

An
Bord
Pleanála

Board Direction
BD-009702-21
ABP-311333-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 21/12/2021.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

In coming to its decision, the Bord had regard to the following:

- (a) the site's location close to Dublin city centre, within an established built-up area on lands with zoning objective Z2, which seeks 'to protect and/or improve the amenities of residential conservation areas' in the Dublin City Development Plan 2016-2022,
- (b) the policies set out in the Dublin City Development Plan 2016-2022,
- (c) the provisions of the Architectural Heritage Protection, Guidelines for Planning Authorities, issued by the Department of Arts, Heritage and the Gaeltacht in October 2011;
- (d) the provisions of Rebuilding Ireland Action Plan for Housing and Homelessness, (Government of Ireland, 2016),
- (e) the provisions of Housing for All- a New Housing Plan for Ireland, issued by the Department of Housing, Local Government and Heritage in September 2021
- (f) the provisions of the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the

Department of the Environment, Community and Local Government in March, 2019, as amended

- (g) the provisions of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual, A Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- (h) the provisions of the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2020
- (i) the provisions of the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009
- (j) the provisions of the Urban Development and Building Heights, Guidelines for Planning Authorities, issued by the Department of Housing, Planning and Local Government in December 2018
- (k) The nature, scale and design of the proposed development;
- (l) The availability in the area of a wide range of social, community and transport infrastructure;
- (m) The pattern of existing and permitted development in the area;
- (n) The planning history within the area;
- (o) The submissions and observations received;
- (p) The Chief Executive's Report of Dublin City Council; and
- (q) The report of the Planning Inspector.

It is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this inner suburban location, would respect the existing character of the area, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site. In completing the screening for Appropriate Assessment, the Board had regard to the nature, scale and location of the proposed development, the documentation including submissions on file, and the Inspector's screening assessment.

The Board accepted and adopted the screening assessment carried out by the Inspector and the conclusion in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' conservation objectives. The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the following fifteen European sites:- South Dublin Bay SAC (Site Code: 004024), Howth Head SAC (Site Code 000202), Baldoyle Bay SAC (Site Code: 000199), Malahide Estuary SAC (Site Code: 002193), Ireland's Eye SAC (Site Code: 002153), The Rye Water Valley/Carton SAC (Site Code: 001398), Baldoyle Bay SPA (Site Code: 004016), Malahide Estuary SPA (Site Code: 004025), Rogerstown Estuary SPA (Site Code: 004015), Rockabill to Dalkey Island SAC (Site Code: 003000), Lambay Island SAC (Site Code: 00204), Dalkey Islands SPA (Site Code: 004172), Howth Head Coast SPA (Site Code: 004113), Ireland's Eye SPA (Site Code: 004117) and Lambay Island SPA (Site Code: 004069) in the light of their conservation objectives, having regard to the nature of the proposed development and the distances from the development site to these European sites.

However, in relation to North Bull Island SPA (Site Code: 004006), South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), North Dublin Bay SAC (Site Code: 000206) it could not be concluded that there would not be the likelihood of significant effects in view of the Conservation Objectives of such sites and a Stage 2 Appropriate Assessment was required to be undertaken.

Appropriate Assessment

The Board was satisfied that the information before it was adequate to undertake an Appropriate Assessment in respect of the subject development, in relation to the remaining European sites identified by the Inspector, that is, North Bull Island SPA (Site Code: 004006), South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), North Dublin Bay SAC (Site Code: 000206).

The Board completed an Appropriate Assessment in relation to the potential effects of the proposed development on these three designated European Sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban area, the Natura Impact Statement submitted with the application, and the Inspector's report and submissions on file.

In completing the assessment, the Board considered, in particular:

- (i) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (ii) the mitigation measures which are included as part of the current proposal,
- (iii) the conservation objectives for these European sites, and

In completing the Appropriate Assessment, the Board adopted the report of the Inspector and concluded that, subject to the implementation of the proposed mitigation measures contained in the Natura Impact Statement, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the relevant European sites North Bull Island SPA; South Dublin Bay and River Tolka Estuary SPA and North Dublin Bay SAC, or any other European site, in view of the site's Conservation Objectives.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environmental Impact Assessment Report (EIAR) Screening Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

Having regard to:

- (a) the nature and scale of the proposed development, which is below the threshold in respect of Class 10(i) and (iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- (b) the location of the site on lands zoned 'To protect and/or improve the amenities of residential conservation areas' in the Dublin City Development Plan 2016-2022, and the results of the Strategic Environmental Assessment of the plan;
- (c) The existing use on the site and pattern of development in surrounding area;
- (d) The planning history relating to the site
- (e) The availability of mains water and wastewater services to serve the proposed development,
- (f) the location of the development outside of any sensitive location specified in article 299(C)(1)(v) of the Planning and Development Regulations 2001 (as amended)
- (g) The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003),
- (h) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and
- (i) The features and measures proposed by applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the proposed Preliminary Construction and Environmental Management Plan (CEMP) .

