



An
Bord
Pleanála

Board Direction
BD-007680-21
ABP-304604-19

The Board noted the Inspector's report of 16/09/2019, in respect of this application (for proposed amendments to the North Lotts and Grand Canal Docks SDZ 2014), which included the following documents (submitted May 2019):

- Review of the Building Height and Proposed Amendments to the Scheme
- SEA of the proposed amendments to the Scheme
- AA of the proposed amendments to the Scheme

The above was considered in the context of section 170(A) of the PDA 2000-2018. Under sub section (2) of this section which states that "the Board shall make a decision as to whether or not the proposed amendment constitutes a material change to the planning scheme."

The Inspector's report of 16/09/2019 concluded that:

The proposed amendments would not:

- (i) constitute a change in the overall objective of the scheme
- (ii) relate to lands that are already developed
- (iii) significantly increase the overall commercial and or residential yield under the planning scheme
- (iv) adversely affect or diminish the immunity of the area and
- (v) be likely to have a significant effect on the integrity of Natura 2000 sites in the vicinity either individually or in combination with other plans or projects.

The Board determined at a meeting held on the 25th of September 2019 under section 170A (4)(b) of the Planning and Development Act 2000, as amended, that the proposed amendments to the North Lotts and Grand Canal planning scheme constitute a material change which falls within the criteria set out in subsection 3(b).

Note: It is noted that while the Planning Authority indicated that an SEA of the Proposed Amendments to the 2014 Scheme was submitted, the Board's inspector is understood to have considered the report to be an aid to screening for SEA, rather than an SEA in its own right (see para 6.1.1. of Inspector's Report on 304604-19, dated 16/09/219).

The Board directed the planning authority:

- a) to send notice and copies of the proposed amendments of the planning scheme concerned to the Minister and the prescribed authorities, and
- (b) to publish a notice of that proposed amendment in one or more newspapers circulating in the area concerned,

Following a period of public consultation, and the submission of a report from the Planning Authority in respect of the submissions received (dated December 2019). 29 Submissions were received, many seeking amendments and an increase in height and density of development, and greater evidence of alternatives considered and justification for the Scheme. No amendments were proposed, and no further analysis appears to have been undertaken by the Planning Authority (or at least no further analysis was submitted to the Board).

The Report on the public consultation and the submissions themselves, as well as the proposed amendments were considered in a Supplementary Report carried out by a second Planning Inspector, dated 10th March 2020. The inspector noted the submission of the Planning Authority, and with the exception of the proposed reduction in height to sub Block 3D considered the remaining amendments to be in

accordance with SPPR 3 in that they relate to a review of the building heights of the scheme. The Inspector noted the conclusions of the first planning report in respect of SEA, and that no submissions raised the issue of SEA. The matter was not further considered in the supplementary report.

The second Planning Inspector, with the exception of the amendment relating to a reduction in height of sub-block 3D, recommended that the remaining amendments should be approved by the Board.

The Board at a meeting of all available Board Members on the 10th March 2021 considered the Proposed Amendments, accompanying SEA and AA (submitted in May 2019) and the Report on Public Consultation submitted in December 2019. The Board also considered the two inspector's reports (dated Sept 2019 and March 2020).

The Board decided unanimously, **not to approve the making of the proposed amendments**, for the following reasons and considerations.

Reasons and Considerations

The Board noted that no Appropriate Assessment appeared to have been carried out by the Board's Inspectors, but that the conclusions of the Planning Authority that stated 'assuming the successful implementation of the mitigatory objectives contained with the planning Scheme (of 2014), there will be no adverse effects on the integrity of the Natura 2000 sites arising from the scheme in isolation or in combination with other plans and projects.' The Board noted that no further surveys or analysis were carried out and that there was limited additional information in respect of additional plans or projects which may have an influence on 'in combination effects'. Were the Board to have considered approval of the amendments proposed, it is considered that a comprehensive Screening for Appropriate Assessment (Stage 1) would be required, and that if mitigation is required that a NIS should be submitted.

The Board also noted that notwithstanding its title that the document 'SEA of the proposed amendments to the Planning Scheme' does not constitute a comprehensive and complete SEA under the meaning of the Act, and in accordance with SI No. 435/2004. Specifically, the Board notes that the SEA submitted is deficient in respect of how it addresses:

- The plan's relationship with other relevant plans,
- The current state of the environment and likely evolution thereof without implementation of the plan or modifications of the plan
- The likely significant effects on the environment with particular regard to population, climate and material assets

And an outline of the reasons for selecting the alternatives dealt with.

The Board, in considering the proposed amendment to the SDZ, further noted the relatively minimal changes proposed, notwithstanding the material and significant changes in the wider environment and policy context since the adoption of the SDZ in the first instance (in 2014).

The Board noted the rationale and requirement for the amendment to the SDZ, ie. to have regard to the Urban Development and Building Height Guidelines 2018 (SPPR3 (B)), which builds on National Planning Framework objectives and National Strategic Objective to deliver compact growth (ref. para 3.1 of the Ministerial Guidelines). Within the NPF and national policy documents such as the Housing and Homelessness Action Plan 2016, objectives to address the ongoing housing crisis and need to provide housing close to services and employment are also relevant.

