
Statement of Material Contravention

Proposed Strategic Housing Development

Old Schoolhouse Site (former Clonsilla School, Protected Structure RPS No. 700), Porterstown Road, Kellystown, Clonsilla, Dublin 15.

Osh Ventures Ltd.

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Hughes Planning & Development Consultants

70 Pearse Street, Dublin 2
+353 (0)1 539 0710 – info@hpdc.ie – www.hpdc.ie

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1.0 Introduction

Hughes Planning and Development Consultants, 70 Pearse Street, Dublin 2, have prepared this Statement of Material Contravention on behalf of our client, Osh Ventures Ltd., to accompany a planning application to An Bord Pleanála for a proposed Strategic Housing Development at Old Schoolhouse Site (former Clonsilla School, Protected Structure RPS No. 700), Porterstown Road, Kellystown, Clonsilla, Dublin 15.

The proposed Strategic Housing Development comprises the construction of a build-to-rent (BTR) apartment development, comprising 198 no. residential units with associated amenities and community infrastructure facilities, public realm improvements and all associated site and infrastructural works necessary to facilitate the development. The proposal also provides for the refurbishment of the protected structure.

An Bord Pleanála issued a Notice of Pre- Application Consultation Opinion on 6th November 2020 under ABP Ref. ABP-307464-20. The opinion states that *'furthermore, Pursuant to article 285(5)(b) of the Planning and Development (Strategic Housing Development) Regulations 2017, the prospective applicant is hereby notified that, in addition to the requirements as specified in articles 297 and 298 of the Planning and Development (Strategic Housing Development) Regulations 2017, the following specific information should be submitted with any application for permission: Item 1 of this opinion requires:*

- 1. The prospective applicant should satisfy themselves in relation to whether the proposed development represents a material contravention of the Development Plan and/or Local Area Plan and satisfy the subsequent submission requirements in relation to this."*

On this basis, this Material Contravention statement provides a robust justification for the granting of permission for the proposed development which may materially contravene the Fingal County Development Plan 2017-2023. The Material Contravention proposed relates to the height and density of the proposed development with regards to policies contained within the Fingal County Development Plan. The proposed development may also be considered to materially contravene the Fingal County Development Plan in relation to the quantity of public open space provided.

It is respectfully requested that An Bord Pleanála have regard to the following justification for a potential material contravention of the Fingal County Development Plan 2017-2023 (as it relates to building height / density and provision of public open space) having regard to the fact that the proposed development is by definition 'of strategic importance', the pattern of development approved in the area and having regard to the compliance of the proposed development with national planning policy and section 28 Guidelines as outlined herein.

These include the National Planning Framework 2040, Urban Development and Building Heights Guidelines for Planning Authorities, 2020, Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018 and the Regional Spatial and Economic Strategy for the Midlands and Eastern Region which fully support and reinforce the need for residential development at appropriate densities on sites in close proximity to public transport and within existing urban areas.

2.0 Legislative Context

Planning and Development and Residential Tenancies Act 2016 (as amended)

Pursuant to Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (2016 Act), where a proposed development is considered to materially contravene the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), the Board can determine that permission should, nonetheless, be granted, having regard to a consideration specified in Section 37(2)(b) of the Planning and Development Act, 2000 as amended (the Act). Section 9(6)(c) of the 2016 Act stating that:

Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development.

Section 37(2)(b) of the Act states that where a proposed development materially contravenes the development plan, the Board may grant permission where it considers that:

- (i) *the proposed development is of strategic or national importance,*
- (ii) *there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) *permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (iv) *permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

We note that the subject site is located within land subject to the 'RA - Residential Area' zoning objective in the Fingal County Development Plan 2017-2023 wherein residential use is permitted in principle. Given that the subject scheme comprises a Build-to-Rent residential development, it is submitted that the proposal is in full compliance with the applicable zoning objective which governs the future development of the site. It is also prudent to note that the subject site is subject to a specific objective requiring the provision of a masterplan by Fingal County Council. It is noted that at date of lodgement, the masterplan has not been prepared.



Figure 1.0 Extract from Fingal Development Plan 2017-2023 Zoning Map (Sheet No. 4) with application site outlined in red.

