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Sent: Friday 11 March 2022 16:37

To: Housing WildBirdDeclarations <WildBirdDeclarations@housing.gov.ie>

[REDACTED]

Subject: Public Consultation on Wild Birds Derogation Declarations for 2022.23 - Submission from Balbriggan Community Committee on urban Seagulls

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Department of Housing, Local Government and Heritage (DHLGH)
National Parks and Wildlife Service (NPWS)

11th March 2022

To Whom it Concerns at DHLGH/NPWS,

Please find attached a PDF as a submission on behalf of the Balbriggan Community Committee (BCC) for urban seagull issues to DHLGH/NPWS's public consultation on Wild Birds Derogation Declarations for 2022.23 in response to the invitation we received as stakeholders on 21st February 2022.

Subject to the normal rules on data privacy and GDPR, we consent to our submission being published.

In our submission, we refer DHLGH/NPWS to the following four historical documents (already in DHLGH/NPWS's possession) for additional evidence/elaboration on points that we are making. We have attached these documents as well for convenience and do not need/require them to be published as part of our submission, unless DHLGH deems publication to necessary for reasons of completeness or other reasons:

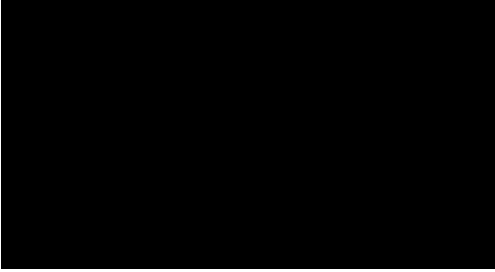
1. BCC Report (104 pages) on urban gull issues, originally submitted in December 2017
2. BCC Minority Report to the Consultative Committee (CC) on urban seagulls established in June 2019
3. First Legal Opinion acquired by the Department/NPWS on behalf of the CC - 11th August 2020
4. Second Legal Opinion acquired by the Department/NPWS on behalf of the the CC - 10th February 2021

We would appreciate a formal acknowledgement from DHLGH/NPWS that our submission has been received ahead of the closing date of 14th March 2022 @ 5pm.

Yours sincerely,

on behalf of the Balbriggan Community Committee (members cc'd above) for urban seagull issues established in May 2016;

Members of the Minister/Department's Consultative Committee established in June 2019 to examine the impacts of urban seagulls on communities and make recommendations;



National Parks and Wildlife Service (NPWS)
Department of Housing, Local Government and Heritage
Public Consultation Process (PCP)
Wild Birds Derogations Declaration for 2022.23

Balbriggan Community Committee (BCC)
On urban seagull issues

Emailed to: WildBirdDeclarations@housing.gov.ie

11th March 2022

Submission to PCP – Wild Birds Derogation Declarations 2022.23, Urban Seagulls and impacts on communities

1. Urban Seagull colonies:

Essential Derogation requirements “in the interests of public health and safety” under Article 9.1.a) of the 1979 Birds Directive and Statutory Instruments (S.I.) No. 477/2011 - European Communities (Birds and Natural Habitats) Regulations 2011, section 55.2.a):

Important Note regarding this PCP:

After this PCP was issued on 21st February 2022, BCC wrote a complaint to the Secretary General of the Department on 23rd February as follows:

“The decision threshold for derogation in the text (of the PCP) is not compliant with the specified decision threshold in EU Law, it was rejected and replaced by the Oireachtas in primary legislation (Wildlife 2000 Act Section 59), and was also rejected by the legal side of the Department in the 2011 Regulations – in compliance with the EU legal text. The General Public and stakeholders expect as a minimum that Government Departments comply with the law. There is no justification for this non-compliance especially as public health and safety is at stake; though we expect that some elements of your Department may continue to seek to justify continuing non-compliance. Hopefully this will not happen and normal Civil Service standards will apply. We respectfully ask that you instruct that the consultation documentation be amended to ensure compliance with the correct legal derogation decision threshold “in the interests of public health and safety”.

