed services, and will remain so until the policy lacuna that exists between DCHG and Local Authorities on the issue is recognised and addressed. In the interim, a simple General Licence enabling affected communities to protect themselves is needed – a case-by-case system cannot and will not work.
20. Therefore, our first and most urgent recommendation is to ask you to consider a simple General Licence as has been used in Northern Ireland and the rest of the UK for many years. This would ***create a consistent all island interim solution and would provide a no-cost and non-harm basic level of protection*** immediately to impacted communities. The long-term strategic solution being discussed in the CC, including reference to the England model when it is explored fully and if it transpires to be useful, can ensue with appropriate priority and available resources, in the knowledge that a sensible and basic protection regime – with no harm to seagull species – is in place for the genuine needs of impacted communities in urban areas around the country.
21. BCC again acknowledges and appreciates the non-harm Balbriggan Derogation commenced in the 2017 Declaration at the instigation of Minister Humphreys. While somewhat flawed in that it leaves people to their own devices whereas neighbouring jurisdictions provide Local Authority managed services, it enables recurring nest and egg removal in areas of the town occupied by very high density seagull colonies - as were clearly shown by the FCC drone/camera study in 2018. Thankfully the Derogation continues to provide essential relief in the zoned areas. There is some evidence that continuous disruption of nesting each season is gradually teaching the seagulls to nest elsewhere and we request that the Balbriggan

provision is retained in this and coming years – until a superior and comprehensive solution becomes available.

22. BCC knows from experience that such a recurring non-harm Derogation is necessary in urban areas impacted by very high density, freely proliferating, unmanaged seagull colonies and that is why we are recommending a simple General Licence for impacted urban areas pending delivery of a better solution in the future from the work of the CC. It is unjustifiable to compel impacted communities to wait indefinitely for a future solution as the problem escalates every breeding season.
23. The unconditional commitment to public health and safety from Defra and NE in their new policy could not be stronger and should, we recommend, influence your own considerations towards your decision(s), failing which the health and safety of Irish citizens will continue to be unjustifiably compromised. If the NE model does offer a contribution towards a solution(s) here, we firmly believe that all of its eight principles (Section 7 and Appendix 1) as enunciated must apply and must not be cherry-picked or diluted as they are clearly inter-dependent and cohesive.
24. As such a policy would obviously require time and resources to be studied and assimilated, we propose that accepting our recommendation for an interim solution using a General Licence for urban areas along the same lines as used in Northern Ireland would be a reasonable, considerate, and prudent step towards providing basic protection for impacted urban communities around the country.
25. In the round therefore, with the greatest respect, we ask you Minister to direct that DCHG policy decisions regarding urban seagull colonies should attribute **overriding priority, unequivocally, to “the interests of public health and safety”** as catered for in the national and EU legislation and in line with all of our neighbouring jurisdictions’ handling of this issue.
26. We believe that the first next significant step after an interim General Licence would be that a purposeful dialogue be initiated by DCHG with the Local Government Management Agency – refer to our recommendation 2 on page 27. Our biggest concern is that this issue must not be allowed to drag on and worsen into a fifth year and a sixth breeding season with no real efforts to address it.
27. Accordingly Minister, our Minority Report is hereby submitted to you with respect and in good faith.

2. Key background

- 1 BCC formed in May 2016 to seek help from DCHG with serious issues arising from high-density colonies proliferating in our town. We received an unhelpful and derisory response from DCHG in July 2016. That response stimulated a sustained campaign with unanimous cross-party political support. BCC collected a major petition across eight housing estates and including many small and large businesses. We also consulted a number of schools (Principals, teachers and parents) all of whom support the need for a solution to the negative impacts from high density urban seagull colonies. Our community committee represents the views of thousands of people across Balbriggan. Our petition was submitted to DCHG and the Minister in October 2016,
- 2 From 2016 onwards (PQ replies, media statements) DCHG has sought to place responsibility for addressing the issue onto Fingal County Council (FCC), and indeed onto the HSE. The Ministers for DHPLG and for Health are on the record stating that the seagull issue is “primarily a matter for DCHG”.
- 3 In Sept. 2016 DCHG wrote to us stating that a Review of the Derogation Process in 2018 would “**address all perceived threats**”. We rejected this two year delay being imposed by DCHG with no interim mitigation measures.
- 4 DCHG eventually met us in Dec. 2016 and acknowledged that Ireland is years behind the rest of the UK and EU on the issue and said they had “written to the HSE” about public health and safety, but still made no offer of mitigation for citizens. DCHG subsequently cherry-picked and misrepresented the HSE response omitting references to the “wider public health dimension and Local authorities”, relying instead on absence of a general disease threat to the general public being stated by the HSE, but ignoring pointers in the same correspondence from two public health doctors who referred to “the wider definition of public health and the Local Authorities”. DCHG’s case-by-case system has dispensed public health and safety licences for over thirty years – these were not predicated on a general disease threat to the general public. The old case-by-case system is not fit for purpose for the scale of the urban seagull problem and people are being harmed by this deficit.
- 5 In Feb 2017, Minister Humphreys met the five TDS then representing Balbriggan. Feedback from the TDs was that the Minister had directed that DCHG should devise a solution in time for the May 2017 (Annual) State-wide Declaration. No information was provided by DCHG between Feb. and May, and the Dept. did not reply to correspondence from our TDs. The limited Derogation issued was for ‘public safety’ only – i.e. it did not acknowledge ‘public health’. Our TDs subsequently informed us that the eventual Derogation fell short of what they understood to have been directed by the Minister.
- 6 On 1st May 2017 DCHG granted a restricted Derogation permitting removal of nests and eggs on public safety grounds, covering parts of Balbriggan. The Derogation is somewhat flawed in that it leaves people to their own devices to remove nests whereas all neighbouring jurisdictions provide Local Authority managed services. However, it is welcome because it enables serious cases to be addressed in the prescribed areas. The aim is that high-density breeding in many areas will reduce as non-harm disruption of nesting continues each season - teaching the seagulls to nest away from people. The Balbriggan Derogation is needed on a continuing basis until the issue is under control or pending a better solution.

- 7 BCC has continued campaigning for a fuller Derogation that aligns recognition of the public health dimension with all neighbouring jurisdictions, and we continue to seek involvement of FCC to provide managed services for nest removal. This is the common operational practice for years, on public health and safety grounds, across impacted areas in the UK, including Northern Ireland, and in Europe.
- 8 In 2018 FCC commissioned a small study using drone and camera technology across parts of Balbriggan, Skerries and Howth during the seagull breeding season – the first such study in Ireland. The camera results showed high-density colonies nesting in all three towns, including large colonies on our schools. This study was provided to DCHG but was essentially ignored. Also in 2018, at the behest of local Councillors, FCC carried out an extensive leaflet drop across Balbriggan addressing issues of food waste management, non-littering of food, and non-feeding of seagulls – another ‘first’ in Ireland. BCC understands the Leaflet drop was followed up with visits by Environmental Health Inspectors to all food businesses to emphasise food waste management policy. BCC understands FCC was/is willing to develop this initiative further. In 2019 we have seen prosecutions initiated for the first time in Ireland for feeding of pigeons and seagulls in residential areas – we believe under the Public Health Acts.
- 9 In short, the Balbriggan Community, co-operating with our Local Authority, unilaterally and thoroughly undertook and carried out all ancillary activities usually demanded prior to control measures. Such actions referred to as an ‘integrated management plan’ in the new NE policy.
- 10 Our Local Authority told us that it went as far as it could with the above measures “in the absence of a clear national policy from DCHG” and pending resolution of “new resources from DCHG for the new business that would be involved”. In our view, there is clearly a serious public policy lacuna here that is preventing a proper public administration response to the urban seagull issue. It is DCHG’s responsibility to address this lacuna in our view, based on all normal Departmental policy precedents.
- 11 DCHG’s major Review of the Derogations Process (wild birds) was completed in summer 2018, and reported on 22nd Oct.. With regard to urban seagulls, this review recommended a steering group to run for another two-plus years, to review impacts of urban seagulls on communities and make recommendations. **This Review did not “address all perceived threats”** as DCHG had claimed it would in Sept. 2016, on the contrary, it further and significantly pushed out any attempt at solutions for another three-plus years. A five year timeline with no mitigation measures for impacted communities spotlights entrenched ambivalence in DCHG regarding its responsibility under Article 9.1.a) of the Directive to protect “the interests of public health and safety” and an inexcusable disregard for citizens.
- 12 Despite further intense political representations seeking action, DCHG proceeded to form the “Consultative Committee” to run for a further two-plus years. Following a meeting on 17th Oct. 2018 – five days before the Review Report was published - with the five TDs then representing Balbriggan, BCC was invited by the Minister to serve on the CC. This CC was to “**meet soon and submit an Interim Report with recommendations in time for the 2019 Declaration in May**”. Subsequently, it did not in fact meet until June 2019 – thus adding another breeding season and another year’s escalation.
- 13 BCC was reluctant to join the CC based on our experience since 2016 with DCHG, and sought some written assurances from the Minister which were received on 15th February 2019. In our view, significant assurances have not been met by DCHG since then and in CC proceedings.

- 14 It is now almost four years (five breeding seasons) since BCC first sought help with this issue. In our view the recommendations in the FIR fall seriously short of meeting the urgent here and now needs of citizens impacted by urban-living seagull colonies. Specifically, the overriding priority of public health and safety is not articulated, and therefore we believe, not accepted. Our sense is that the FIR recommendations will stretch out far into the future and further delay mitigations for citizens. In fact, the CCFIR does not even commit to mitigation happening at the end of its recommended processes and actions – while the urban seagull problem continues to escalate.
- 15 There is no denying this background and the four year timeline to date with no significant policy or actions from the Department to mitigate impacts on urban communities around the country. Similarly, there is no denying that Ireland is majorly out of step on the issue with all neighbouring jurisdictions and legitimate “interests of public health and safety” continue to go unserved.
- 16 Regrettably, as things stand, it also seems to BCC that any substantive recommendations that might emanate from the CC in the legitimate interests of entire communities being negatively impacted are, unjustifiably, a long way off, if indeed such recommendations will ever be made.
- 17 Many of the reasons why we have been compelled to submit a MR derive from the above background.

3. Negative Impacts on Communities from Urban-living Seagull Colonies

1 We respectfully ask the Minister to consider the following questions and to put them to the senior officials in DCHG:

- 1) The true extent and seriousness of escalating negative impacts from proliferating seagull colonies on afflicted urban communities continues to be diminished and almost denied by DCHG – impacts of a scale and severity not experienced or tolerated from any other animal or bird species. Why is this so?
- 2) We have yet to receive a response when we ask the authorities or vested conservation interests what possible conservation goal is being served here, such that it justifies horrendous and escalating negative impacts for months every year on urban communities? Is the continued un-resisted and unmanaged proliferation of urban-living seagull colonies, despite the serious negative impacts arising, a deliberate policy position? If so, please justify?
- 3) Why are our authorities continuing to prevaricate and delay a proper public administration response to this issue here in Ireland when it has been and is being addressed for many years in every one of our neighbouring jurisdictions on public health and safety grounds?
- 4) Whereas people encounter seagulls occasionally in our cities and towns, with their aggressive behaviour, our concerns relate to the places where high density colonies live and breed from the Feb. through to Oct. In housing estates where high density colonies breed, their negative impacts are only understood by people being compelled by current DCHG policy to live with and tolerate these impacts. Why must this situation continue to escalate every breeding season while such harm is being inflicted on communities?