As the proposal complies with the zoning objective, it is considered that the subject of this material contravention statement relates to building height and by association, the density of development achieved. Additionally, the quantum of public open space provided may also be considered a material contravention. It is respectfully requested that An Bord Pleanála have regard to the justification for the proposed development provided in the subsequent sections. It is considered that the policies and objectives stated in the Section 28 Government Guidelines, including the National Planning Framework 2040, Urban Development and Building Heights Guidelines for Planning Authorities, 2018, and Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2020, provide justification for the proposed number of units, density and height.

These policies, among others, are discussed in the below justification section. Further to this, the proposal can be justified having regard to the strategic importance of Strategic Housing Developments and the permissions granted locally since the adoption of the Development Plan.

3.0 Potential Material Contravention - Density and Height

The Fingal County Development Plan 2017-2023 contains specific objectives pertaining to Clonsilla and, more specifically, the subject site. The proposed development may be considered to materially contravene the following specific local objective of the Plan:

Objective CLONSILLA 2 *Develop key sites within the village for mixed use including a residential component to enhance the viability and vitality of the village while ensuring new developments do not exceed **three storeys**.*

In this regard the proposed development may materially contravene the objective for buildings to not exceed 3 storeys in height with the proposed development height exceeding this by providing structures of up to seven storeys in height. The proposed development may also materially contravene the maximum density with a proposed residential density of 85 units per hectare based on the residential zoned lands. However, given national, regional and local planning policies to increase residential density and height at appropriate locations, a strong justification for the granting of permission for the proposed density and height is set out below.

4.0 Justification for Potential Material Contravention pursuant to Section 37(2)(b) of the 2000 Act.

A justification for the potential material contravention of the Fingal County Development Plan 2017-2023 is set out below, under the relevant parts of Section 37(2)(b) of the 2000 Act.

4.1 Part (i) - Proposed Development is of Strategic or National Importance

The proposed development comprises of inter alia the provision of 198 no. residential apartments, on a site of c. 2.32 hectares. The proposed development falls within the definition of a Strategic Housing Development in accordance with the definition of same provided under Section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended. On this basis it is submitted that the proposed development is, of strategic importance with respect to the timely delivery of urban housing and implementation of the current Government's Action Plan for Housing and Homelessness – Rebuilding Ireland.

National guidance, such as the National Planning Framework, Urban Development and Building Height Guidelines, Sustainable Urban Housing Design Standards for New Apartments and the Regional Spatial and Economic Strategy for the Eastern and Midlands Region seek to create compact sustainable residential to be located in appropriate urban locations, close to existing/proposed infrastructure and services. The development is located on residentially zoned land in an existing urban settlement and is adjacent to existing infrastructure and services.

The development also provides significant improvements to the adjoining public realm including an upgraded pedestrian footpath, an increased quantum of landscaping and planting, new furniture. The proposal is considered to enhance the permeability of Clonsilla by providing additional gateways to provide access through the site. The proposal is also considered to integrate and complement the existing with the Royal Canal.

It is therefore submitted that the proposed development can be considered to be of strategic importance.

4.2 Part (ii)- *There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned*

The proposed development meets the qualifying thresholds for strategic housing development, as prescribed by current legislation.

The residential density of the proposed scheme equates to 85 no. units per hectare. There is no specific residential density standard prescribed by the Fingal County Development Plan 2017-2023, however, Objective PM41 is noted. Which reads as follows:

'Encourage increased densities at appropriate locations whilst ensuring that the quality of place, residential accommodation and amenities for either existing or future residents are not compromised.'

The Development Plan otherwise refers to the assessment of planning applications having regard to the Sustainable Residential Development in Urban Areas Guidelines (2009) and its companion document Urban Design Manual. For 'Outer Suburban' sites, the Guidelines promote net residential densities in the general range of 35-50 dwellings per hectare, involving a variety of housing types. The Guidelines also advocate a design-led approach to achieving appropriate density, that meets the relevant residential amenity safeguards.

It is submitted on the basis of the above that the density objectives for this site are not therefore clearly stated in the current Fingal County Development Plan 2017-2023.

4.3 Part (iii) - Permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government

The following section shall demonstrate how the proposed development in terms of height is justified in the context of recent National Planning Policy and Section 28 Government Guidelines. Please also refer to the Statement of Consistency and Planning Report for further details on the proposed developments compliance with national and regional guidelines.

4.3.1 Project Ireland: National Planning Framework 2040

The National Planning Framework 2040 (NPF) seeks to increase densities and building heights in appropriate urban locations to consolidate urban sprawl, increase the sustainability of public transport networks and meet the housing needs of our growing population. The NPF seeks to influence the location of new housing development and future population growth and targets the location of 40% of new housing development within and close to the existing 'footprint' of built up areas over the lifetime of the framework.