To date, we have not received an acknowledgement/response from the Secretary General and note that the pertinent text in the PCP notice regarding the legal threshold for derogation decisions “in the interests of public health and safety” – towards which this PCP is materially important - has not been amended to state the correct, legal derogation decision threshold as specified in the 1979 Birds Directive article 9.1.a) and SI No. 477/2011 section 55.2.a). We therefore protest that the PCP notice is materially misleading with regard to the correct legal basis for derogations, and are obliged to make our submission under this protest.

We have also, therefore, set out the legal position in detail at 1.1., as we understand it, based on two expert legal advices sourced and paid for by the Department/NPWS, using taxpayers’ money, as part of the work of its own Consultative Committee on urban seagulls established in June 2019, upon which BCC has two serving members. Whereas our submission is primarily concerned with high density urban seagull colonies and severe negative impacts on communities where such colonies have

established, our point about the legal derogation decision threshold “in the interests of public health and safety” is relevant to all wild bird species derogations and all relevant circumstances.

1.1. The Law.

The S.I. Regulations covering derogation Declarations are legally obliged to properly reflect the correct, legal derogation decision thresholds for inclusion or exclusion of species in the derogations - as specified in both EU and National Law. In EU member States, EU law is the higher law where material differences arise between EU and National texts on any given legal text/matter.

In order to comply with the law, in circumstances where ‘public health and safety’ is at stake, the legally prescribed derogation decision threshold for inclusion or exclusion of a species is whether or not it is “***in the interests of public health and safety***” to include it or not (per paragraph 1. above). The pertinent derogation decision threshold texts in the 1979 Birds Directive and the 2011 Regulations are identical. Normal Civil Service standards require that the law is fully adhered to and that the Minister must be briefed accordingly when S.Is. (Regulations) are submitted for signature into law.

Since 1986 however, Departments/NPWS have used S.I. No. 254/1986 - European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1986 in its annual State-wide derogation Declarations. Ergo the specified derogation decision threshold used since 1986 to date has been that species included in derogations must “***represent a threat to public health and safety***”. The words/phrase “public health and safety” do not appear in the text of the 1976 Act, therefore this threshold was fabricated in 1986 by the Department. Therefore, contrary to what normally occurs this fabricated threshold was not derived from primary legislation, and the 1976 Act was never amended to reflect this fabricated threshold. However, the Department completely disregarded the correct legal decision threshold for derogations which was already ‘in hands’ at the time, courtesy of the 1979 Birds Directive Article 9.1.a) – viz. “***in the interests of public health and safety***”. The material difference between the legal derogation decision threshold and the legally invalid decision threshold fabricated and applied by the Department since 1986 is highly significant in the urban seagull context.

BCC made the above points and observations on the legal position to the Department/NPWS repeatedly in submission from 2016 onwards and in the Public Consultation in 2018 for the Major 5-yearly review of the Derogations Process. Our five TDs made the same legal points to the Department and the Minister in a meeting in October 2018 when the decision to form the Consultative Committee (CC) on urban gulls was notified to them and they were ignored. BCC repeated the same point as CC members in 2019 and we were ignored.

However, the expert legal Counsel hired by the Department/NPWS to advise the CC in legal matters emphatically agreed with us on all of our key points in his August 2020

and February 2021 legal opinions – based on the evidence and on the law, and on the correct legal derogation decision threshold. Counsel’s opinions were ignored by the Department/NPWS in the 2021.22 Derogation Declarations. The previous year (April 2020), the CC itself recommended derogation licences for ‘other impacted areas’ “in the interests of public health and safety” under the terms of the Birds Directive and in time for the earlier 2020.21 Derogation Declarations – and it was ignored in both the 2020.21 and 2021.22 Declarations. The second nominee to the post of CC Chair resigned after just eighteen days in the post and “urged” the Department/NPWS to deal with our third phase of legal questions – as agreed with the first CC chair before he resigned – and his request was ignored; our 3rd phase questions, asked as full CC members, remain unanswered despite the written wishes of two former independent Chairs of the CC. The third nominee to the post of CC Chair declined the position after initial meetings with members, and urged the Department/NPWS to implement the April 2020 CC Report and recommendations – asking what was the point of the CC otherwise. All of what we say above is on the written record.