2 This is a condensed evidence-based list of serious negative impacts on communities:

- 1) Intense noise in the months May through to September from sunrise, and throughout the day and night causing long-term sleep deprivation and huge distress in impacted estates
- 2) Extensive faecal contamination around homes, play areas, schools, food premises et al. From the end of February there is a substantial increase in this contamination which is linked to territorial behaviour and preparation for nesting. We see the gulls swimming in and consuming sewage waste which is both disgusting and dangerous.
- 3) Aggression, attacks and serious injury to people from breeding gulls and from aggressively foraging gulls such that injuries require medical treatment and sometimes hospitalisation
- 4) Recurring major damage to homes, schools and businesses (roofs, guttering, major plant infrastructure, solar panels, vehicles et al.) - incurring hundreds of thousands of euro in cost with often major recurring secondary damage including serious leaks and flooding
- 5) High-density colonies breeding and foraging aggressively in our schools such that primary children are kept in from the yard at food-break times for health and safety reasons
- 6) High-density colonies breeding and aggressively foraging on “sensitive areas” of our hospitals (refer DCHG licences and wasted expenditure by Lourdes Hospital, Drogheda)

- 7) huge expense on so called 'alternative measures' to deter gulls which have been widely shown and acknowledged to be "futile, a waste of time, effort and money"
- 8) An inability from late May until August to use and enjoy home gardens and safely and to properly carry out ordinary home maintenance e.g. painting, cleaning and repairs, certainly not on a ladder, and often a refusal by contractors and tradesmen to do work due to the aggression of breeding seagulls.

The Antimicrobial Resistance (AMR) threat from contaminated urban seagull colonies.

- 3 AMR is globally recognised as a major public health threat and all developed countries in the world including Ireland are implementing comprehensive national plans to address this threat.
- 4 The 'One Health' concept which recognises that humans, animals and the environment are interdependently linked has also been embraced globally and the AMR threat is a key priority. Geo-regional and National plans are only getting to attend to the environmental threat now as priority has been given to clinical medical environments in early phases of remedial measures for AMR.
- 5 Zoonosis – the spread of disease from animals to humans - accounts for over 60% of all serious human diseases in the past fifty years (WHO, ECDC et al). SARS in 2002, MERS in 2012 and COVID19 in 2019 are three stark reminders in recent and immediate memory.
- 6 BCC first raised the threat from AMR contamination in and dispersal by urban seagulls in 2017. Urban seagulls forage in all of what are called "AMR Hotspots" – places where AMR contamination is high. Professor Kathryn Arnold, York University, August 2016 set out the policy implications for the AMR threat from the environment, wildlife, and specifically urban seagulls.
- 7 DCHG in fact licenced a study of Herring Gulls in Howth, Co. Dublin by Associate Professor Dr. Barry McMahon (UCD) which confirmed the threat in his Report copied back to DCHG. When BCC asked DCHG about this study the Dept. replied "the Dept.'s only role was to issue the licence".
- 8 BCC researched AMR in urban seagulls further in Ireland, the UK, Europe and in fact globally and provided sixteen peer-reviewed studies all confirming that urban seagulls are contaminated with AMR, involved in its dispersal in the environment, and, therefore, a potential public health threat.
- 9 Dr. McMahon met BCC in January 2018 and confirmed the AMR findings regarding urban seagulls and indeed several other wildlife species. He told us that, regrettably, testing is negligible and it is difficult to say/establish and therefore unknown whether AMR is passed from seagulls to humans.
- 10 DCHG ignored our concerns about AMR contamination in urban seagulls, and also ignored our 104-page Community Report submitted in December 2017 saying it would be passed to their 2018 Review. Our Community report was then ignored in the Review - put into an Appendix under a statement that it "did not necessarily represent the views of DCHG or Aniar consulting".

- 11 BCC notified DCHG in 2018 of the AREST project being funded by the EPA to study AMR in the Environment. Professor Dearbhile Morris (NUIG) stated on RTE's ECOEYE feature on the project that our coastal waters and rivers are contaminated with AMR due to our (bad) human and animal waste (sewerage) management practices. Bathers and beach users run a risk of AMR contamination. The most vulnerable are the very young, elderly, immune-compromised or people with skin cuts. Currently, there is no legal requirement to test our waters for AMR levels.
- 12 The CC Chair has brought Dr McMahon and Professor Morris in to present to us. Essentially they confirmed what we had provided to DCHG in the studies and in their knowledge – that seagulls are contaminated with and implicated in the dispersal of AMR in the environment. They also confirmed that testing to see if AMR is being transferred to humans from animals/wildlife is negligible – there is no data because of this. However they also accepted that **the absence of evidence is not evidence of absence**. The importance of volume human testing in a disease threat context is very much understood these days.
- 13 BCC has asked since 2017 that Professor Martin Cormican – the HSE's Director of Ireland's response to the AMR threat in the clinical/hospital environment be consulted on the AMR environmental risk. He is on the record (RTE, ECOEYE, link provided) as saying that "we need a barrier between people and contaminated environments until we clean up our act". We provided two of his AMR presentations to DCHG, and to the 2018 Review and to the Chair of the CC. Also, Dr. McMahon recommended at the end of his presentation to the CC in Feb 2020 that Professor Cormican should be asked to present to the CC and he also referred to the Arnold paper.
- 14 At our latest request for an update from the Chair he told us that Professor Cormican has not responded to the CC's communications. Clearly Professor Cormican is now fully engaged on the COVID-19 crisis in our Hospitals and he will be so for the duration of the crisis.
- 15 The two of Professor Cormican's presentations that we provided to DCHG and to the 2018 Review and to the CC Chair state explicitly that AMR is mainly contracted by microscopic traces of faeces that are ingested, inhaled, picked up through drinking contaminated water, through contact e.g. on skin cuts or exposed injuries. AMR-contaminated high density urban seagull colonies deposit huge volumes of their faeces and other large quantities of detritus when breeding on our homes, schools, supermarkets, restaurants, hospitals etc. for over seven months every year and this faecal detritus is dispersed freely in the environment as it is dried out and windblown.
- 16 BCC provided DCHG, the 2018 Review, and the Chair of the CC with a link to the UK's Health and Safety Standards for protection of workers who encounter high levels of bird mess and detritus on the job. UK Employers must provide full Respiratory Protective Equipment (RPE) to their employees, sites must be completely screened off and chemically treated prior to cleaning. Power-washers are prohibited because they create aerosolized droplets in the environment, and employees with respiratory conditions must not be assigned to this type of work. BCC has witnessed Irish workers cleaning extensive bird detritus sites (schools, pubs and supermarkets) using power-washers to try to keep the premises clean. BCC asked the Irish Health and Safety Executive in 2016 if such protections were in place for Irish workers and we were told that employers needed to refer to the Acts – response copy available if required..

- 17 The EU has officially recognised the threat of AMR contamination in the Environment from animals and from wildlife in its latest AMR strategy documents – these were provided by BCC to DCHG, the 2018 Review and the Chair of the CC.
- 18 The Department of Agriculture and Teagasc have issued formal literature to the farming community warning about AMR and the transfer of contamination from farm animals to humans. BCC has provided this documentation to DCHG and to the Chair of the CC.
- 19 BCC has raised the AMR threat concern since 2017 and it continues to be ignored by DCHG. It was also ignored by the 2018 Review cited by DCHG in 2016 as “the means by which all perceived threats would be addressed”. While the CC has recently started to pay attention to the AMR issue, our sense is that DCHG and the CC will continue to rely on an “absence of evidence”, which we believe to be due to negligible testing as flagged by Dr. McMahon and Professor Morris. We believe the AMR threat should influence the imminent 2020.21 Derogation Declaration and is featured in our recommendations in section 5.
- 20 In 2018 our then MEP Lynn Boylan (Environmentalism) researched the attitude in EU countries to the AMR environmental threat through the EU Commission and Parliament libraries on our behalf. She wrote to DCHG and the Dept. of Health stating that there were sufficient grounds for “an abundance of caution approach” to the urban seagull threat and that Irish citizens should be given an equal level of protection as is being afforded to EU citizens under EU law. She described the fact that this is not the case, when it is catered for in the legislation, and common across the UK and EU, as “bizarre”. MEP Boylan’s letter was ignored by DCHG, the 2018 Review and the Dept. of Health.
- 21 Communities being compelled by DCHG policy to live with high density urban seagull colonies are clearly at a higher than ambient degree of risk from the AMR threat than those not being afflicted by the urban seagull problem and are entitled to the protection of the State under national and EU law.
- 22 We ask once again, why are we not being protected? We will continue to ask until we are protected.

4. BCC Concerns with and Divergence from the CC

- 1 The Chair will have reported his assessment of key elements addressed to date in CC meetings since June 2019 in the CCFIR; therefore we do not cover the same ground here.
- 2 This Minority Report from BCC would not have been necessary if the CCFIR had contained a substantive recommendation with reasonable mitigation measures for impacted communities for the 2020.21 State-wide Declaration due on 1st May. We have made our position clear on this since the first CC meeting in June 2019, to the Minister in Feb 2019, and indeed since May 2016.
- 3 BCC has provided extensive evidence that Ireland is majorly out of step on the urban seagull issue in terms of policy and operational practices compared to every one of our neighbouring jurisdictions – UK, including Northern Ireland and EU – all of whom have been protecting their citizens in impacted areas on grounds of public health and safety “for years”. DCHG acknowledged that we are out of step in a meeting with us on 8th December 2016. We are still majorly out of step in 2020 and into the fifth seagull breeding season since we first sought help. Based on CC proceedings to date and the CCFIR, it seems clear to us that Ireland will remain out of step and that citizens will remain unprotected here indefinitely unless and until further Ministerial direction is provided to DCHG.
- 4 If one concedes an arbitrary five thousand breeding seagull pairs in greater Dublin, they are producing up to fifteen thousand chicks every year. Seagulls breed from aged four and are very long-lived. Urban seagulls generally do not revert to living in natural habitat (P. Rock, CC 2 and several published papers). What is the conservation goal of urban seagull proliferation?
- 5 Regrettably in our view, our experience to date in the CC vindicates many concerns that we and our TDs raised with the Minister in correspondence between Sept. 2018 and Feb. 2019.
- 6 BCC’s main points of concern and divergence are as follows:
 - a) We notified the Chair and the CC of our diverging views on a number of substantive points including public health and safety concerns, throughout CC meetings 1 to 4, and made clear the likelihood that we might have a divergent position after CC meeting 2 in Dec. 2019.
 - b) We notified the Chair of our decision to prepare and submit a MR and our reasons for this decision after CC meeting 3 on 4th Feb 2019. Our MR position prompted the Chair to remove all recommendations from the CCFIR. We replied that that was the Chair’s prerogative, but that we felt obliged to submit a MR for the reasons given. The Chair subsequently reinstated high-level recommendations for reasons set out in the FIR.
 - c) BCC tracked the development of the new seagull management policy for England over eight months from May 2019 to its publication in January 2020. We provided this to the Secretaries General of DCHG and the Dept. of an Taoiseach and to the Chair of the CC on 3rd March last - see section 7 and Appendix 1. By arrangement with the Chair we provided him with a set of questions (Appendix 2) for a conversation he hoped to have with the Chair of Natural England (NE) about the policy – we understand NE has not reverted yet. We believe that our set of questions should be

considered by DCHG if the England policy is to be explored in detail and referenced for a solution here.