The following objectives and guidance regarding brownfield development in the NPF are of particular relevance:

- National Policy Obj. 3a** *Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.*
- National Policy Obj. 3b** *Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.*
- National Policy Obj. 4** *Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.*
- National Policy Obj. 13** *In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.*
- National Policy Obj. 33** *Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location."*
- National Policy Obj. 35** *Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.*

Moreover, the NPF states that to enable brownfield development:

'Planning policies and standards need to be flexible, focusing on design led and performance-based outcomes, rather than specifying absolute requirements in all cases. Although sometimes necessary to safeguard against poor quality design, planning standards should be flexibly applied in response to well-designed development proposals that can achieve urban infill and brownfield development objectives in settlements of all sizes. This is in recognition of the fact that many current urban planning standards were devised for application to greenfield development sites and cannot account for the evolved layers of complexity in existing built-up areas.'

The proposed residential development is consistent with the Objectives of the NPF. The proposed development will take place in a sustainable manner, on lands that are within the established urban settlement of Clonsilla, zoned for residential development and can be considered contiguous to existing residential developments. The development will also provide for the refurbishment and re-use of the

former Schoolhouse protected structure This will take place through appropriate design standards and achieving the correct density for the subject site. The development will not give rise to any negative effects on the environment and will support the economic growth and development of Clonsilla.

It is evident that there is a strong emphasis placed on increased building heights and densities in appropriate zoned lands and locations within existing urban settlements. As such it is respectfully submitted that the proposed building height, ranging from four to seven storeys, and density, of 85 no. units per hectare, is in line with Government guidance and evolving trends for sustainable residential developments in urban areas.

The National Planning Framework states the following in relation to changing family size:

‘Currently, 7 out of 10 households in the State consist of three people or less, with an average household size of 2.75 people. This is expected to decline to around 2.5 people per household by 2040. Household sizes in urban areas tend to be smaller than in the suburbs or rural parts of the country. In Dublin city, one, two and three person households comprise 80 percent of all households. Yet, the stock of housing in Ireland is largely comprised of detached and semi-detached houses with three to four bedrooms.’

Having regard to the above, the proposed unit mix responds to the identified strategic need for smaller units in the housing stock in urban areas. The proposed development will include one-bedroom and two-bedroom apartments with a reduced provision of three-bedroom units, which will improve the variety of house types in the area consistent with national policy guidance.

4.3.2 Sustainable Residential Development in Urban Areas & Design Manual

The role of the ‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’ is to ensure the sustainable delivery of new development in urban areas throughout the country. The Guidelines provide clear guidance on the core principles of design when creating places of high quality and distinct identity. The Guidelines recommend that planning authorities should promote high quality development in policy documents and through the development management process. The Guidelines should be read in tandem with the Design Manual which demonstrates good design principles and their application in designing new residential developments. The Guidelines recognise that a key design aim in delivering sustainable communities is to reduce, as far as possible, the need to travel, particularly by private car, by facilitating mixed-use development and by promoting the efficient use of land and of investment in public transport. Such policies will help to sustain viable local services and employment.

Section 2.1 of the Guidelines state that, *“the scale, location and nature of major new residential development will be determined by the development plan, including both the settlement strategy and the housing strategy.”* The sequential approach to land development is also recognised by the Guidelines within Section 2. which notes that *“the Department’s Development Plan Guidelines (DoEHLG, 2007) specifies that zoning shall extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, encouraging infill opportunities and that areas to be zoned shall be contiguous to existing zoned development lands..”*

In this case, the subject site is zoned for residential development under the current Fingal County Development Plan 2017-2023. The site is located on appropriately zoned lands within the built up area of Clonsilla. Limiting height and density will prevent sustainable, compact development within appropriately zoned lands located within an existing settlement boundary and will lead to ‘leapfrogging’ of developments and urban/suburban sprawl, particularly into greenfield and high amenity lands. Thus, the SUFP objective to restrict height at the application site conflict with National Planning Policy issued under Section 28 Guidelines.

The Guidelines also recognise the need to plan for sustainable neighbourhoods. In this regard, the proposed strategic housing development provides for community facilities. The refurbished protected structure will also provide a management office and additional amenities for residents. A childcare facility is also proposed, with this facility to be made available to both the future residents of the scheme and local community on a weekly/sessional basis.