Therefore, as was expertly advised and recommended to the Department/NPWS by its own CC in April 2020, and also in expert legal advices sourced by the Department/NPWS and paid for by the taxpayer in August 2020 and February 2021, previous derogation Declarations back to S.I. No. 254/1986 - European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1986) have been “legally invalid”, “arguably ultra vires the 1979 Birds Directive”, and have applied a materially higher derogation decision threshold (viz. ***represent a threat to public health and safety***) than the proper legal threshold (viz, ***“in the interests of public health and safety”***). The advices also state that Departments/NPWS “have been wrongly advising Ministers for years”, in the public health and safety derogation context.

The only national primary legislation referring to public health and safety in the derogation context is the Wildlife 2000 Act, Section 59 which states as follows

59.—Nothing in Part II, or section 51, of the Principal Act shall make unlawful any thing which is done pursuant to and in accordance with a licence granted in that behalf by the Minister for the purpose of preserving public health or public safety, including air safety. Saver in interest of public health and safety.

According to the archived records of the Dáil debate on the Wildlife Act 2000, its drafting was commenced **fifteen** years earlier in 1985, before the 1986 Regulations were brought forward. It is noteworthy that the saver in the margins of the Act reflect verbatim the derogation decision threshold specified in Article 9.1.a) of the Birds Directive “in the interests of public health and safety” – the intentions of the legislators could not be any clearer. The actual text in the Act “preserving public health and safety” mirrors the British text in its 1981 Wildlife and Countryside Act. Therefore the fabricated and legally invalid derogation decision threshold “represent a threat to public health and safety” is nowhere to be seen in the latest Act of primary legislation. What is even more noteworthy is that the 2000 Act empowers the Minister to derogate for the purpose of preserving public health and safety – irrespective of the protections

of birds specified in the Principal (1976) Act – i.e. the Act recognises, de jure and de facto, the overriding priority of public health and safety in the context of legal protection of birds. This overriding priority is also stated explicitly and accepted by the ECJ in the 1985 case v. Belgium (urban starlings, national derogation). The ECJ's findings against Belgium's derogation were that it did not state that there was 'no satisfactory alternative solution' or 'the identified risks in time and place' – both of which ancillary conditions in the Birds Directive have been met evidentially and have been legally validated in the case of urban seagulls, which have far greater negative impacts on communities than starlings.

Why have we gone to such lengths in this submission to set out our legally supported analysis of the true legal position? There are a number of reasons why. The PCP notice text is itself materially misleading for a start. The Department/NPWS claims to "obey the law" (the 1979 Birds Directive is the pertinent law in EU member States), in its responses to Parliamentary Questions, in its media statements, in its 2018 Derogations Process Review Section 2.5, and in statements to its own CC. However the two expert legal advices that the Department/NPWS sourced and paid for with taxpayers' money to advise its own CC emphatically state otherwise, and agree with our analysis above, and state that the Department/NPWS's derogation regime (1976 Act Section 22 and the 1986 Regulations) "***is concerned with a domestic regime for wildlife protection (including birds)***". The opinions also state that "***This is fortified by the fact that Article 9 of the Birds Directive would appear to be transposed in any event by Reg.54 and Reg.55 of the 2011 Regulations and it would be otiose to include these provisions in the 2011 Regulations if the derogation regime had been adequately transposed in the Act and / or the 1986 Regulations.***" The Department/NPWS – for the first time in ten years since they were instituted – referred to the 2011 regulations, in passing only, in the 2021.22 Declarations, advising the Minister that this would make the Regulations "more compliant"! There is no such acceptable legal status as being "more compliant" with the law. This created a nonsensical position in our view whereby the Declarations persisted with the "legally invalid" Derogation decision threshold in the SI text as signed by the Minister, yet the 2011 Regulations, referred to for the first time and in passing only, contain but do not apply the correct legal derogation Decision threshold. The legal advices state that the Department/NPWS "has been wrongly advising Ministers for years" in the derogation/public health and safety context.