- d) **We gave our view that the new policy for England might offer a contribution towards a solution here – provided that all eight of the principles on which it is based are adhered to and not cherry-picked.** Specifically, NE's urban seagull management policy relies on 'class licences' used e.g. by Local Authorities and authorised pest control companies.
- e) We were more than surprised to see that in a matter of a few days the NE policy was referred to the CC by the Secretary General (not covered by the Terms of Reference) and – at face value, without discussion by the CC, and untested in use, and became the basis for key recommendations in the FIR, while the FIR itself remains ambivalent about the overriding priority of public health and safety – a key pillar of the NE policy. This is an example our concerns about cherry-picking. Latterly, the FIR has rowed back somewhat on that approach to the NE policy for reasons set out in the FIR.
- f) We replied to a request for comments on the England policy from the Chair on 28th March 2020 stating our regard for the eight principles (at face value) as set out in the policy – the first principle being the overriding priority of public health and safety.
- g) At present DCHG does not attribute overriding priority to public health and safety and refuses to explain why this is so. In our view, this is an irrational and indefensible position given that the Dept. is solely responsible for Article 9.1.a) of the Directive – i.e. protection of citizens "in the interests of public health and safety". DCHG has independently issued case licences on those grounds for over thirty years and has only sought to resile from this historical precedent since the urban seagull issue emerged in 2016. Furthermore the Department of Housing, Planning and Local Government, (DHPLG) our Local Authority (FCC), and the Dept. of Health (DoH), are each on the public record stating that this (seagull issue) is primarily a matter for DCHG – documents available if required.
- h) In our view the recommendations in the FIR fall seriously short of meeting the urgent **here and now** needs of citizens impacted by urban-living seagull colonies. Our sense from the CC, and the FIR is that the negative impacts on communities are persistently being diminished and are of low priority relative to ecological and conservation considerations.
- i) The CC/FIR position on impacts on urban communities and on the overriding priority of public health and safety is appositely contrary to the English policy now being referenced in the FIR as having a potential input to a solution here. We retain serious concerns that DCHG will seek to cherry-pick the Depts. apparent need for a case-by-case system based on applying for a licence from the English policy and ignore or dilute the other key principles of the policy – in particular 'Class' licences for Local Authorities dealing with high-density colonies.
- j) In particular, we notified the Chair repeatedly that, given the full background of this issue (Sections 2 and 3 above), BCC could not sign off a FIR that did not include a substantive recommendation towards the 2020.21 Declaration for basic mitigation measures for human communities impacted by the urban seagull problem.
- k) Given that DCHG is the progenitor and sole sponsor of the CC, the fact that the DCHG management representative on the CC has missed two out of the four meetings held is strikingly

odd, especially leading towards a FIR with potentially substantive recommendations. This is not a personal criticism as no doubt there were entirely valid reasons for the two apologies received. However in our experience, in the case of the main sponsor being unavailable, either a suitable deputy is sent along or rescheduling occurs. The two technical representatives of DCHG had to qualify their contributions in both missed meetings as being subject to subsequent approval/ agreement by the DCHG management side of the Dept.. This situation was most odd in our experience.

- l) As constituted and operating the CC, in our view, seeks to impose and preserve not just equivalence of rights for urban-colonising seagulls over legitimate and reasonable interests of people, in fact it seeks to continue to subordinate, indefinitely, people's ordinary and normal rights to comfort and safety in their homes and schools to the perceived interests of seagulls.
- m) contrary to an indication given by the Chair and the CC to BCC in CC meeting 2 when we asked if communities have to continue to "suck this up indefinitely" to which the answer we received was "no", the CC clearly seems intent on deferring any mitigation measures to which it might eventually agree, until the end of an unspecified, un-resourced, unscheduled period of research activities – research that BCC believes has already been carried out in other jurisdictions e.g. in Holland, Belgium, France and parts of the UK.

Clearly and incontrovertibly, such an approach continues to place the legitimate interests of negatively impacted communities firmly last in all considerations. This approach is unjustifiable and will continue in our view unless strong political direction is given to DCHG that the interests of public health and safety are in fact and are to be treated as overriding interests in the making of policy and operational decisions.

- n) It is clear to BCC from the CC's proceedings that the ***overriding priority of public health and safety*** - a principle that inarguably warrants primacy in public policy making has neither been overtly accepted nor articulated in the CC, except by us, nor has it been accepted by DCHG.

Intuitively, if this principle were unequivocally accepted by DCHG and the CC the FIR would now contain an uncontested, substantive and strong recommendation for reasonable mitigation measures in the interests of citizens for the 2020.21 State-wide Declaration.

- o) It is also clear to BCC that we are the only members of the CC speaking up for the legitimate interests of citizens. There is no State advocate for citizens on the CC and none of the institutional members are fulfilling this role – it is being left to a committee of citizens from Balbriggan. We have stated this fact at each of the four CC meetings to date and this gap in the CC membership remains a serious concern to us.

In our considered view, it is DCHG/NPWS that should be proactively fulfilling the citizens' advocacy role under Article 9.1.a) of the Birds Directive, thus honouring the State's primary duty of care to citizens being harmed by uncontrolled, unmanaged and un-resisted high-density wild bird colonies. **If DCHG is not responsible, and given the stated official positions of DHPLG, FCC and DoH, – who is responsible?**

- p) When asked by BCC in CC meeting 3 if DCHG accepted that, allowing that it has confirmed that it has just one Ranger for all of Dublin North, and that it accepts that there are very high numbers of urban seagulls in Dublin North - the effect of its policy and operational approach to managing urban seagull issues is that the Department is de facto **compelling** very many communities, schools, hospitals and businesses to live with circumstances that have been regularly and routinely classified – for over thirty years - as public health and safety risks in its own case-by-case system, by its own Rangers, through its own procedures, and through its own legal Department's assessments.....the Department replied “we obey the law”.

In continuing to subordinate the interests of communities' public health and safety to what are, in our view and in our direct experience, highly questionable and unjustified conservation interests, and claiming to be “obeying the law”, the Department is therefore inferring that Northern Ireland, Scotland, Wales, England, and all of our Northern EU neighbours who have been protecting millions of their citizens under the Birds Directive for many years are “not obeying the law”. BCC asks what law mandates that thousands of people live with the negative impacts set out in section 3 above, and is this really a tenable position?

- q) UK seagull researcher and expert Peter Rock gave a lengthy talk (phone conference) in CC meeting 3. He acknowledged that noise from gulls is “probably the number one complaint issue in the UK”; he also acknowledged that so called “alternative deterrent measures” are largely futile and a waste of time and money when gulls are determined, yet this futile effort is still often required by conservationists and policy makers. When BCC interrupted to ask a question about “unsuitable locations” for gulls, Mr Rock asked us to clarify what we meant by “unsuitable locations” and we cited “schools and hospitals”. Mr Rock responded saying “oh yes by all means keep them off schools and hospitals, screeching gulls are the last thing you want when you are sick in a hospital”. This exchange was not minuted, and the Chair told BCC that he rang Mr Rock to clarify his comments, and the Chair has said that “Mr Rock claims that BCC is taking his remarks out of context”. There were two BCC representatives present and we know what we asked Mr Rock, we know why we asked it, and we know what the reply was. However, there are no detailed minutes covering this exchange and it is therefore a substantive matter of dispute that is unresolved.

‘Class Licences’ are used by Local Authorities and pest control companies on public health and safety grounds all across the UK and Northern Europe to remove nesting gull colonies from schools and hospitals and indeed from residential areas where high-density colonies are established. Extensive evidence of this has been provided by us to DCHG since 2016, and subsequently to the CC. This irrefutable evidence pertained directly to BCC's question of Mr. Rock and his reply - and it continues to be ignored.

- r) BCC asked the Chair if he could establish whether DCHG/NPWS had included any funding in its 2019 estimates for 2020 spending towards addressing the urban seagull issue and the Chair replied that estimates could not be made until there was a basis on which to make them. This situation is contrary to the normal prudent approach taken to estimates made in Government Departments. **In BCC's experience when/if there is any serious intent in a Department or Public Office to act on an issue in the coming year(s), there is always something put in the estimates in advance; also in our experience, the opposite applies.**

BCC is obliged to assume that no relevant funding has been sought/reserved by DCHG for the urban seagull issue in 2020– again making 2021 look like the earliest possible scheduling for any serious actions that cost money. This situation speaks to the continuing standoff between DCHG and FCC relating to responsibility and resources for the issue, and the concern that the new policy for England will be cherry picked by DCHG.

On the question of resources, BCC is acutely conscious now of the huge economic blow to the country from COVID-19 which looks like extending significantly into the future. The issue of resources will surely be critical across every branch of Government, potentially for several years ahead.

In our view, a basic General Licence to protect people is needed in the interim period pending development, eventually, of a comprehensive new policy. Otherwise, as the problem continues to escalate due to un-resisted, unmanaged urban-living seagull colonies, reasonable protections will continue to be denied to communities.

- 7 In the round, based not just on the sample of our concerning experiences in the CC that we have set out above, BCC is satisfied that there are more than enough reasons to conclude that we have in fact been dealing with an unspoken *fait-accompli* by the Dept., not just since the decision to set up this CC in October 2018, not just since the Interim report of the Major Review in April 2018, not just since the Departments reneging on its undertaking to meet and discuss our Community Report in December 2017, not just since the Department's letter to us in September 2016 citing the major review as the solution for all perceived threats, but actually since the Department's first emailed reply to us on 1st July 2016 basically dismissing our community and telling us to go away – copy of the Dept.'s reply to us on 1st July 2016 is available if required.
- 8 The Department's managed and phased '*fait accompli*' has been to prevaricate, delay and do nothing about this issue for years already past and potentially it seems for years to come, under the guise of a very selective and demonstrably atypical interpretation of the Birds Directive, and a CC that looks set to run slowly, with no meaningful actions or mitigations for communities in sight.
- 9 Once again we acknowledge the Chair's efforts to reach consensus, and progress made on a framework and potential approaches. We also acknowledge the strong divergence of views in the CC on a number of issues. If consensus is set as a mandatory output from such a committee, it follows that little or no progress on core issues is possible when divergence persists on such issues. In such circumstances, either direction must be given or a decision must be made to square the circle. It is our view at this point that Ministerial direction is needed to ensure that the Department and therefore the CC applies the principle that public health and safety is an overriding priority and as such must be fully respected in policy. If public health and safety is not the overriding priority – whatever the priority is needs to be articulated and explained clearly and unequivocally.