In terms of density, Section 6.3(c) of the Guidelines support increased residential densities in suitable locations. It states that:

'In other locations, increased densities of development can be acceptable as long as they contribute to the enhancement of town or village form by reinforcing the street pattern or assisting in the redevelopment of backlands.'

The proposed land uses are in accordance with the zoning objective designation on the site. It is important to note that the wider area of Clonsilla provides a wealth of services and amenities for the use and enjoyment of the community including local retail centres, schools, healthcare facilities, churches, community centres and a sports/recreational. Further to the provision of a significant extent of social infrastructure, we note the site's proximity to significant employment centres both in the immediate area and in Dublin City Centre, which is highly accessible via strong local public transport links.

4.3.3 Urban Development and Building Heights Guidelines for Planning Authorities, 2018

The Urban Development and Building Height Guidelines, 2018, are intended to set out national planning policy guidelines on building heights and development intensity in urban areas in response to specific policy objectives set out in the National Planning Framework and Project Ireland 2040. Under Section 28(1C) of the Planning and Development Act 2000 (as amended), Planning Authorities and An Bord Pleanála will be required to have regard to the guidelines and apply any specific planning policy requirements (SPPR's) of the guidelines in carrying out their function.

The Height Guidelines emphasise the policies of the NPF to greatly increase levels of residential development in urban centres and to increase building heights and overall density, and to ensure that the transition towards increased heights and densities are not only facilitated but actively sought out and brought forward by the planning process and particularly at Local Authority level and An Bord Pleanála level. The Height Guidelines contain the following commentary which we would consider relevant to the subject application:

'Government considers that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas.'

'the preparation of development plans, local areas plans, and Strategic Development Zone Planning Schemes and their implementation in the city, metropolitan and wider urban areas must therefore become more proactive and more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights'.

Moreover, we would again note the provisions of Specific Planning Policy Requirement No.1 as follows:

*'In accordance with Government policy to **support increased building height and density in locations with good public transport accessibility**, particularly town/ city cores, planning authorities shall explicitly identify, through their statutory plans, areas where increased building height will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies **and shall not provide for blanket numerical limitations on building height.**'*

The site benefits from an excellent public transport network including its location approximately 430 metres east of the Clonsilla Railway Station. Dublin Bus route nos. 39, 39a and 239 each provide regular, frequent access to and from Clonsilla via Blanchardstown. These services provide strong access links to Dublin City Centre, wider employment/recreational centres within Dublin, links to inter-county rail services (at Connolly Station). The proposed development therefore represents an opportunity to provide for increased densities in accordance with national planning policy. Furthermore, Chapter 3 of the Height Guidelines, presents the following commentary with regards to increased building height in urban locations:

'In relation to the assessment of individual planning applications and appeals, it is Government policy that building heights must be generally increased in appropriate urban locations. There is therefore a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility.'

The Height Guidelines continues to present 3 no. broad principles to which Planning Authorities must consider in the assessment of proposals for increased building height in urban locations. We note and respond to these principles as follows:

1. *Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?*

The proposal provides for the refurbishment of a disused protected structure and the development of an existing underutilised brownfield site within Clonsilla for the provision of 198 no. Build-to-Rent apartments. The proposal allows for the efficient and compact growth of the immediate area as is considered appropriate in the context of sustainable development. The proposal is therefore in accordance with the National Planning Framework.

2. *Is the proposal in line with the requirements of the development plan in force and which plan has taken clear account of the requirements set out in Chapter 2 of these guidelines?*

As discussed on the previous page, it is our opinion that the relevant County Development Plan sets out a blanket numerical restriction on building heights and residential density within the plan area, is, itself, in contravention of national planning policy with regards to compact and sustainable urban growth. As such, we would consider the height, of four to seven storeys, and residential density, of 85 no. units per hectare, proposed under the current application represents an appropriate response to the evolving topography and densification of the immediate area and is therefore in accordance with the National Planning Framework.

3. *Where the relevant development plan or local area plan pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework?*

Whilst it is acknowledged that the provisions regarding height in the plan area were adopted in 2017. We would ask An Bord Pleanála to have due regard for the extent of documentation provided with this application which confirms that the proposed development will have no undue impact on the its receiving environment and will provide a high standard of accommodation for future residents.