Very real and very severe impacts of the Department/NPWS's obdurate persistence with the "legally invalid" derogation decision threshold, and with wrong advice to successive Ministers for years, have been experienced now for several years and counting in communities where, unmanaged, uncontrolled high density Herring gull colonies have established (as shown in the National (sic) Survey of Urban Gulls published by the Department/NPWS in September 2021). The real life negative consequences of such serious legal and administrative failures, as advised by expert Counsel since August 2020 and February 2021, on the part of successive Departments/NPWS are escalating, uncivilised, dangerous conditions experienced by large communities of people over several months every year.

1.2. Four simple facts:

Given the expert advices including legal advices provided to the Department/NPWS by and via its own CC, and the true and irrefutable evidence of seagull numbers, and international precedents, and indeed ordinary common sense,

- i) no human family, especially but not exclusively where there are infants, very young children, elderly members and/or immune-compromised members, should be compelled by the State, under a threat of legal penalty and criminalisation for non-compliance, to accept seagulls (large, wild, aggressive birds implicated evidentially and extensively in a number of public health and safety risks) nesting on their home for several months every year,
- ii) It is inarguably contrary, in several respects, to the interests of the health, safety and wellbeing of families for the Department/NPWS to continue do so, and
- iii) it is contrary to the clear intentions of EU Law (the 1979 Birds Directive Article 9.1.a), existing primary legislation (the Wildlife Act 2000, Section 59), and existing Regulations (S.I. No. 477/2011 Section 55.2.a), and indeed the judgement of the ECJ in 1985 vs. Belgium that “the protection of public health and safety is a higher ranking priority than the protection of birds”, and
- iv) parents, grandparents and adults to whom the care of children is legally obligated and entrusted e.g. (carers, teachers et al) all have legal responsibilities for the protection of children/vulnerable people, and are subject to potentially severe legal sanction if they fail to meet such responsibilities; yet the Department/NPWS’s policy on urban seagulls exposes children/vulnerable people to escalating serious injury and other risk types from seagulls, and says that it will prosecute adults who choose to act to protect children/vulnerable people – including on their own property, and in schools etc..

The current situation with regard to urban seagulls, therefore, is totally absurd.

1.3. The minimum derogation requirements.

In the continuing absence of Local Authority-based managed services for removal of seagull nests and eggs from specified locations in the legitimate interests of public health and safety, the Department/NPWS needs to publicise a perpetual derogation for the removal of seagull nests and eggs from family homes. Advice as follows should be issued in national print and broadcast media well ahead of the traditional 1st May derogation Declaration date:

- a) that seagulls should be deterred/prevented, without live birds being harmed, from nesting on homes. Extensive experience and expert advice to the CC has shown that so called ‘deterrent measures’ (fake birds of prey, spikes, wires, gels, scary-face balloons etc.) are totally ineffective and are a waste of time and money; the proven and least harm effective measure is systematic removal of nests/eggs until the birds realise they will not succeed in breeding at specified locations;