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not therefore be required.

Conclusions on Proper Planning and Sustainable Development

The Bord considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this inner suburban location, would respect the existing character of the area, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Bord considered that a grant of permission that could materially contravene section 16.7.2 of the Dublin City Development Plan 2016-2022 in terms of height would be justified in accordance with sections 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, having regard to:

- (a) The proposed development is considered to be of strategic or national importance by reason of its potential to contribute to the achievement of the Government's policy to increase delivery of housing set out in the Rebuilding Ireland Action Plan for Housing and Homelessness 2016, and to facilitate the achievement of greater density and height in residential development in an urban centre close to public transport and centres of employment.
- (b) It is considered that permission for the proposed development should be granted having regard to Government Policies as set out in the Project Ireland 2040 National Planning Framework in particular objectives 13 and 35 and the Urban Development and Building Height Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018 in particular Specific Planning Policy Requirement (SPPR) 1 and Specific Planning Policy Requirement (SPPR) 3.

In accordance with section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act 2016, the Bord considered that the criteria in section 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended was satisfied for the reasons and considerations set out in the decision.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity

2. The mitigation measures and monitoring commitments identified in the Natura Impact Statement, Preliminary Construction and Environmental Management Plan, Outline Invasive Species Management Plan and other plans and particulars submitted with the application, shall be carried out in full except as may otherwise be required in order to comply with other conditions, for the protection of habitats and species associated with the (i) North Bull Island SPA; (ii) South Dublin Bay and River Tolka Estuary SPA and (iii) North Dublin Bay SAC designated sites.

Prior to the commencement of development, the developer shall submit a schedule of mitigation measures and monitoring commitments identified in the Natura Impact Statement, Preliminary Construction and Environmental Management Plan and Outline Invasive Species Management Plan for these three designated sites only, and details of a time schedule for implementation of the mitigation measures and associated monitoring, to the planning authority for written agreement.

Reason: In the interest of clarity, for the protection of and to ensure no adverse affects during the construction and operational phases of the proposed development on identified designated sites (North Bull Island SPA; South Dublin Bay and River Tolka Estuary SPA and North Dublin Bay SAC).

3. Prior to commencement of any works on site, revised details shall be submitted to and agreed in writing with the planning authority with regard to the following:
 - a) revised drawings showing all ground floor units having a minimum floor to ceiling height of 2.7metres
 - b) additional details of privacy measures between balconies/terraces and between areas of private/communal open space
 - c) details of proposed landscaping for communal courtyard area
 - d) a map, at appropriate scale, which clearly delineates any areas which are to be taken in charge
 - e) details relating to proposed relocation of recycling facility
 - f) details of proposed green roofs

Reason: In the interests of proper planning and sustainable development and to safeguard the amenities of the occupants.

4. The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020) and be used for long term rentals only. No portion of this development shall be used for short term lettings.

Reason: In the interest of the proper planning and sustainable development of the area and in the interest of clarity.

5. Prior to the commencement of development, the owner shall submit, for the written consent of the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that

Period. The period of 15 years shall be from the date of occupation of the first residential unit within the scheme.

Reason: In the interests of proper planning and sustainable development of the area.

6. Prior to expiration of the 15-year period referred to in the covenant, the owner shall submit for the written agreement of the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

7. (a) Pedestrian access to the public open space areas shall be permanent, open 24 hours a day, with no gates, security barrier or security hut at the entrance to the development or within the development in a manner which would prevent pedestrian access between the areas identified above.

(b) Prior to the occupation of any residential unit, the developer shall ensure that the public realm areas and new routes, as outlined in the site layout plan and landscape drawings shall be fully completed and open to the public.

Reason: In the interest of social inclusion and to secure the integrity of the proposed development including open spaces.

8. The proposed gym shall be available to residents of the proposed development only, unless authorised by a further grant of planning permission.

Reason: In the interests of the proper planning and sustainable development of the area.

9. Prior to the commencement of the development the applicant shall agree in writing with the planning authority, details in relation to all crane operations, with a minimum of 30 days prior notification of their erection. Details of a suitable marking and lighting scheme shall also be agreed, together with additional information regarding crane type (tower, mobile), elevation of the highest point of crane, dimensions of crane, ground elevation and location co-ordinates. The planning authority may consult, as required, with the Irish Aviation Authority.

Reason: In the interests of clarity and proper planning and sustainable development of the area.

10. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs and the underground car park shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. In particular:

a) The roads and traffic arrangements serving the site (including signage) shall be in accordance with the detailed requirements of the Planning Authority for such works and shall be carried out at the developer's expense.

b) The roads layout shall comply with the requirements of the Design Manual for Urban Roads and Streets, in particular carriageway widths and corner radii;

c) Pedestrian crossing facilities shall be provided at all junctions;

d) The materials used in any roads / footpaths provided by the developer shall comply with the detailed standards of the Planning Authority for such road works, and

e) A detailed construction traffic management plan, including a mobility management plan, shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

Reason: In the interests of traffic, cyclist and pedestrian safety and to protect residential amenity

11. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any dwelling.