Further to the above, we note the provisions of Specific Planning Policy Requirement No.3 as follows:

It is a specific planning policy requirement that where;

(A)1 an applicant for planning permission sets out how a development proposal complies with the criteria above; and

2. *the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;*

*then the planning authority **may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise.***

Having regard for the above, it is submitted that the proposal is in compliance with the criteria specified under SPPR No. 3 of the Height Guidelines, which has been demonstrated with the various documentation submitted with the planning application.

4.3.4 Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2020

The 'Sustainable Urban Housing: Design Standards for New Apartments' build on the content of the 2015 apartment guidance. The Guidelines state that "in the longer term to 2040, the Housing Agency has identified a need for at least 45,000 new homes in Ireland's five cities (Dublin, Cork, Limerick, Galway and Waterford), more than 30,000 of which are required in Dublin City and suburbs, which does not include additional pent-up demand arising from under-supply of new housing in recent years."

The Guidelines also state that "*apartments are most appropriately located within urban areas. As with housing generally, the scale and extent of apartment development should increase in relation to proximity to core urban centres and other relevant factors. Existing public transport nodes or locations where high frequency public transport can be provided, that are close to locations of employment and a range of urban amenities including parks/waterfronts, shopping and other services, are also particularly suited to apartments.*"

In light of this, the Guidelines note that "*City and County Development Plans must appropriately reflect this, in the context of the need to both sustainably increase housing supply and to ensure that a greater proportion of housing development takes place within the existing built-up areas of Ireland's cities and towns. This means making provision for more residential development to take place on infill and brownfield sites and as refurbishment of existing buildings, to increase urban residential densities.*"

Section 2.23 of the Guidelines also recognises that the National Planning Framework "*signals a move away from rigidly applied, blanket planning standards in relation to building design, in favour of performance-based standards to ensure well-designed high-quality outcomes. In particular, general blanket restrictions on building height or building separation distance that may be specified in development plans, should be replaced by performance criteria, appropriate to location.*"

Section 2.4 of the Guidelines also promotes higher density development in 'Central and/or Accessible Urban Locations' which such locations typified as follows:

- *Sites within walking distance (i.e. up to 15 minutes or 1,000- 1,500m), of principal city centres, or significant employment locations, that may include hospitals and third-level institutions;*
- *Sites within reasonable walking distance (i.e. up to 10 minutes or 800- 1,000m) to/from high capacity urban public transport stops (such as DART or Luas); and*
- *Sites within easy walking distance (i.e. up to 5 minutes or 400-500m) to/ from high frequency (i.e. min 10 minute peak hour frequency) urban bus services.*

The subject site accords with the above criteria and is thus representative of a central/accessible urban location which can accommodate a high density of development. The site is within walking distance of bus and rail services.

4.3.5 Rebuilding Ireland – Action Plan for Housing and Homelessness

Rebuilding Ireland was launched in 2016 with the objective to double the annual level of residential construction to 25,000 no. homes and deliver 47,000 no. units of social housing in the period to 2021, while at the same time making the best use of the existing stock and laying the foundation for a more vibrant and responsive private rented sector.

Rebuilding Ireland is set around 5 no. pillars of proposed actions. Pillar 3 seeks to – Build More Homes: Increase the output of private housing to meet demand at affordable prices and Pillar 4, 'Improving the Rental Sector', includes build-to-rent and encourages "build-to-rent" as a key action.

The increased height and indeed the number of units put forward in the proposal will deliver much needed housing within the Area in accordance with the aims of Rebuilding Ireland, and in particular Pillars 3 and 4.

4.3.6 Regional Spatial and Economic Strategy for the Eastern and Midland's Region

The Regional and Spatial Economic Strategy for the Eastern and Midland's Region (RSES) was adopted on May 3rd 2019. It is a strategic plan and investment framework to shape future development and to better manage regional planning and economic development throughout the Region to 2031 and

beyond. It identifies regional assets, opportunities and pressures and provides appropriate policy responses in the form of Regional Policy Objectives. The RSES builds on the foundations of Government policy in Project Ireland 2040 and replaces the current Regional Planning Guidelines (RPGs). The following commentary from section 4.7 'Self-Sustaining Growth Towns and Self-Sustaining Towns' We note the following commentary from Regional Policy Objective 4.3 'Consolidation and Re-intensification' of the RSES:

'Support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin city and suburbs and ensure that the development of future development areas is coordinated with the delivery of key water infrastructure and public transport projects.'