- b) advice should reference evidence of severely anti-social noise over several months from nesting seagulls, in particular from high density colonies causing sleep deprivation and the acknowledged negative health impacts of that;
- c) advice should also reference the risk of serious injury or falls caused by attacks by breeding seagulls – such that may require professional medical treatment (tetanus, anti-biotics, stitches) and/or attendance at a hospital;
- d) advice should also reference the proven risk of Antimicrobial Resistance (AMR) contamination from seagull faeces and/or a blood injury from a seagull attack; this AMR advice should specifically reference heightened contamination risks to the very young, the young, the elderly and anyone who is immuno-compromised – as was expertly advised in February 2020 to the Department/NPWS’s CC established in June 2019 to examine the issue of urban seagulls and their impacts on communities;
- e) advice should also state that such a derogation is consistent with expert legal advices as sourced by the Department/NPWS via its CC;
- f) the derogation should state that expert advices and extensive precedents have made it clear that nest/egg removal is the only effective, least-harm method for deterring urban gulls in the specified locations where high density colonies have established and are proliferating, i.e. that there is “no satisfactory alternative solution”, and that the known and now legally accepted risks (CC legal advices) from nesting gulls (i.e. in time and place during the breeding, nesting and rearing season) are clearly incontrovertible; such statements will satisfy the conditionality on derogations as required by the Birds Directive, and were accepted emphatically in the legal advices acquired by the Department/NPWS Aug. 2020/Feb. 2021.
- g) if it is seriously and genuinely contended by the authorities that the feeding of gulls by people is a major contributory factor to the negative issues arising in communities where high density breeding colonies are escalating rapidly, then the authorities should act firmly to stop the feeding of gulls – Limerick City Council have previously prosecuted and fined a person for feeding gulls. In our view, feeding of gulls is a minor factor at best, albeit with severe localised impacts on neighbours when a person feeds gulls systematically. Action is definitely needed to halt feeding of gulls in public spaces. Overall, we agree with the expert advice to the CC by UK expert on urban gulls Peter Rock viz. that urban gulls have adapted for higher temperatures that support breeding, a lack of predation, unlimited food supplies over long ranges, and an absence of resistance from humans – that these are the key factors in urban gull behaviours, and that localised feeding by people is just “a bonus for opportunistic gulls”.

1.4. Common-sensed application of such a derogation:

The derogation and advices at 1.3. above should also be provided to schools, creches, Hospitals and other medical facilities, Hotels, Bed & Breakfasts, and to businesses involved with the manufacture, storage, supply, sale or consumption of human food.

1.5. Transparency about dangers and the need for professional services:

Clear advice needs to be provided regarding the dangers from nesting seagulls and the need for a competent, insured contractor when nest/egg removal is being carried out.

1.6. Futility and illogicality of any mapped/zoning approach to derogation

The use of a mapped/zoning approach for such derogation will not be suitable/successful due to the high mobility and range of urban seagull flocks and will inevitably result in nonsensical outcomes at map boundaries. This has happened already with the Balbriggan derogation where out of date maps were used, and two large schools experiencing recurring and very serious seagull issues were excluded because they were a few metres outside of the derogation boundary map drawn by the Department/NPWS.

In fact, any mapped/zoning approach will de facto signal a continuing non-acceptance by the Department/NPWS of the 'public health and safety' dimension of the urban seagull issue – it is not possible to zone or ration protection of public health and safety, and indeed such should not even be attempted.

It is clearly more feasible to designate types of buildings/premises for the derogation, with all other locations where issues arise with seagulls remaining subject to case licence applications under the existing system. In fact, the original 1976 Wildlife Act provision at Section 22.5.g) states that "it shall not be an offence to destroy or remove any such nest which is built in or on an occupied building".

1.7. Availing of a derogation remains optional, not compulsory:

Of course the implementation of a derogation as set out above clearly leaves people with the option/right to accept the risks as advised from seagulls and to tolerate nesting gulls on their home, premises etc. should they wish to do so.

However, people who may freely choose not to avail of a derogation have no right to impose their choice or its attendant, acknowledged, serious risks on others who choose to protect their families from injury and/or disease risks, and their property from serious damage. This is especially so when the law (EU and National) intentionally affords overriding priority to the interests of public health and safety, notwithstanding the Department/NPWS's failure to date to reflect this in derogation policy on urban gulls.

1.8. Case-by-case licencing for locations other than those specified at 1.3 and 1.4:

At locations/premises experiencing negative issues with urban seagulls, other than those listed at 1.3 and 1.4. above, the published advice should describe how to apply for an appropriate licence in order to resolve such issues – i.e. the current low volume case-by-case system.