Reason: In the interests of amenity and public safety.

12. The proposed development shall make provision for the charging of electrical vehicles. All car parking spaces serving the development shall be provided with electrical connections, to allow for the provision of future charging points and in the case of 10% of each of these spaces, shall be provided with electrical charging points by the developer. Details of how it is proposed to comply with these requirements, including details of design of, and signage for, the electrical charging points and the provision for the operation and maintenance of the charging points shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: in the interests of sustainable transportation

13. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and surface water management.

14. The applicant or developer shall enter into water and waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

15. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

16. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority/An Bord Pleanála prior to commencement of development. In addition, details of a maintenance strategy for materials within the proposal shall also be submitted for the written agreement of the planning authority, prior to the commencement of any works on site. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity and durability.

17. Each apartment shall be used as a single dwelling unit only and shall not be sub-divided in any manner or used as two or more separate habitable units.

Reason: In the interests of sustainable development and proper planning

18. Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility

10. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity

20. All plant including extract ventilation systems and refrigerator condenser units shall be sited in a manner so as not to cause nuisance at sensitive locations due to odour or noise. All mechanical plant and ventilation inlets and outlets shall be sound insulated and/or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interest of residential amenity.

21. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

22. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

23. The landscaping scheme as submitted to An Bord Pleanála shall be carried out within the first planting season following substantial completion of external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

The developer shall retain the services of a suitably qualified Landscape Architect throughout the duration of the site development works. The developer's Landscape Architect shall certify to the planning authority by letter his/her opinion on compliance of the completed landscape scheme with the approved landscape proposal within six months of substantial completion of the development hereby permitted.

Reason: In the interest of residential and visual amenity.

4. Prior to commencement of any permitted development, the developer shall engage the services of a qualified arborist as an arboricultural consultant, for the entire period of construction activity. The developer shall inform the planning authority in writing of the appointment and name of the consultant, prior to commencement of development. The consultant shall visit the site at a minimum on a monthly basis, to ensure the implementation of all of the recommendations in the tree reports and plans. To ensure the protection of trees to be retained within the site, the developer shall implement all the recommendations pertaining to tree retention, tree protection and tree works, as detailed in the in the submitted Tree Survey Report. All tree felling, surgery and remedial works shall be completed upon completion of the works. All works on retained trees shall comply with proper arboricultural techniques conforming to BS 3998: 2010 Tree Work – Recommendations. The clearance of any vegetation including trees and shrub shall be carried out outside the bird-breeding season (1 March–31 August inclusive) or as stipulated under the Wildlife Acts 1976 and 2000. The arborist shall carry out a post construction tree survey and assessment on the condition of the retained trees. A completion certificate is to be signed off by the arborist when all permitted development works are completed and in line with the recommendations of the tree report. The certificate shall be submitted to the planning authority upon completion of the works.

Reason: To ensure and give practical effect to the retention, protection and sustainability of trees during and after construction of the permitted development.

25. Prior to the commencement of any works on site, the applicant shall submit a finalised Badger Mitigation Plan for the subject site, which shall include detailed methodologies and a schedule of the timing of the works to be carried out in relation to the construction of an artificial sett on the development site, the exclusion of badgers from the existing setts on the site and the destruction of these setts. All these works shall be completed in full, prior to the commencement of any other development works on site except such clearance of vegetation as is necessary to identify existing badger setts. Monitoring of the artificial badger sett shall continue for four years following the completion of the construction of the proposed development.

Reason: To provide for the conservation of the badger population occurring on the development site and avoid injury to these animals.

26. The construction of the development shall be managed in accordance with a Final Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide inter alia: details and location of proposed construction compounds, details of intended construction practice for the development, including hours of working, noise management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste and/or by-products.

Reason: In the interests of public safety and residential amenity.

27. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

28. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

● Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

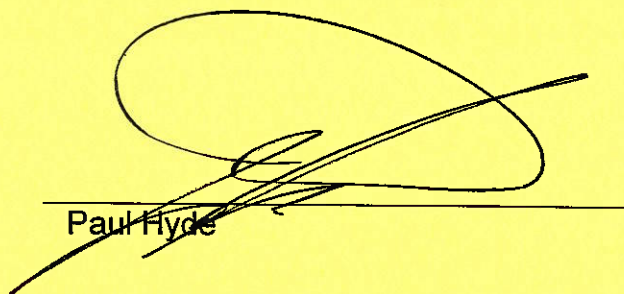
30. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

31. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Board Member



Paul Hyde

Date: 21/12/2021