The Legal Context Module of the CC and the impact of noise from urban colonies

- 10 Noise from high density urban colonies over seven months every year is a major impact, often from 3am and through all 24 hours on and off every day. Noise was identified as the number one issue by UK expert Peter Rock in his presentation to the CC in Feb. 2020.
- 11 DCHG claims that it is “obeying the law” in its policy and procedures on urban seagulls. This implies that all of our neighbouring jurisdictions are not obeying the law. Also, DCHG has taken an ambivalent and historically self-contradictory and indefensible position on its responsibility to “protect the interests of public health and safety” under Article 9.1.a) of the Birds Directive.
- 12 At paragraph 15 below see a paper submitted to the CC Chair on 16th March last relating to environmental noise and its impacts on public health and safety including the latest position in the EU and WHO (provided to us by our MEP Clare Daly in February 2020) on standards for night-time noise and a recognition of the serious public health issues involved. We believe that FCC has extensive expertise on environmental noise and that it is recognised by public authorities as including a serious public health dimension.
- 13 We have asked the CC Chair to provide our paper on environmental noise to the Barrister that he is communicating with for the Legal Context module that he has designed into the CC programme.
- 14 Importantly, we have also asked the Chair to ensure that the Attorney General (AG) is consulted on this matter and with all of our concerns as set out in our document of 16th March below, and specifically to include the legitimate interests of citizens. In our view, such a comprehensive consultation with the AG should and must be undertaken by DCHG.
- 15 Based on ordinary common sense and human experience, constant sleep deprivation for hours every night over even a short length of time-not to mention for several months -.is a serious matter for the health and well-being of sufferers and has knock on effects on safety in driving, and work etc..

16

16th March, 2020

**Balbriggan Community Committee (BCC) submission to
Consultative Committee (CC) Chairman Derek McLoughlin
Environmental Noise pollution – urban seagull colonies**

Dear Chair,

We (BCC) mentioned to you that we would make a number of submissions in the coming days towards your deliberations on the First Interim Report (CCFIR).

We also mentioned to you that our MEP Clare Daly is working on our behalf on several issues and questions within the urban gull issue. Understandably the COVID-19 issue has impacted the EU institutions, but Clare is working away. This document relates to the Environmental Noise issue.

The attached document from MEP Daly assembles official information and links on all current work at EU and WHO level in relation to Environmental Noise Pollution and its acknowledged serious public health implications - which are explicitly described in the documentation. You will see the reference to a WHO target of a 40db night-time noise level in the MEP's document - and we referred to this WHO target in the document we sent to you last Friday, 13th March, towards your planned discussions with Natural England's Chair, Tony Juniper.

We have previously - since 2016 – drawn the attention of the Department, the 2018 Review and latterly the CC, to the urban seagull noise issue and in particular to sleep deprivation afflicting residents of housing estates in which high-density gull colonies are living, breeding and expanding un-resisted. We have provided material from Professor Niall Moyna of DCU on human performance, human health and the importance of sleep; a recording extracted from RTE's 'Awake' programme is attached. We have asked the CC a number of times to invite Professor Moyna to speak to us; and we have previously provided evidence-based material from the Road Safety Authority's "Tiredness Kills" campaign –

https://www.rsa.ie/Documents/Campaigns/Drunk%20With%20Tiredness/Driver_Tiredness_The_facts%5B1%5D.pdf

Peter Rock acknowledged in CC 3 that noise from urban gulls is a major issue, probably the number one issue to his knowledge on the list of negative impacts across the UK.

Urban gull ecology shows that breeding pairs return to successful nest sites, and 3-4 year olds often return close to where they were hatched in order to breed. We provided two case studies (with photographs) in our December 2017 Community Report - one of which was a single semi-detached house in a housing estate with **six nesting pairs and eighteen eggs**, another of which was a similar house 100 metres away with **3 nests/9eggs**, and a regular gathering of 12- 15 gulls (juveniles) on the roofs of these houses. One of these houses has nine (futile) sets of deterrent spikes on the roof which the gulls break and pad with sods. The Department's Ranger declined written invitations from BCC to visit these sites. The Roughan O'Donovan Consultant doing the drone study did visit these sites, and many others, and spoke to the people, as did FCC Director Power. The Roughan O'Donovan Consultant observed that juveniles sometimes help with feeding and protection of chicks - an observation we have made ourselves.

The thing that has made a difference to these and many similar cases has been the ability to systematically, repeatedly remove nests every season – up to four times before the gulls give up and move away. We are hoping that the cycle will be broken in the next two seasons. The amount of faecal mess around homes has been disgusting and uncivilised, as has the aggressive behaviour of the gulls. We have no doubt that many residential estates around the country have identical issues.

Many of our estates suffer the noise issue from high-density colonies from sunrise, and 22/7 from May until October, with some breaks during the day as the gulls forage. This is a huge and escalating negative and serious impact - including during the daytime for shift/night workers.

People who work in Dublin reported to us that they can't open office windows all summer due to the noise. Office workers have observed residents in the Georgian houses on Nth. Gt. George's St hanging out windows with large helium filled red balloons with yellow scary faces on them trying to scare gulls off their roofs. Offices have had ground nesting gulls in car parks.

This situation is ridiculous and freely escalating. Ireland is majorly inferior on policy, gull management operations, and on protection of public health and safety compared to all of our neighbouring countries – and has been for many years now. Action is long overdue and it will be inexcusable not to start now ahead of the next Derogation Declaration.

After CC 4 we offered to send you a 30-second MP3 of Herring gull calls to put on your phone as an alarm tone - you mentioned your familiarity with gulls and your time in Bristol. The MP3 is attached in this message. We suggest that you email it to your phone, save it in your ring-tones, and set it as your alarm tone, to go off every 30 minutes from 11pm to 8 am - with a 2 hour gap from 1:30 to 3:30am, every day, and every hour through the daytime. And then we ask you to see how long you can put up with it, and to imagine the cacophony from up to 30 nests in a housing estate, with two adults and three chicks in each from May to October through those hours every day. You might consider speaking to parents of Junior and Leaving Cert exam children who live in impacted estates and who go into their examinations "like zombies" because gulls have them awake from 3am in the weeks running up to and during their exams. Once again – parts of our estates might as well be on Lambay Island. What possible “conservation” argument is there to justify this state of affairs that is worsening every breeding season?

The noise issue, the terrible distress it causes and the undoubted risks it adds for drivers of all types, working heavy machinery et al. - this issue alone in our view is enough to see high-density gull nesting rigorously prevented in residential areas. **And this issue and many of the other impact issues needs to be properly described and acknowledged in the CCFIR to the Minister, not just skimmed over in a few lines.**

In relation to the Legal Context presentation/discussion being planned for April- if it is still going ahead, we submit the following requests:

If a person is sleep-deprived e.g. from being awake for hours during the normal sleep period of say 11pm to 7am, for several months:

1. What is the legal liability position if the person drives a Public Service Vehicle (or a family car, or a Heavy Goods Vehicle) and they are culpable in an accident due to driver fatigue in which several people may be injured or killed?
2. If a person works using heavy machinery in their job and causes an injurious or fatal accident to him/herself or to a colleague or colleagues that is attributable to a lapse in concentration caused by tiredness/fatigue - what is the legal position a) for liability for the accident b) if the employee declares him/herself unfit to work and may be then suspended or dismissed by the employer, and c) if the employee informs his employer of tiredness and the reason for it and is instructed to work on the machine anyway?
3. What views do insurance companies have on this, and what is their direction of travel in terms of actuarial risk assessment, liability and litigation in tiredness cases? This question is particularly pertinent as recognition of impairment due to tiredness increases.
4. Should people who are impacted by constant sleep disruption from constant environmental (seagull) noise be advised to ask their GP to certify them as being unfit for work? Or should they be permitted to remove the cause of the noise/impairment – the seagull nest(s)?
5. Should people impacted by constant noise from gull colonies **continue to be compelled** – as is the status quo due to DCHG policy – to live with it and accept it? What is the legal position of DCHG who have the statutory responsibility, the necessary legislative provisions to act "in the interests of public health and safety", and who are very well aware of the noise problem, and of its impacts on entire communities of people around the country, and of the fact that Ireland is behind the rest of its EU (and UK) neighbours in protecting citizens?
6. Looking at these media reports, it would seem that a person who is tired and continues to drive/work is the one who is legally liable, yet the state/DCHG will prosecute them if they take a reasonable action (remove nest(s) to eliminate the cause of their tiredness), and they must self-exclude from doing their job if it involves driving/heavy machinery:

<https://www.thejournal.ie/driver-asleep-balbriggan-2761718-May2016/>
<https://www.mirror.co.uk/news/uk-news/tired-mum-killed-another-driver-16521344>
<https://www.dailymail.co.uk/news/article-7529613/Man-fell-asleep-wheel-killed-girl-16-jailed.html>
<https://www.derbyshiretimes.co.uk/news/crime/whitwell-man-who-caused-fatal-crash-after-falling-asleep-wheel-jailed-730783>
<https://www.cdc.gov/features/dsdrowsydriving/index.html>
<https://www.libertyinsurance.ie/blog/driver-fatigue>
<https://www.axa.ie/articles/driving/how-does-driver-impairment-contribute-to-collisions/>
<https://www.hse.ie/eng/staff/safetywellbeing/healthsafetyand%20wellbeing/safe%20driving%20for%20work%20policy%202018.pdf>
<https://www.constructionequipment.com/caterpillar-takes-closer-look-operator-fatigue>
<https://pbeinc.com/news/machine-advancements-help-combat-operator-fatigue/>
Please see page 164: https://www.garda.ie/en/Crime/Traffic-matters/Rules_of_the_road.pdf

7. Is it not in fact the case that the Birds Directive sought/seek to prevent abuse of the health and safety provision as a mechanism to just get rid of inconvenient birds, but it never anticipated the major issues that are arising from urban gull colonies – that in fact ‘public health and safety’ is an “overriding” public policy with unchallenged primacy?

17 BCC requests that an opinion from the Attorney General’s office is also sought by the Department regarding the serious negative impacts on entire communities from urban gull colonies, and the degree to which Ireland is out of step with the EU and the UK. We ask that the AG’s opinion would also include consideration of a person’s right to own and enjoy safe and comfortable use of their homes, and the State’s duty of care to citizens and their health and safety, in particular to our children in their schools, elderly and immune-compromised citizens being exposed to (documented) physical attack, injury and infection risk from urban gull colonies – despite the existence of national and EU legislation to mitigate and prevent such attacks without harm to seagull species.

Conclusion.