1.9. Managed Services for the control of high density urban seagull colonies:

As expertly advised, including expert legal advice, to the Department/NPWS by its own CC, and as evidenced by the results of the Urban Gull survey, urban seagulls have chosen urban locations (after closure of landfills – as acknowledged by the Department/NPWS in an FOI-based press release in July 2016) because of higher

temperatures that enhance breeding conditions, an absence of predators, unlimited food supplies over their long range, and the fact that they are for the most part unresisted by humans – and they benefit in Ireland alone from an illegally high derogation decision threshold since 1986. There is also clear evidence that urban seagulls are never going to revert to sea habitats (Rock, GPS surveys, Bristol). Outside the harsh constraints of sea habitats, urban seagulls have no apparent constraint on their proliferation – as is clearly indicated by the Nation Survey results. Essentially, urban seagulls are behaving just like an ‘invasive, dominant species, out of control in urban areas. It is urgently incumbent therefore, on the relevant authorities, that management and control of urban seagulls is undertaken – ref. Articles 1 and 2 of the Birds Directive – in the interests of public health and safety under Article 9.1.a) of the Directive.

As we have stated since 2016, ideally, Ireland will progress at some point to a Local Authority based managed services model for addressing urban seagull issues, similar e.g. to the new policy/services introduced in England recently which sees very strict protection of gulls in their natural/rural habitat, but an overriding priority to public health and safety, with clearly specified reasons for such, in urban areas:

<https://naturalengland.blog.gov.uk/2021/12/17/urban-gull-licensing-a-review-of-our-organisational-licence-trial-and-plans-for-2022/>

Also as we have stated since 2016, such a solution offers a very high assurance of adherence to the law, consistent intervention standards, limitation to the prescribed conditions/circumstances for nest/egg removals, and, if necessary, relocation of gull chicks. It also offers a very high standard of statistical data collection and reporting. This approach is not a free-for-all General Licence, it is a properly targeted approach which gives due priority to public health and safety where such is appropriate and necessary.

1.10. Summary.

In the absence of a managed services solution, what we have set out above is, in our view, the minimum necessary, legal and proportionate derogation provision/method in the legitimate interests of public health and safety. Once the full and correct advice is provided by the Department/NPWS in a totally transparent way with the derogation, all who are seriously negatively impacted by urban seagull issues will have the minimum necessary means to protect the interests of public health and safety and their property, in ways that do not harm any live seagulls, and will eventually teach seagulls to back off seeking to use core human habitats for breeding purposes.

2. **Key comments.**

2.1 BCC has made submissions to the equivalent PCP processes on derogation Declarations since we were added to the list of stakeholders in 2019. We refer the Department/NPWS to each of our previous submissions which remain substantively relevant and justified based on the evidence of severe and escalating impacts of urban gulls on communities, and on the legal advices acquired via the CC. We also re-refer the Department/NPWS to our previously ignored 104 page Community Report as

submitted in December 2017 which stacks up fully today when compared to the Department/NPWS's continued prevarication and refusal to act in the interests of public health and safety on the urban seagull issue, including its refusal to act on the expert advices and recommendations of its own CC established in June 2019 to examine the impacts of urban seagulls on communities and make recommendations.

- 2.2 We also re-refer the Department/NPWS to our community's Minority Report as members of the CC as submitted in April 2020 – it too stacks up fully today. We also re-refer the Department/NPWS to the two expert legal advices sourced by the Department/NPWS via the CC which emphatically agree with all of our key positions on the issue.
- 2.3 As for further serious evidence of urban gull issues impacting public health and safety, we have seen the EPA recommend closure of Balbriggan Beach in 2021 due to the very high levels of seagull faeces running off our streets during rain into our harbour www.beaches.ie
We have seen the case in North Wales on 30th April 2021 where a toddler succumbed to near fatal illness and organ failure when he ingested seagull faeces while playing in his own back garden – <https://www.express.co.uk/news/uk/1430203/Toddler-seagull-poo-garden-kidney-failure-Anglesey-north-Wales>
We have seen the new urban seagull policy for England in December 2021 within which our position on public health and safety and severe impacts on communities, especially vulnerable people are specifically acknowledged as part of their new 'Organisational Licence' being "rolled out" across England <https://naturalengland.blog.gov.uk/2021/12/17/urban-gull-licensing-a-review-of-our-organisational-licence-trial-and-plans-for-2022/>
We have seen the second Young Scientist Project in the last five years from the Loreto in Balbriggan seeking to address attacks on the school children by high density urban seagull flocks foraging aggressively in the school – an escalating circumstance reported by several of our schools since 2016. <https://www.independent.ie/regionals/dublin/fingal/balbriggan-loreto-students-prove-that-wearing-red-keeps-the-seagulls-at-bay-41250577.html>

It should be noted that all four of the above serious pieces of evidence of public health and safety issues from urban seagulls occurred after the CC's expert advices and recommendation for a derogation and after the legal advices that derogations are justified, i.e. they further amplify the need for action on the urban seagull issue.