The proposed amendments provide for minimal increases in height throughout the scheme and in one location a reduction in height is proposed. Furthermore, it is noted that an increase of only 225 residential units is proposed. Proposed increases in commercial floor area is also considered in submissions received to be equally restricted. The proposed increases in residential and commercial floor area were not considered to be material or significant (as outlined in the Inspector's Report dated September 2019). Therefore, and having regard to a number of the submissions received, the Board is of the opinion that options to consider greater housing provision within this strategic location have not been fully assessed and have not been realised. The Board considers that the fundamental intention of the Urban Development and Building Heights guidelines was not to introduce height for the sake of height, but to introduce and consider increased heights and densities as a means of accommodating greater residential populations within our serviced and zoned land banks in particular where public transport, employment and other services were proximate to this development (compact growth).

In addition, the Board was concerned that the implications and potential impact of not facilitating meaningful population increase within this strategic location could place greater demands to provide housing in locations further away from services and the city centre and that these potential impacts would not appear to have been considered or documented in the planning reports (including the document titled SEA) submitted and accompanying the proposed SDZ amendment. A similar situation arises in respect of the minimal increase in office space provided for within the proposed amendments. The Board is not satisfied that the proposed amendments reflect the objectives of the NPF, Building Height Guidelines or national strategic objectives and are further not satisfied that all reasonable alternatives have been considered and/or the environmental impact of the proposed amendments when considered against related plans or programs.

The Board noted the 29 submissions received, 21 of which sought greater height, density or commercial opportunity. The Board in their consideration of the amendments of the SDZ noted the submissions received and their consideration by the Planning Authority, and in the Board's Inspectors report and are not satisfied that meaningful engagement with these submissions has occurred. Having regard to the parameters to which the Board is bound in respect of their consideration of proposed

amendments to an SDZ as outlined in section 170(A) of the Planning and Development Act 2000, as amended, it is not open to the Board to meaningfully engage with these submissions as they cannot make material changes to the proposed amendments. The Board notes that once adopted alternative proposals or interpretation of the SDZ objectives cannot be considered through planning applications and that there is minimal or no opportunity for appeals of SDZ planning application decisions. Therefore, there is a greater onus on the planning authority to ensure that this is provided for and documented and reflected in the proposed SDZ amendments, and in the alternatives considered under SEA provisions.

While the Board in its Direction (dated 26/09/2019) accepted that the proposed amendments in their own right did not constitute a change in the objectives of this scheme, significantly increase the overall commercial or residential yield under the planning scheme, adversely diminish the amenity in the area and/or be likely to have a significant effect on the integrity of the Natura 2000s sites in the vicinity (individually or in combination), having regard to the submissions received the Board is of the opinion that in so limiting its considerations and potential impact that the national strategic objectives and the objectives of the Urban Development and Building Height Guidelines could not be fully realised or considered.

Further, noting the submissions received and having regard to the national policy objectives, the Board considered that the full scope of potential environmental impacts of the proposed amendments have not been adequately considered such as would demonstrate the proposals are the most environmentally sustainable response to the Urban Development and Building Height guidelines and requirements of national policy objectives. Therefore, it is considered that obligations and requirements in respect of SEA legislative provisions (SI No. 435/2004) may not have been met, specifically in terms of how the plan (ie proposed amendments to the scheme) deals with its relationship with other relevant plans, the current state of the environment and likely evolution thereof without implementation of the plan or modifications of the plan, the likely significant effects on the environment with particular regard to population, climate and material assets, and an outline of the reasons for selecting the alternatives dealt with.

In deciding not to accept the Inspector's recommendation to allow the amendments, the Board is not satisfied that the proposed amendments fully reflect national policy objectives to deliver compact growth and/or the promotion of height and urban development as outlined in the Urban Development Building Height Guidelines, given the very minimal changes proposed. With no material increase in residential or employment provision, it is unclear how this could assist in the delivery of or further enhance the objective for compact growth or increased height and density.

The Board is not satisfied that the proposed amendments constitute proper planning and sustainable development of this strategic land bank, and are further not satisfied, that in their decision not to utilise such a strategic land bank for increased population and employment, that the potential environmental impact for other relevant plans within the city and suburbs has been considered, as would have been provided for were an SEA to have been carried out.

The Board having reviewed the scheme, proposed amendments, Planning Authority's report, Inspector's reports, and the third party submissions, are not satisfied that meaningful engagement with all third party submissions has occurred, and that all reasonable alternatives have been adequately assessed, or that the impact of such alternatives including the preferred option on relevant plans outside of the SDZ, has been considered in particular where the SDZ encourages/dictates that population and increases in building height and density are met outside of the SDZ.

Note:

The Board considers that the review and associated proposed amendments to be a missed opportunity to accommodate much needed residential homes and commercial floor space for a growing and changing population, demographics and employment sector within the city centre on a strategic and well serviced land bank.

The Board considers that in any future review of the Planning Scheme, as required under SPPR3(B), that this should clearly demonstrate how the key tenant of the Urban Development & Building Heights Guidelines is met, in particular in respect of reviewing heights as a means of increasing density and optimisation of zoned serviced lands and achieving compact urban growth.

The Board further suggests that a comprehensive SEA and AA would be required.

Board Member


Paul Hyde

Date: 16/03/2021