- 18 It is BCC's view that the 'noise' case in relation to high-density urban seagull colonies is a plain common-sensed case of sufficient gravity to warrant systematic prevention of high-density nesting in residential areas on incontrovertible public health and safety grounds.
- 19 It is also BCC's view that this is an urgent matter that must be addressed at the next opportunity i.e. the 2020.21 State-wide Derogation Declaration. It is irresponsible for DCHG to seek to justify and hold to its case-by-case assessment position in the face of incontrovertible evidence of rapid expansion of urban seagull colonies in residential areas – until such time as 'Class Licences' are in use by Local Authorities and other approved providers of managed services.
- 20 Similarly, there is no justification for delaying a necessary policy change any longer to provide for unspecified research that has already been completed in our neighbouring UK and EU countries.
- 21 Accordingly, BCC makes the following recommendation to the Chair of the CC - see section 5 for further recommendations and rationales.

The 2020.21 State-wide Derogation Declaration should include Herring gulls and permit nest/egg removal in urban areas on public health and safety grounds, and this provision should be widely publicised well in advance of 1st May 2020.

If this recommendation is not made to the Minister and the Department for the 2020.21 Derogation Declaration, BCC requests a written explanation from the Chair as to why it is not being made, such an explanation to justify continuing to compel entire communities around the country to live with a public health and safety risk that has been routinely acknowledged in case-by-case inspections by NPWS Rangers for over thirty years.

- 22 DCHG has itself issued case licences for nest removal that acknowledged the noise and disturbance issue. It should not be necessary for site visits to housing estates with fifteen to thirty nests operating for five months every year to establish whether or not there is a serious noise issue.
- 23 In concluding this section of our MR, we recognise that there is a lot of detail. This is so because DCHG has sought to diminish this entire issue since we raised it in May 2016, likewise with the 2018 Review, and now again with this CC – which DCHG is seeking to establish or portray as a new 'ground zero' on the issue – '**we are where we are**' so to speak. In our view, we are where we are because of DCHG prevarication, and we are not very far along given the pace to date.
- 24 BCC will not acquiesce to the seriousness or the unjustifiable long delay on addressing this issue being diminished and/or concealed. BCC will continue to pursue all legitimate avenues open to us until a proper public administration response to this issue is forthcoming from the responsible authorities.

5. Recommendations from BCC.

- 1 BCC puts forward the following recommendations based on our knowledge and understanding of the urban seagull issue derived from direct experience in our community and from our research over several years into what happens across the UK and EU on the issue.

We have submitted these recommendations to the Minister (and previously to the Chair of the CC for sharing with all members) in good faith.

1. DCHG/NPWS should include the Herring gull (and other gull species if necessary) in the 2020.21 State-wide Declaration and should extend the Balbriggan provision to all impacted urban areas in a simple General Licence like the one used in Northern Ireland for many years - permitting nest and egg removal on public health and safety grounds:

- a) This provision is necessary now, indeed long over-due, and can be an interim pre-cursor to a comprehensive seagull management policy and a managed services suite to be developed either by the CC or in partnership with DCHG/NPWS and Local Authorities as priorities and resources allow
- b) this provision should be widely publicised in national press and broadcast media well in advance of 1st May 2020
- c) people in residential areas, hotels, bed & breakfasts, schools, creches, universities, hospitals, medical centres, and all other human care facilities should be advised to avail of this provision using qualified, insured contractors,
- d) all business premises involved with production, manufacture, storage, sale or consumption of human food should be advised to avail of this provision
- e) in circumstances where chicks have hatched, nest(s) should be left undisturbed and reported to DCHG/NPWS who may arrange for relocation of the chicks
- f) intervention to remove nests and eggs must be reported within 30 days by the property owner/manager to DCHG/NPWS on Form XXX – to be designed.

- 2 **As it is now late April, it is too late for BCC's remaining recommendations as follow to be considered in time to have a substantial influence on the 2020 breeding season. Notwithstanding, they are submitted by us as a carefully considered contribution to development of the best possible policy and solutions.**

- 2 DCHG/NPWS should seek early discussions with the Local Government Management Agency (LGMA) and

- a) request that Local Authorities with cities, large towns and large residential areas conduct specified (NPWS data) surveys and provide an up-to-date assessment of the impacts of urban seagull colonies in residential areas, schools, creches, universities, hospitals and all other human care facilities, also premises involved with production, manufacture, storage, sale or consumption of food
- b) identify and nominate suitable locations for survey, observation and study of urban gull colonies, including use of drone, camera and audiology technologies

- c) develop a communications message for the general public, schools, hospitals and business building upon Fingal County Council's innovative on-line publicity leaflet on food waste management, non-feeding of gulls, and promotion of these policies through visits from Environmental Health Officers to all food premises – such measures to include legal and penalty-based enforcement if/as necessary
 - d) develop new or enhanced enforcement measures to discourage and penalise persistent feeding of gulls in urban areas, including fines and prosecutions; note prosecutions in 2019 for feeding of pigeons and seagulls in residential areas
 - e) negotiate the setting up of Local Authority managed services for removal of seagull nests and eggs and relocation of chicks (see recommendation 3 above regarding approved contractors and service providers), with consultative, advisory and participatory roles for NPWS Rangers or NPWS-nominated partners at the discretion of NPWS.
3. DCHG/NPWS should establish an online register of approved licenced contractors and service providers for gull-proofing of large sites, removal of nests and eggs, and relocation of chicks:
- a) this provision must include standards covering insurance, tax compliance, competencies, equipment (including maintenance), protection of work-force and client health and safety, comprehensive training and all required competencies
 - b) this provision should include mandatory reporting of all interventions made under a Licence – location(s), removals, repeat actions and outcomes
 - c) record keeping of all interventions must support multi-annual matching of location(s), data retention and reporting
 - d) DCHG should consider whether such contractors would also have assignments or contracts to trap, ring, GPS-tag and cull gulls in prescribed circumstances
 - e) such contractors and service providers would be required to collaborate with NPWS Rangers or NPWS-nominated partners at the discretion of NPWS.
4. DCHG/NPWS should devise a communications strategy - a schedule of actions for such a strategy should include:
- a) early briefing of the policy and rationale to Government, the Oireachtas and county councillors
 - b) transparent and consistent communications through national media to the general public such that the policy and rationale is clearly understood
 - c) partnered and co-ordinated communications with the LGMA, Local Authorities, and registered approved contractors and service providers
 - d) comprehensive online information and FAQs about the policy, the rationale, procedure and compliance requirements
 - e) an on-line reporting system for seagull issues.
5. DCHG/NPWS should notify the Department of Education of the intention to develop new urban gull management policy insofar as it will relate to schools, and universities:

- a) ask schools to complete a survey (preferably online) designed to capture all relevant information about impacts of seagull colonies
 - b) agree a communications text similar to 4b) above with the schools for boards of management, staff and parents' councils
 - c) develop a balanced learning module for children/students that incorporates and explains prudent species management actions as well as conservation principles.
6. DCHG/NPWS should notify the Department of Health, the Health and Safety Executive, the Health Information and Quality Authority, and the Department for Children of the intention to develop new urban gull management policy insofar as it will relate to hospitals, other medical facilities, care facilities, creches:
- a) ask Hospitals to complete a survey (preferably online) designed to capture all relevant information about impacts of seagull colonies
 - b) agree a communications text similar to 4 b) and 5 b) above with the DoH/HSE/HIQA for management and staff
 - c) ask the HSE/HIQA to notify the register of approved contractors and service providers to all hospitals and medical facilities
 - d) examine the protections needed for workers who encounter high-density bird waste and detritus in the course of their work and enhance as necessary.
7. DCHG/NPWS should notify the Department of Agriculture and Food and the Food Safety Authority of the intention to develop new seagull management policy.
- a) Other EU jurisdictions have curtailed free range /outdoor farming e.g. of pigs and poultry due to seagull flocks visiting farms, shedding faeces and the Antimicrobial Resistance threat
 - b) Seagull flocks visit meat plants and aquaculture sites for foraging purposes; DCHG has previously denied a licence to such plant seeking to control seagulls – this should be reviewed
 - c) Farmers should be a useful source of information on seagull flocks visiting lands and impacts on other species.
8. DCHG/NPWS should notify the Department for Jobs, Enterprise and Innovation and the Health and Safety Authority of the intention to develop new urban gull management policy:
- a) all workers who encounter urban gull colonies or indeed large volumes of nest and/or other detritus from any bird species should have their health and safety protected in line with best international practice e.g. the following standards as applied for several years now in the UK
<https://www.hse.gov.uk/construction/healthrisks/hazardous-substances/harmful-micro-organisms/other-diseases.htm>
 - b) DCHG/NPWS should agree a communications and procedural text with DJEI and the HSA to ensure that best practices in public health and safety and in the protection of workers are exercised in relation to all urban bird colony sites
 - c) major damage and costs caused to business by urban gull colonies requires a proactively managed set of solutions to minimise impacts and at the same time

respect conservation requirements and objectives e.g. very early identification of nesting activity and early interventions could reduce damage and costs and would also disrupt and dislocate and relocate colonies nesting on unsuitable buildings before they are incubating eggs.

9. DCHG/NPWS own the policy lead on the urban gull management issues and funding and resourcing issues that arise in the creation of new policy must be identified, quantified and negotiated with and between the involved organisations. Continuing to stand off this issue and watch rapid proliferation continuing un-resisted is contrary to effective public administration and inimical to the legitimate interests of citizens impacted by the problem.
- the
- a) Local Authorities are not going to engage unless and until the resources issue is acknowledged and properly addressed – Fingal County Council has said so on the record to BCC and in the CC, and the Minister for Housing Planning and Local Government has stated on the record that this issue is “primarily a matter for DCHG”
 - b) Schools and Hospitals will not have funds to deal with this problem, especially large, established colonies – there is no point in DCHG either waiting for them, or telling them, to “apply for a licence” as their problems escalate and entrench
 - c) at its core, this is a public health and safety issue where high density colonies have established and are expanding rapidly and un-resisted – and ‘the consumer pays’ principle does not and should not be applied
 - d) continued prevarication will make the problems bigger, worse, more difficult and expensive to address, and more likely to lead to harm measures being taken.
10. DCHG/NPWS should write to the EU Commission/Environment Directorate and set out the major negative impacts that expanding urban gull colonies are having on communities here and the public health and safety concerns:
- a) public health and safety is an overriding priority
 - b) many so-called ‘alternative measures’ are discredited and futile, a waste of time and money in many circumstances, especially large scale sites/roofs
 - c) the Commission’s excellent work on environmental noise and public health and safety needs to factor in the noise over several months every year of rapidly expanding high-density urban gull colonies in residential areas. The WHO target is 40db for night-time noise, gull colonies reach 115db with their calls all through the night in residential areas continuously over several months – causing major distress and both health and safety risks many residents in impacted areas.
11. DCHG/NPWS should set out a clear list of realistic and practical conservation and research objectives (including funding and resource proposals) in relation to urban gull colonies and their prudent management, with public health and safety unequivocally positioned as an overriding priority:
- a) it is well past time to accept that urban-living and rural-living gull species groups are separate and do not mix, and to stop conflating their numbers and conservation status for policy purposes – as has now been explicitly recognised in the new policy for England.