- 2.4 Our view as expressed since May 2016 that the Department/NPWS has been acting illegally since 1986 by applying a materially higher and fabricated derogation decision threshold ("represent a threat to public health and safety") that the correct legal decision threshold ("in the interests of public health and safety") has been emphatically borne out by the two legal opinions sourced by the Department/NPWS via its own CC in August 2020 and February 2021. Similarly, our view has been borne out that the

Department/NPWS has never implemented the 1979 Birds Directive – the law, and continues to rely on legally invalid Regulations, and has been “wrongly advising Ministers for years”, in ways that are very harmful to communities impacted by out of control high density urban seagull colonies.

The results of the National (sic) Survey of Urban Gulls published in September 2021 acknowledged a number of 1,485 Herring Gull nests in Balbriggan alone. The total number of nesting urban Herring gull pairs in Ireland nationally in 2002 was reported as 209 pairs in the Seabird 2000 Census. In 2018, Fingal County Council’s superior (Aerial/Drone technology) Survey of parts of Balbriggan, Howth and Skerries showed that very high numbers of breeding pairs existed in the towns – but this was ignored for policy purposes by the Department/NPWS – adding thousands more gulls to the population to date. Were it not for the partial derogation in Balbriggan since 2017 we have no doubt that our figure would be much higher than 1,485 nests.

The claimed policy positions relating to numbers of gulls and catastrophic decline clearly do not stand up. The 2004 Report/Analysis (Mitchell et al) of the Seabird 2000 Census has been formally amended by one of its authors (Dr Stephen Newton, CC member) in 2018 in relation to gull counts and the facts that urban gulls were never counted, and that the claimed decline in numbers only applied to gulls in natural habitats. This formal editing of that Report has been lodged with and acknowledged by the JNCC. Birdlife International have retained the European Herring Gull (Sept. 2021) at the “least concern” threat level 1 of 5 levels, have now acknowledged peer reviewed studies stating that claimed decline in gull numbers seems to be an adjustment to a previous equilibrium that predated unsustainable human waste management practices and industrial-level fish waste discards at sea. John Coulson’s comments to Birdlife were very salient viz. that it would discredit the threat rating system to raise Herring Gulls to threat level 2 because there are millions of them, not even taking into account urban numbers and the failure to properly count those. The Aerial study in 2018 (Balbriggan, Howth and Skerries) by Fingal County Council clearly showed very high numbers in small areas of those towns, but was ignored for policy purposes by the Department/NPWS which now relies on their inferior (ground observation based) study in 2021, which has merely confirmed the 2018 Aerial study results in Balbriggan, Howth and Skerries, and it seems has not properly looked at Dublin city. The British Trust for Ornithology in partnership with DEFRA in 2018/2019 completed studies in North Wales and Greater Birmingham which demonstrated that ground-based-observation results for urban Herring gull counts need to be multiplied by a factor of 14 (1,400%) to equate to simultaneous Aerial study results over the same terrain.

The absence of and resistance to any real mitigation actions during the timeline (several years) of all of the above demonstrates the fact that relevant authorities obdurately chose to ignore and seek to diminish the impacts of high density urban seagull colonies on communities – even as these impacts escalated rapidly, and

relegated the interests of public health and safety to the lowest level of consideration/priority. This attitude needs to be overturned now.