The proposed development is consistent with the above as it will provide 198 no. Build-to-Rent residential apartments with ancillary resident facilities on a site which is appropriately zoned and situated within close proximity to existing public transport services and employment centres of Clonsilla and nearby towns. The proposed development thus allows for the efficient intensification of a site within a built-up area and is thus in accordance with the aims of the Regional and Spatial Economic Strategy for the Eastern and Midland's Region.

4.4 Part (iv) - Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted in the area since the making of the development plan

We would contend that permission for the proposed development should be granted having regard to the pattern of development approved in the immediately surrounding area. Precedent exists for approval of developments which exceed the height specified within the Fingal County Development Plan 2017-2023. More specifically, we refer to ABP Ref. ABP-306074-19 which involved a Strategic Housing Development, involving the construction of 211 no. new residential apartments at Windmill, Porterstown Road, Clonsilla, Dublin 15.

This application was approved by An Bord Pleanála on 30th March 2020, despite providing a maximum height of 8 no/ storeys on a development site within Clonsilla. We note the following commentary from the Inspectors Report prepared in respect of this application:

It is our opinion that, given the location of the subject site on a prominent position on a site accessed from Porterstown Road which commands a significant vista along the Royal Canal, that a similar case can be made for the subject site to accommodate the proposed height of up to seven storey. Moreover, and In light of the above, it is submitted that should An Bord Pleanála consider the proposed development a material contravention of the Fingal County Development Plan 2017-2023, there is ample justification for An Bord Pleanála to permit a material contravention of the Framework Plan in terms of allowable height having regard to Section 37(2)(b)(ii) and Section 37(2)(b)(iii) of the Planning and Development Act, 2000 (as amended).

Noting the proposed development is of strategic importance during an acute housing crisis, that the proposed development complies with relevant planning policy at national level, and that there is a direct precedent case in the immediate area for material contravention of height policy, it is submitted to the Board that there is a justification in this instance for the granting of the proposed development

5.0 Potential Material Contravention - Open Space Provision

Sections 3.5 and 12.7 of the Fingal County Development Plan 2017-2023 sets out the criteria for public open space provision. The plan requires, that in term of quantity,

'sufficient quantities of open space and recreational facilities are provided for and that for all developments with a residential component, the overall standard for public open space provision is a minimum 2.5 hectares per 1,000 population. In general, this shall be provided at a ratio of 75% Class 1 and 25% Class 2'

The plan also states that in order to provide existing and future communities with adequate recreational and leisure opportunities:

'the Council will employ a flexible approach to the delivery of public open space and more intensive recreational/amenity facilities. It is the intention of the Council, however, to ensure, except under exceptional circumstances, public open space provision exceeds 10% of a development site area'.

The following are stated objectives of the Development Plan:

Objective PM52 *Require a minimum public open space provision of 2.5 hectares per 1,000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms. For all developments with a residential component, the overall standard for public open space provision is a minimum 2.5 hectares per 1,000 population. In order to provide existing and future communities with adequate recreational and leisure opportunities, the Council will employ a flexible approach to the delivery of public open space and more intensive recreational / amenity facilities. It is the intention of the Council, however, to ensure, except under exceptional circumstances, public open space provision exceeds 10% of a development site area.*

Objective DMS57 *Require a minimum public open space provision of 2.5 hectares per 1,000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.*

Objective DMS57A *Require a minimum 10% of a proposed development site area be designated for use as public open space. The Council has the discretion for the remaining open space required under Table 12.5 to allow provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities outside the development site area, subject to the open space or facilities meeting the open space 'accessibility from homes' standards for each public open space type specified in Table 12.5.*

The Council has the discretion for the remaining open space required under Table 12.5 to allow provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational / amenity facilities is not achievable. This is subject to the Regional Park meeting the open space 'accessibility from homes' standard specified in Table 12.5.

Objective DMS57B *Require a minimum 10% of a proposed development site area be designated for use as public open space. The Council has the discretion to accept a financial contribution in lieu of remaining open space requirement required under Table 12.5, such contribution being held solely for the purpose of the acquisition or upgrading of small parks, local parks and urban neighbourhood*

parks and/or recreational/amenity facilities subject to the open space or facilities meeting the open space 'accessibility from homes' standards for each public open space type specified in Table 12.5.

The Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities is not achievable, subject to the Regional Park meeting the open space 'accessibility from homes' standard specified in Table 12.5. Where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space.

5.1 Justification of Proposed Quantum of Public Open Space

The proposal provides for a series of areas of public open space dispersed throughout the development site, providing for 3,554m² (0.3554 ha) which equates to over 15% of the overall site / red line area. In accordance with the requirements of the Fingal Development Plan which seeks 'to provide existing and future communities with adequate recreational and leisure opportunities', there are a number of public open spaces dispersed throughout the site. The Development Plan sets out, in Table 12.5 of same, an open space hierarchy, with a requirement to provide 'Pocket Parks' of between 500sq.m and 0.2ha in size, to be within 150m walking distance of every home. An examination of the site layout plan and the dispersion of open spaces demonstrates that all of the proposed dwellings are located less than 150m from an area of public open space that is greater than 500sq.m.

We also note the provision of the Development Plan under Objective DMS57B which states that 'the Council has the discretion to accept a financial contribution in lieu of remaining open space requirement required under Table 12.5'.

The application site comprises an area of 2.32 hectares and accommodates 198 no. residential units and a creche facility. Having regard to the aforementioned guidance set out in the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009, the proposed development produces a net density of 85 units per hectare.

The proposed site layout plan incorporates public open spaces which equate to over 15% of the overall site area. This accords with Objectives DMS57A and DMS57B of the Fingal Development Plan 2017-2023, which require 'a minimum 10% of a proposed development site area be designated for use as public open space'. We note that that Fingal County Council has the discretion to accept a financial contribution in lieu of remaining open space requirements. However, the proposed public open space meets the minimum standards for same as per the Development Plan and also realises a more efficient density of development from that previously proposed.

Should the criteria of the Development Plan be applied to the proposed development in providing a minimum public open space provision of 2.5 hectares per 1,000 population, and using the basis of calculating same on an occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms, the proposed development produces an occupancy rate of 335 persons and a corresponding public open space requirement of 0.8375 hectares, equating to 36% of the overall site area, which is a considerably significant proportion of the overall site area.

In summary, the net density of the development now proposed equates to 85 dwellings per hectare and therefore is considered to accords with the guidance contained in the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, issued by the Department of Environment, Community and Local Government, 2009. It is considered that the public open space provided within the proposal, equating to 15% of the site area, is a sufficient quantum to serve the proposal, is in accordance with Objective 57A and 57B of the Fingal County Development Plan.

6.0 Conclusion

Having regard to the foregoing, including the SHD precedent development referenced above, it is considered that the proposed density, height and quantum of public open space is justified in this instance. It is submitted that the proposed development is consistent with the proper planning and sustainable development of the area and is consistent with all relevant national and regional planning policies and guidelines. On this basis, the proposed material contravention of the Fingal County Development Plan 2017-2023 can be justified as follows:

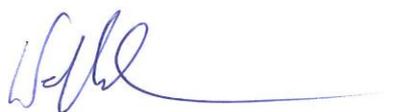
"n relation to section 37(2)(b)(i) of the Planning and Development Act 2000 (as amended):

The proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended); to its support for the National Policy Objectives in the National Planning Framework, in particular Objective 11, its location within the development boundary of Clane which is identified as Small Town in the Kildare County Development Plan 2017-2023, on zoned and serviced lands, and its potential to contribute both to the achievement of the Government's policy to increase delivery of housing from its current under-supply as set out in Rebuilding Ireland Action Plan for Housing and Homelessness issued in July 2016.

In relation to section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended):

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework, specifically National Policy Objective 27 and 33; the provisions as set out in the 'Urban Development and Building Height Guidelines, Guidelines for Planning Authorities December 2018' (in particular Specific Planning Policy Requirement 3 and Specific Planning Policy Requirement 4); and the 'Guidelines for Planning Authorities on Sustainable Residential Developments in Urban Areas May 2009' (in particular Chapter 6).

It is respectfully submitted that should An Bord Pleanála consider the proposed development a material contravention of the Fingal County Development Plan 2017-2023 that an appropriate justification is set out within this statement demonstrating that the proposed development is appropriate having regard to the contents of the Development Plan and Local Area Plan, the policies and objectives set out within the Section 28 Guidelines, as well as the strategic nature of the development and the pattern of development approved in the surrounding area.



Kevin Hughes MIPI MRTPI
Director for HPDC Ltd.