- b) blaming food waste behaviours on the urban gull situation is facile – the species has chosen urban living for reasons that also include efficiency, lack of predation, better shelter, higher temperatures, breeding success, and possibly most of all because, unlike many other bird species, they are not being resisted by humans
- c) **seeking to coerce society to accept and get used to the huge negative impacts of freely proliferating high density urban gull colonies is a mistake**, is certainly not a conservation policy that includes prudent species management, and will inevitably lead to more severe measures being taken against urban gull species.

12. DCHG, as the statutory body responsible for the implementation of article 9.1.a) of the Birds Directive that is intended to protect **the interests** of public health and safety should pay close attention to the now globally accepted ‘One Health’ policy that closely connects human health, animal health and the environment:

- a) Zoonosis - 60% of all infectious human diseases come from animals/wildlife
<https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html>
- b) AMR is a major public health threat and seagulls are clearly implicated as being contaminated with AMR and dispersing it in the environment
- c) communities being compelled as a default outcome of DCHG/NPWS policy to accept high-density expanding urban seagull colonies in close proximity (homes, schools, hospitals et al.) are logically exposed to higher risks than communities not living with such conditions; the policy default needs to be changed with urgency to respect the overriding priority of public health and safety
- d) The EPA’s AREST project is showing leadership on the AMR environmental concerns; however “the level of testing on animals is negligible” – Professors McMahon, and Morris, CC meetings 3 and 4, respectively,
- e) prevention is better than cure – the Balbriggan community will not wait until we are the source of AMR cross-contamination data, and neither would other impacted communities if they had a similar knowledge and understanding of what is going on as we have.

3 BCC offers the above twelve recommendations based on experience, common sense and a close analysis of how the urban seagull issue is recognised and addressed in all neighbouring jurisdictions.

6. Policy deficits in Ireland vs. the United Kingdom and Europe.

- 1 The evidence since May 2016 has been and continues to be that urban seagull management policy as set and implemented in Ireland by DCHG/NPWS is demonstrably and majorly out of step with policy and practices in all neighbouring jurisdictions (UK and EU) – such that the policy deficits here continue to harm Irish citizens.
- 2 DCHG/NPWS is knowingly denying protections to urban communities around Ireland and are therefore inflicting, by default, increasingly uncivilised and dangerous conditions on communities where high-density urban gull colonies have established and are proliferating without managed resistance and without proactive species management.
- 3 DCHG/NPWS issues an annual State-wide Declaration on 1st May covering control measures for all otherwise protected bird species, including compliance conditions. DCHG also operates a case-by-case system for individual licences which involves site inspection, case evaluation, a recommendation, assessment against the legislation and a legal determination, and a written decision being sent back to the applicant. Typically the response time to an application is 6-8 weeks. The incubation period for gull eggs is 31-33 days and egg-laying starts around the end of April. Chicks hatch in late May through June. The Declaration is not published until well after egg-laying has commenced.
- 4 The Balbriggan Derogation approximates to a regional Class Licence that recognises that case-by-case licencing in the 8-10 week breeding window is not a feasible proposition in areas where high-density colonies are proliferating.
- 5 BCC has previously provided evidence of policy, licencing and operational practices in Northern Ireland, Scotland, Wales, England, France, The Netherlands, Belgium, and Denmark. Until 2019, the four UK countries operated a General Licencing scheme with no application process required; England had to introduce a new policy in 2020 due to unrelated legal matters in 2019. The UK also operates 'Class (bulk/multi-case) Licences' e.g. for Local Authorities and pest control companies.
- 6 DCHG/NPWS claims to be “obeying the law” when challenged regarding the serious deficiencies in Irish policy compared to all of our neighbours - thus, given the generality of urban gull issues and negative impacts, implying that all of our neighbours have not been obeying the law. DCHG/NPWS remains evasive about the fact that Northern Ireland, Scotland and Wales and England have operated General Licences for years with no application process or vetting required, and various types of 'Class Licences' for Local Authorities and Pest Control companies – all “in the interests of public health and safety”, as catered for in national legislation and in the EU Birds Directive.
- 7 BCC has been pursuing these matters with DCHG/NPWS with unanimous cross-party political support from our elected representatives since May 2016 and all of the ground described above has been covered in detail with verifiable evidence.
- 8 Table 1 below sets out a comparative analysis of the policy positions in England, Scotland, Wales and Northern Ireland versus the Republic of Ireland. The English policy is significant in that it is completely new and follows many years of having had a General Licence which

operated in an environment where majorly impacted UK regions, cities and towns have had a variety of Local Authority-based services which avail of contract services using flexible 'Class' Licences.

- 9 The policy principles set out in Table 1 are extracted directly from a letter to UK Minister Theresa Villiers from the Chair of NE Tony Juniper dated 30th Jan. 2020 (Appendix 1). BCC's submission (invited by the Dept.) to DCHG on 10th Jan 2020 (three weeks before the NE policy was published)– to the Stakeholders' Consultation phase for the 2020.21 State-wide Declaration contains every single one of the policy principles set out in the Juniper letter. BCC recently received an apology from the Dept. for its failure to acknowledge subsequent questions submitted by BCC regarding the Consultation and the outcome(s) – asked in our capacity as members of the CC, and as yet, as full CC members, has not received any replies to legitimate questions.
- 10 With regard to our EU neighbours' policies and operational practices, over many years, on urban seagull issues, BCC has previously provided evidence as follows:
- 1) The Netherlands Raad Van Stadt (Supreme Court, no appeal) ruling in August 2016 on urban gull controls – 13 counts on public health and safety grounds over-ruling a lower court injunction in 2014;
 - 2) The Port of Calais Annual Report (English translation provided by our MEP) of its gull control programme - based on public health and safety grounds – using GPS and Drone technology to map urban nests and support a systematic removal programme.
 - 3) NICE, France, Drone programme (YouTube) for locating and spraying urban nests with oil – on public health and safety grounds.
 - 4) Belgium, contraceptive feeding programme on public health and safety grounds.
 - 5) Aarhus, Denmark – lethal control on Herring gulls in residential areas due to noise – on public health and safety grounds.
 - 6) France, Spain, Portugal, Holland, Sweden. Serbia, Lithuania, UK and Ireland – consistent test results from urban gull colonies implicating gulls in Antimicrobial Resistance dispersal. There are similar tests globally – America, South America, South Africa, Middle East and Australia.
- 11 BCC believes that there is incontrovertible evidence to support similar programmes here in Ireland to deter seagulls from people's homes, schools, hospitals and places where human food is produced, stored, sold and consumed. We are dealing with the same seagull species, the same characteristics and behaviours, the same public health and safety threats and the same escalating negative impacts on entire communities here in Ireland.
- 12 Irish citizens – whole communities - are not being properly served in relation to the urban gull issue. DCHG/NPWS are responsible for this situation and at this stage there is a moral imperative for it to be addressed with some urgency.

Table 1

Policy Principles	UK - England	Rep. of Ireland	Comments
Give overriding priority to public health and safety	YES	NO	DCHG/NPWS treats public health and safety as being subordinate to conservation considerations, is in fact ambivalent on the public health issue, and since 2019 has only quoted 'public safety' on its case by case licences
Treat urban and rural living species separately for policy purposes because it has been proven that the two species groups generally do not mix	YES	NO	DCHG/NPWS conflates urban and rural species numbers in considering conservation status for policy purposes
Anticipate the season seeking applications in Feb with a closing date of 15 th March and an exceptions handling facility for later applications	YES	NO	DCHG/NPWS has persisted with 1 st May as its date for publishing its State-wide Derogation Declaration despite being repeatedly asked to bring this forward to February
A flexible and layered licencing scheme catering for single case applicants, 'Class licences' for Contractors, and Local Authorities with a 30-day response time	YES	NO	DCHG operates the Annual State-wide Declaration and also a fixed case-by-case Application/Licence system with a response time of 6-8 weeks; gull eggs incubate in 31 days.
No limits on numbers of nests, eggs and chicks to be removed from urban areas; a 5% limit on removals in rural areas	YES	NO	DCHG/NPWS has no policy statement on this; de facto, removals are majorly limited by policy and practice
Acknowledge the serious damage that urban gull colonies are doing, including to other species, and promote targeted attention to this	YES	NO	DCHG/NPWS does not acknowledge serious damage by gulls generally either to property or to other species; damage is only acknowledged by the Dept. in case licences and in parts of Balbriggan.
Gaps that may exist in research on urban seagulls to be filled over time – with no delay to implementation of the policy	YES	NO	DCHG/NPWS – by default and through inaction and inertia on the gull issue since 2016 has no policy on urban gull research, has not included any resource provisions for it in estimates, and knowingly continues to leave citizens exposed to health and safety risks.
Implement policy with full transparency, political and administrative cohesion, and clear and extensive publicity	YES	NO	DCHG/NPWS transparency is minimal to nil in terms of publicity, ignoring legitimate questions and persistently evasive.
Keep the policy under review	YES	YES	In 2016 DCHG claimed that the 2018 Review would address all perceived threats .It produced a 2 year+ Consultative Committee. It is now 2020 and none of the threats have been addressed, nor is there any commitment yet as to when they will be addressed. DCHG apparently intend to keep current policy under Review and without action indefinitely, irrespective of impacts on communities in Ireland.
<u>Alternatively – operate a General Licence Northern Ireland, Scotland and Wales</u>	YES	NO	DCHG/NPWS have to date refused to put urban gulls onto the State-wide Declaration – and have conceded a 'Balbriggan only' policy when it is clear that very many urban areas need protection.

7 New Seagull Policy for England

- 1 DCHG stated in the first CC meeting in June 2019 that “the UK had withdrawn its General Licence for seagulls”. This statement by DCHG was materially incorrect in a number of respects that remain uncorrected in CC minutes despite the fact that BCC has provided accurate official documents on the issue to the CC Chair. As a matter of fact, the issue raised by DCHG only affected England and was not related to seagulls. General Licences for bird controls (including seagulls) in Northern Ireland, Scotland and Wales remain in force and unaffected by the problem that arose in England.
- 2 BCC subsequently tracked the development of a new seagull policy for England. In April 2019 on foot of a legal action in England by environmentalist Chris Packham concerning indiscriminate culling of feral pigeons, Natural England (NE) was forced to withdraw its General Licence for wild bird controls. This affected controls for several species including seagulls and caused consternation due to the fact that it was in the breeding season.
- 3 Defra took the licencing function back from Natural England for a period of time and issued a public commitment to have new licencing arrangements early in 2020 well ahead of the breeding season. Work was done between Defra and Natural England through 2019 and the new English Policy was published in January 2020, early, as promised - see appendix 1.
- 4 In its new policy, NE did not include seagulls in the General Licence due to a concern about the species conservation status and reverted to an Application system. However, NE, for the first time ever, made a clear distinction between the conservation status of rural- and urban-living seagull colonies – the former being decreed as under pressure, whereas the latter (urbans) are acknowledged to be abundant and not under pressure. That is to say that urban seagulls are not ‘of conservation concern’. Accordingly, a control limit of just 5% was placed on rural (natural habitat) colonies which are ‘of conservation concern’, but “no limits apply to the removal of Herring Gull nests, eggs or chicks in urban areas”.
- 5 **The policy states that “generally, overriding priority is applied to public health and safety” and re-iterates the “protection of life and human health”.** The policy also anticipates the breeding season, calls for applications in February and sets a 30-day response time service level – i.e. licences will be granted even before nesting begins.
- 6 In all, BCC identified eight principles clearly set out by NE in what appears at face value to be a well-nuanced, strategic solution. BCC provided a copy of the policy and our views on it – taking it at face value – in a letter to the General Secretaries of DCHG and an Taoiseach’s Department on 9th March. We also provided a set of (invited) questions on the policy to the Chair of the CC on 13th March as he planned to talk to NE Chair Tony Juniper about the policy – see Appendix 2. We believe our questions are relevant for DCHG if the England policy is to be considered towards solutions here in Ireland.
- 7 One key concern of BCC, should the England policy in fact be referenced for a solution in Ireland is that all of the eight principles on which it is founded are clearly inter-dependent and cohesive. Any attempt to cherry-pick bits of the policy would, in our view, cause a failure to deliver on the public health and safety protections.