There is also persistent and widespread evidence (Stephen's Green, Herbert Park, St. Anne's Park, Marley Park, the Phoenix Park) – reported to Dublin City Council and the OPW, and persistent anecdotal evidence that urban seagull colonies are doing harm to other species – and this too continues to be ignored by the Department/NPWS. The facts of the matter are that the proven pestilent behaviours of high density urban gull colonies satisfy most of the listed harms in the legislation for which derogations are justified viz. public health and safety, air safety, damage to other fauna, damage to water (drinking and bathing) and damage to property. As an Apex species that has left the confines of its natural habitat, urban seagulls are exploiting higher temperatures for breeding purposes and are proliferating rapidly, with an absence of predators, and an unlimited range for food supplies, are benefitting from illegal protections, and an absence of any meaningful management and control by the responsible authorities.

3. Conclusion.

We have stated and provided incontrovertible evidence since 2016 that our town and our community has been suffering a rampant infestation of urban seagulls that continue to cause havoc for months every year – with several behaviours from the birds that give it pest status.

The Department/NPWS sought to fob our community off in 2016 with referral to its major Review of the Derogation Process in 2018. We accelerated our campaign with a very large petition and cross party political support.

In February 2017 we were advised by our TDs at the time that then Minister Humphreys had directed the Department/NPWS to provide a derogation to Balbriggan and its districts that enabled removal of seagull nests and eggs. On 1st May 2017 the Department/NPWS implemented a partial derogation that was thinned to the minimum, for 'public safety' only (a restriction since legally impugned by expert legal advice paid for by the taxpayer), restricted to a mapped/zoned area that used an out of date map and excluded two major schools (eventually included in 2021 after several requests) that were having serious issues with seagulls, and demonstrated almost zero transparency in its announcement. The Department/NPWS has persisted with its legally invalid (denying the interests of public health and safety), opaque approach to the Balbriggan derogation to date.

Whereas the derogation continues to be very useful in extreme cases with multiple nests on many properties, the Department/NPWS's denial of the 'public health' dimension of the issue, the fluffed zoning map, and the failure to publicise the derogation properly causes great confusion and difficulties that have persisted each year since 2017. We have explained this to the Department repeatedly since 2017, and we have been ignored.

The 2018 Derogation Review essentially ignored the urban seagull issue and persisted with a claimed legal position that has been since impugned by expert legal advices

sourced by the Department/NPWS. It recommended a 'steering group' on urban gulls which subsequently became the CC. The CC's First Interim Report in April 2020 – in time for the derogation Declarations – recommended a derogation for other impacted areas in the interests of public health and safety, but was ignored in both the 2020.21 and 2021.22 Declarations. The Department has been unable to appoint a replacement CC Chair since the first Chair resigned in September 2020 to take up another position.

Based on the six year timeline since 2016 and all of the key evidence and events mentioned above, in our view – and we agree fully with the legal advices acquired by the Department/NPWS, it seems to be incontrovertibly correct to say that the Department/NPWS has failed seriously in its statutory responsibility to protect the interests of public health and safety in the urban seagull context, and that it has failed in terms of policy and public administration, to recognise, manage and control the serious risks posed by freely proliferating, high density urban seagull colonies.

The Department/NPWS's claims with regard to "the law" and "follow the science" seem very hollow to us at this stage based on the evidence, the legal opinions, the results of its own belated and clearly inferior National (sic) Survey. It is patently clear in our view that the legitimate interests of public health and safety have not been served, and that the overriding priority that must legally apply to the health and safety of citizens continues to be denied by the Department/NPWS. We were told by the Department/NPWS in 2016 that the Major 5 yearly Review of the Derogations Process would address the urban seagull issue and all perceived threats – it did no such thing; now six years on since our community first sought protection from high density urban seagull colonies, the tender for the next 5-yearly Derogations Process Review will be due out in September this year.

We therefore believe that the legitimate interests of public health and safety, in the urban seagull context, must be properly and fully protected henceforth and in perpetuity, as an overriding priority – now starting with the 2022.23 derogation Declarations, and this must be done with full transparency and clear publicity well in advance of the Declaration renewal date.



On behalf of:

**Balbriggan Community Committee on urban seagull issues Estd. May 2016
Members of the Minister's CC urban seagulls Estd. June 2019**

c/o postal address provided above.