Minority Report from Balbriggan Community Committee to Minister, DCHG.

1 of two items:

Copy of letter to Secretaries General DCHG and Dept. of An Taoiseach covering the new seagull management policy for England announced 30th January 2020

C/O 118 Hampton Cove
Balbriggan
Co Dublin

Ms. Katherine Licken
Secretary General
Dept. Culture, Heritage and the Gaeltacht
23 Kildare Street
Dublin 2
D02 TD30

3rd March 2020

CC: Mr. Martin Fraser
Secretary General to the Department of an Taoiseach
Mr Derek McLoughlin
Chairman, Consultative Committee on the impacts of urban seagull colonies on communities

Re: Seagull population management:
Overriding priority of public health protection declared publicly in the new policy for England

Dear Secretary General,

We have received (attached) a copy of a letter dated 30th January 2020 from the Chair of Natural England (NE) to the UK Secretary of State for Environment, Food and Rural Affairs. No doubt this letter is already receiving urgent attention in your Department.

Given the import of the statements in this letter, and the strong parallels between the issues arising from urban seagull colonies which impact seriously and negatively on communities in Ireland, it clearly requires urgent and commensurate policy and operational responses from your Department in the legitimate interests of Irish citizens. NE's policy position will be evidence-based given the directness and strength of the statements made to the Secretary of State as published. As the statutory body for wildlife management for England, NE has the credentials and scientific and ecological expertise to underpin its public authority.

We identify some of the key statements in the NE letter as follows:

Paragraph 7 - "....there are situations where it is essential to control these gull species for purposes which include public health and safety, protection from serious damage and conservation."

Paragraph 10 "....generally protecting human life and health will be the overriding priority."

Paragraph 14 "Urban populations tend to be healthier and appear more resistant to decline from lethal control by having better breeding success rates. Control levels of nests, eggs and chicks will not be limited in these areas."

Paragraph 15 "Natural England will continue to promote the use of non-lethal methods that reduce opportunities for gulls to nest and scavenge in problem areas within the built environment."

Paragraph 17 "We are working with Defra colleagues to explore options for filling current gaps in evidence around urban populations. Our current proposal, based on best available evidence, will therefore be subject to review as the evidence base develops further."

The new licencing regime that has been devised and implemented just eight months on from when NE had to withdraw its General Licence due to the Chris Packham Legal case last April contains the following key features:

1. Applications for individual licences for gull controls are encouraged from February onwards –with a closing date of 15th March i.e. before nesting/breeding has commenced, typically around the end of April/early May with chicks hatching in early June
2. NE has set a 30 day service response time for issuing licences/replies-i.e. in most cases the licence will be issued before nesting/laying has commenced
3. Natural England will continue to accept licence applications outside this period and will provide licences where there is a clearly demonstrated need for lethal control
4. Notably, the publicity materials around the new policy emphasise public health and safety, and make specific references to schools, universities and hospitals.

Another hugely significant and major change of policy is the clear separation of the conservation status of urban and rural living gull species for policy and control and management purposes. Essentially, unlike DCHG/NPWS, NE no longer conflates urban and rural population status and statistics within a single uniform policy. This change respects the fact the urban living species do not mix with or revert to living with seaward/rural living species. This policy evolution also recognises and addresses the facts that while significant declines in species numbers may exist in traditional habitat areas, it is essential for prudential public policy to identify, heed and respond to circumstances where spikes in populations exist in other (typically urban) areas.

You will be aware that the Balbriggan Community Committee (BCC) has been working assiduously on this issue since May 2016. While the partial Derogation introduced in 2017 enables handling of extreme/emergency cases, many serious deficiencies in the Balbriggan Derogation have persisted and need to be addressed. Your Department has held our detailed submissions which set out our position for a number of years now. We refer you to our latest submission on 10th January 2020 in response to your Department's invitation to us to partake in the Stakeholders' Public Consultation phase of the preparations for the 2020.21 Derogations Declaration. We have submitted follow up questions to your Department in this regard and await an acknowledgement and a substantive response.

With regard to the Consultative Committee, it is now beyond any doubt to us that no substantive initiatives have been made in the interests of citizens, nor do we have any confidence that substantive initiatives to mitigate impacts on communities will be made in anything like the essential timeframe. The contents of the NE letter are so compelling that they warrant an immediate and urgent policy and operational response from your Department in time for the 2020.21 Derogation Declaration and beyond. We emphasise that in its letter to the Secretary of State, NE has not resiled from making definitive and authoritative statements about the overriding priority of "protecting human life and health".

Irish citizens have been knowingly left by your Department without any genuine protections, without any justification, for several years now in comparison with citizens in Northern Ireland, England, Scotland, Wales and Northern Europe. You will have noted in the NE letter (paragraph 17) that research gaps that may exist in relation to urban gulls will be addressed over time by NE, but clearly are subordinate to the interests of public health and safety of citizens and will not in any way delay the implementation of the new policy.

Any continuance of the notion from the Department, the CC or otherwise, that Ireland has to do its own research to reinvent the wheel - on urban gulls here in advance of any material change to policy here is untenable in the light of the above, and more importantly would constitute a grave failure by your Department, which has overall responsibility in these matters, to protect Irish citizens. Therefore please spare our community the notion that research is needed here to assess whether Irish urban gulls are or are not materially similar to English urban gulls and/or that their respective behaviours and negative impacts on communities are materially similar or not. No doubt you could envisage the outcry here if in relation to the Covid-19 virus Ireland decided to do its own research and risk assessments independent of authoritative international bodies. Of course the scale and impact are vastly different; the comparison of the policy behaviours, is nonetheless is valid.

NE and the National Parks and Wildlife Service (NPWS)/ Department have closely analogous functions and we do not consider that there is any other public body here carrying out similar integrated functions as regards wildlife management. Accordingly, we respectfully ask the following questions:

1. As your Department has not yet, to our knowledge at least, accepted that it has primary responsibility for implementation for Article 9.1.a) in the interests of **both** public health and safety, do you accept the NE statement made clearly in the context of managing urban gull populations that "protecting human life and health is an overriding priority" as an operating principle for your Department? If you do not accept this position, will you set out your reasons?
2. If it is not your Department's responsibility, what other public body has this responsibility, are they aware of this responsibility, and have they accepted this responsibility? In considering these questions we refer you to official correspondence and PQ responses from Ministers Murphy and Harris concerning the respective roles of the three Departments, and in particular the responsibility of your Department?
3. Is it your intention to communicate and comment on the essence of the NE statements and policy to the relevant public bodies, particularly though not exclusively in relation to schools, universities and hospitals, and also appropriately to the general public in urban areas throughout the country affected by high density gull colonies? The communications standards observed by NE and Defra are a model of openness, transparency and efficiency.

4. Will you ensure that public bodies and the general public here are fully aware of the availability of licences your from Department to protect their public health and safety, and will you ensure that your Department's case-by-case licencing system and approach is fully adequate to meet essential timelines – again having regard to NE's policy to seek applications from February onwards – i.e. 2 months in advance of nesting - and to respond to applicants within 30 days? And if it is the case that resource constraints in your Department prevent the rapid service response that has been set up by NE, will your Department expand the State-wide Declaration approach – in order to respect “the overriding priority of protection of life and public health”, thus also emulating the policy in Northern Ireland, Scotland and Wales?

In conclusion, we advise that our community committee has considered with extreme care our approach to this matter and it is informed by advice from a number of political sources. Please note that we have circulated our letter and the NE letter to our TDs, and our MEP and we will be circulating this material and responses received to our wider community committee. Given the intense work underway towards forming a Government, and respecting the demands this places on all concerned, we are deferring our full briefing to our TDs until an appropriate opportunity arises at their convenience. We have copied these letters to the Secretary General of an Taoiseach's Department due to the serious lack of confidence in our community in your Department that is based on all of our experiences of dealing with it since May 2016. There are also important cross-Department/Agency responsibilities here which we believe may warrant a whole-of-Government response.

Yours Sincerely,

Balbriggan Community Committee on urban seagulls and their negative impacts on people

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Date: 30/01/20

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Seacole Building
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SW1P 4DF



Natural England
17 Smith Square
London
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Dear Secretary of State,

I am writing to inform you of the licensing arrangements that Natural England is developing for the coming year for the control of herring gulls and lesser black-backed gulls. This is in pursuance of the licensing functions you have delegated to Natural England and in accordance with the Wildlife and Countryside Act 1981 and the Government's policy framework.

As you are aware, these two species of gull were not included in the three general licences issued by Defra last summer on account of significant concerns about their conservation status.

Both herring gull and lesser black-backed gull have been listed as species under threat in the publication Birds of Conservation Concern 4: the Red List for Birds, published by the BTO in December 2015.

The breeding population of herring gull has fallen by 60% in recent decades, with lesser black-backed gulls declining by an estimated 48%, and there is a particular concern about drastic declines in the numbers of lesser black-backed gulls at breeding sites classified as Special Protection Areas.

In June 2019, Natural England gave a public commitment to develop new licensing arrangements ready for the 2020 bird breeding season.

Our arrangements will support the Government's commitment to protect and restore the natural environment and be consistent with the UK's legal obligation under international conventions to maintain the conservation status of wild bird species, including gulls, within England.

We recognise that there are situations where it is essential to control these gull species for purposes which include public health and safety, protection from serious damage, and conservation. It is important that our arrangements enable stakeholders to manage any conflicts that occur between humans and these gulls in a way that does not affect the species' long-term survival.

Information gathered from emergency individual licences issued in 2019 indicate that a very high level of lethal control of gulls has been undertaken. Having assessed this level of lethal control in comparison with natural mortality levels, we believe that continuing to license control at the current rate would contribute substantially to the continued decline of herring gull and lesser black-backed gull species. Therefore we have concluded that reductions in the numbers killed or taken are necessary to safeguard the long-term viability of these species in this country.

We have re-issued a class licence this year to permit the control of certain wild bird species necessary to preserve air safety and this will continue to cover herring gull and lesser black-backed gulls. The licence was amended for 2020 to introduce a requirement for registered users to report to Natural England the scale of control of these species (and great black-backed gulls) which they expect to undertake in the coming year.

Beyond this, we will license gull control through individual licences, which will need to be prioritised. We will consider the strength of need in each licence application individually but generally protecting human life and health will be the overriding priority. Any control undertaken under other purposes such as preventing serious damage and conserving wild birds and flora or fauna will need to be targeted.

This process will provide consistency and clarity for applicants, and will allow Natural England to assess the merit of each proposal and potential effects on the gull species, factoring in the cumulative impact of all other licensed control. It will also enable us to monitor the number of gulls killed or taken over the year.

This approach also takes into account the strength of local populations of the gull species which can vary between urban and rural areas. In rural areas, where lethal control may have contributed to declining populations, we have identified a sustainable number of birds that could be killed or taken. This is equivalent to no more than 5% of the natural mortality total of each species.

Natural England has concluded that this level will not harm the conservation status of these species and is a recognised benchmark for the sustainable hunting of birds (European Commission guidance, 2008).

Urban populations tend to be healthier and appear more resistant to decline from lethal control by having better breeding success rates. Control levels of nests, eggs and chicks will not be limited in these areas.

Natural England will continue to promote the use of non-lethal methods that reduce opportunities for gulls to nest and scavenge in problem areas within the built environment. In order to ensure a more harmonious coexistence of people and gulls, applicants will be encouraged to put in place an integrated gull management strategy that includes alternatives to lethal control. In many cases, this will mean working with other householders, businesses and local authorities to resolve problems experienced in the areas used by gulls.

Natural England will seek input from stakeholder organisations and business leaders to provide further guidance on how integrated gull management strategies may be demonstrated.

As part of our work we have identified the need to undertake research into gull populations in urban areas in order to fill the current gaps in evidence. We are working with Defra colleagues to explore options for filling current gaps in evidence around urban gull populations. Our current proposals, based on best available evidence, will therefore be subject to review as the evidence base develops further.

Customers will be encouraged to submit individual licence applications in February and March in preparation for the bird breeding season, which is consistent with the majority of user needs. This window will enable Natural England to assess the cumulative scale of control across the applications submitted and take this into account in prioritising the licences to be granted.

Natural England will continue to accept licence applications outside this period and will provide licences where there is a clearly demonstrated need for lethal control.

Yours sincerely

Tony Juniper
Chair, Natural England
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13th March 2020

To:

Chairperson

Consultative Committee the review the impacts of urban gull colonies on communities

From: Balbriggan Community Committee

Suggested discussion points and questions for discussion with Natural England Chairman,

1. **Would you have key pointers you could share with us on that?**
2. **You must have achieved a reasonable consensus between stakeholders – administrative, conservation, political, Local Authorities, Service Providers?**
3. **We haven't seen any public statements on the policy yet from the conservation groups e.g. RSPB, could you summarise the views on the conservation side?**
4. **The overriding public health and safety priority seems very explicit particularly in relation to urban areas, whereas historically it has been generally perceived as a bit woolly and somewhat conditional or equivocal, and indeed has been contentious:**
 - **can you say who would have been representing the interests of citizens/communities in the policy development process?**
 - **how does that overriding priority get reflected pragmatically in the Application processes and decision making e.g.**
 - **do you have a template or benchmarks for assessing Applications' circumstances and cases made on public health and safety grounds?**
 - **in setting no limits on removal of nests, eggs and chicks in urban areas – while obviously not implying an eradication of urban gulls – NE seems to be making a clear statement and acknowledgement about how serious the negative impacts of urban gull colonies can be on human living and communities,**
 - **taken with the other very clear principles and measures set out in the policy, is it fair to say that a concerted effort is being made to teach gulls where they can and can't breed and live in urban areas?**
 - **in other words, is the co-existence objective to arrive at a situation where urban gulls live undisturbed in non-residential, not on schools or hospitals, and non-amenity areas within the built environment e.g. industrial estates/complexes, warehouse campuses and similar?**
 - **would NE be moving towards advising sectors e.g. schools, universities and hospitals to control urban gull species on public health and safety grounds – within the 'overriding priority' designation in the policy?**
 - **the resources picture is clearly mixed and complex when you look across the country– would schools and hospitals be expected to pay for species control services themselves, and would a lack of such resources leave impacted schools etc. living with a recognised public health and safety problem?**

- does NE envisage movement towards a control standard for schools and hospitals under the public health and safety priority?
 - Even though you have brought forward the dates, if you had a high volume of applications do you have a cut-off default where all public health and safety applications would be approved – given the ‘overriding’ priority status?
5. There is now considerable policy divergence between England and Northern Ireland – which is very relevant to us in the Republic of Ireland, and with Wales and Scotland – could you share your views on this, looking forward?
 6. As the UK has left the EU, has NE been considering continuing with policy alignment or potential divergence?

The policy seems comprehensive and well nuanced, e.g. recognising addressing ecology differences between rural and urban living gulls. You seem to be catering for strong interventions in urban areas – NE CEO Marian Spain referred to “areas of most need” in recent interviews.

7. Is this a formal recognition that the urban and rural-living groups do not really mix and are unlikely to mix?
8. Conservation groups have tended (perhaps privately) to see urban living as a refuge, with some hope or expectation that they might go back to sea if habitat was restored – is the new policy a statement/recognition that this is not going to happen (Rock, Coulson) – ergo creating a necessary reshaping of the policy?
9. Is our understanding correct viz. that:
 - a) In changing the policy NE are targeting apparent abuses of the General Licence primarily in the rural setting, specifically excessive culling
 - b) In the revised policy, urban areas with high-density colonies and *an accepted range of problems* the gulls are causing are largely served by Local Authorities and/or Registered Approved Contractors?
 - is that what keeps your Application numbers low/manageable?
 - Does NE invite contractors to register for species control work?
 - c) Schools, Universities, Hospitals are normally protected on public health and safety grounds?
10. Pressure here is building in residential areas where high density colonies (recently sampled in three medium-sized towns with Drone/Camera work) are expanding quite quickly, also in schools and hospitals, and on and around supermarkets, pubs, restaurants and similar.
 - presumably this profile matches yours in terms of “areas of most need”?
 - the biggest and recurring problems reported here are
 - very high levels of noise up to 22/7 for months April through to October

- noise is increasingly recognised as a public health issue and a safety issue – a current EU Environment Committee is working towards a night-time noise target of 40db; a list of serious illnesses to is now linked noise and sleep disturbance
- often with nests throughout housing estates, sometimes with multiple nests on properties and
- also high levels of faecal mess on and around houses and gardens
- gull aggression is known and understood around breeding and chick rearing, but is increasingly reported as aggressive foraging, very often in our schools
- in summary, what would be your *accepted range of problems* in urban areas that would be given routine approval?

-

Regarding NE's requirement for an Integrated Management Plan with applications for urban sites, we're interpreting your licencing system as being layered in a design that accommodates many scenarios from a single domestic/residential application right up to large sites that could include a colony or even discrete colonies on a large campus.

11. Is our interpretation correct and could we discuss this a little?
12. It seems generally accepted for some time now that what are traditionally referred to as "alternative measures", are largely ineffective in many cases, and that systematic, repetitive nest removal is the only viable option – is that likely to be generally accepted on your applications, in particularly those on health and safety grounds?
13. Strict control of food waste is often put forward as a vital component of management plans, however small recent studies suggest that urban gulls rely on urban sources mainly for opportunistic snacking, and they travel to rural and coastal sources for most of their regular food supplies – is NE doing any research work on this?
14. Did NE follow the Dutch Supreme Court case in August where three large Municipalities of Amsterdam won a ruling (all 13 counts, on public health and safety grounds) permitting them to pursue all control measures for a three-year research period – following which the most effective control measures would be continued to bring the problem under control?
15. Does the licence design cater for a group application e.g. from a registered residents/tenants association committee on behalf of a housing estate – e.g. as a way of assisting elderly residents?
16. Have you a refusal template or set of criteria for when licence applications will be rejected.
17. What resources has NE that it can bring to bear on the "applications processing season"?
18. What resources has NE for inspection, investigation and follow-up?

There is clear evidence that urban gull colonies do serious damage and cause large cost to business – both property and infrastructure, often requiring high expenditure and recurring maintenance

19. As urban flocks continue to thrive and expand, where does NE see this 'damage issue' going? Do you see a point at which the burden will become excessive and will be rejected by society?

There is also clear evidence that urban gulls do damage to other bird and wildlife species.

20. As with the property/infrastructure damage, where does NE see the 'other species damage' issue going as urban gull flocks thrive?

Association of urban gulls (and other wildlife species) with the Antimicrobial Resistance (AMR) threat.

21. Has NE been monitoring the AMR threat?
22. Professor Kathryn Arnold, York University set out policy considerations in 2016; the EU Commission AMR Strategy, and recently member states AMR plans have acknowledged the threat from animals in the Environment. ECDC have included gulls as a species of concern. Mediterranean Gull species is implicated in AMR variant CPE (Barcelona Public Health Municipal Authority, 2017)

The current research position seems to be that urban gull's behaviours and human waste mismanagement behaviours expose the species to human-relevant AMR and contamination has been shown world-wide. However it is difficult to test/track whether gulls can or are transmitting AMR to humans. Given the seriousness of AMR, informed communities are pressing for "an abundance of caution approach" towards keeping breeding gulls away from people's homes, schools, hospitals and places involved with food production/consumption.

Has NE been monitoring this potential threat?

Are you aware of research/testing in the UK?

Discuss Irish AREST project?

NE states in the policy that any gaps in urban gull research will be filled over time in partnership with Defra

23. Did NE have pushback from conservation groups on this twin track approach, and if so can you discuss the argument and the outcome?
24. Is NE/Defra looking at resources for urban gull research?

It must be the case that NE has engendered strong support and buy-in to be able to implement the policy so quickly.

25. NE's transparency – including your own letter to the Minister – is noteworthy and indeed exemplary. We had seen former Prime Minister Cameron's call for 'a big conversation' on the urban gull issue, and also the National debate in Westminster in 2017. Also, at Local Government level many of your Councils are active and vocal on the issue.

May I ask if there is general political awareness of and support for the policy?

Did NE conduct any briefings/seminars with political/Government representatives during the policy formulation?

26. In terms of NE's relationship with Defra

Communications:

27. Given the devolved nature of NE's policy and government advisory function, how do you approach the issue of communications – across the board, e.g.

- with and between Defra and NE
- with and between Central Government and NE
- with and between Local Government
- with and between client stakeholders
- what is the 'stakeholder' structure and communications method(s) for the urban setting?

Looking forward, The negative impacts of urban gulls on communities are increasingly intolerable and determined resistance is clearly growing – perhaps with serious negative consequences for the species eventually

28. Does NE have active measures for gauging civil objection and non-compliance with the law e.g. as was discussed at length in the 2017 Parliament debate?

29. Do you consider that the new NE policy is tacking in a direction to reduce negative impacts on communities towards the co-existence objective?

30. Does NE have further plans and ideas for policy evolution in these regards that it can discuss?

AOB