

**An
Bord
Pleanála**

**Board Direction
BD-010017-22
ABP-311591-21**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 15/02/2022.

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 Board had regard to the following:

- (a) the site's location close to Dublin city centre, within an established built-up area and in the Heuston and Environs Strategic Development Regeneration Area and proximate to Heuston Station (mainline rail, LUAS and Dublin Bus services) and Dublin Bus Services on adjoining streets;
- (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) Chief Executive Opinion and associated appendices of Dublin City Council
- (l) the nature, scale and design of the proposed development,
- (m) the availability in the area of a wide range of social, community and transport infrastructure,
- (n) the pattern of existing and permitted development in the area,
- (o) the planning history within the area, and
- (p) the report of the Inspector and the submissions and observations received,

It is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this urban location, would not seriously injure the residential or visual amenities or architectural heritage 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 on serviced lands, 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.

In relation to North Bull Island Special Protection Area (Site Code: 004006), South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), North Dublin Bay Special Area of Conservation (Site Code: 000206) and South Dublin Bay Special Area of Conservation (Site Code: 000210) 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 completed an Appropriate Assessment in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development on serviced lands, the Natura Impact Statement submitted with the application, and the Inspector's report and submissions on file. 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 Special Protection Area (Site Code 004006); • South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code 004024); • South Dublin Bay Special Area of Conservation (Site Code 000210) and • North Dublin Bay Special Area of Conservation (Site Code 000206), or any other European site, in view of the site's conservation objective.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) The nature, scale and extent of the proposed development;
- (b) The environmental impact assessment report and associated documentation submitted in support of the planning application;
- (c) The submissions from the planning authority, the observers and the Prescribed Bodies in the course of the application; and
- (d) The Inspector's report.

The Board considered that the environmental impact assessment report, supported by the documentation submitted by the applicant, adequately identifies and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the environmental impact assessment report and associated documentation submitted by the applicant and submissions made in the course of the planning application.

The Board considered and agreed with the Inspector's reasoned conclusions that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- **Biodiversity:** Impacts mitigated by proposed landscaping strategy; will ensure no invasive species introduced; the significant provision of active and passive open space and measures to avoid disturbance to nesting birds.

- **Land, soils and geology** impacts to be mitigated by construction management measures including reuse of excess material within the site; proposals for identification and removal of any possible contamination; management and maintenance of plant and machinery.
- **Water** impacts to be mitigated by management of surface water run-off during construction; adherence to Construction Management Plan; to attenuate surface water flow and avoid uncontrolled discharge of sediment. Operational impacts are to be mitigated by surface water attenuation to prevent flooding.
- **Air, Dust and Climatic Factor** impacts to be mitigated by the appointment of a designated site agent; implementation of Construction Management Plan which includes for dust minimisation and control measures; construction of thermally efficient buildings and Mechanical Ventilation and Heat Recovery (MVHR) systems
- **Landscape and Visual impacts** mitigated by the use of screening/webbing to prevent materials falling from a height; directing site lighting away from existing structures; design and landscape strategy; maintenance regime.
- **Architectural Heritage** impacts mitigated by use of a qualified conservation architect to oversee works; implementation of agreed CEMP to minimise visual impact during construction.
- **Archaeological** impacts which will be mitigated by archaeological monitoring of ground disturbance works; notification of Department of Housing, Local Government and Heritage prior to commencement of works.
- **Traffic and Transport** impacts to be mitigated by implementation of Construction Management procedures; limited car parking provision; car share club provision; implementation of Residential Travel Plan.
- **Noise and vibration** impacts which will be mitigated by adherence to requirements of relevant code of practice; noise control techniques; quality site hoarding to act as noise barrier
- **Material Assets: Water Supply, Drainage and Utilities** impacts which will be mitigated by consultation with relevant service providers; adherence to relevant codes of practice and guidelines; service disruptions kept to a minimum

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures set out in the environmental impact assessment report and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

Conclusions on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this urban location, would respect the existing character and architectural heritage 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.

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 Environmental Impact Assessment Report, 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.

Prior to the commencement of development, the developer shall submit a schedule of mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, 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 and protection of the environment during the construction and operational phases of the proposed development.

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) The height of Blocks D and E shall be reduced by two floors (L03 and L04 omitted) to a maximum of three storeys over lower ground level.
- b) Omission of proposed arch between Blocks A and C
- c) Further details of proposed residential tenant amenity facilities to include the provision of increased work stations, working from home hubs and laundry facilities. In this regard, the proposed Unit E-1-01 (Lower Ground Floor of Block E) shall be not be utilised as a residential unit. It shall instead be utilised as additional residential tenant amenity facilities
- d) Additional details in relation to the layout of Unit D-1-02 (Lower Ground level of Block D)
- e) A site layout plan clearly delineating all areas of public open space provision
- f) Details relating to the provision of a public artwork of good quality, to be commissioned and installed by the applicant, within the public open space prior to the completion of the development
- g) details of bat friendly lighting.

Reason: In the interests of the protection of the architectural heritage of adjacent Royal Hospital Kilmainham; in the interests of the protection of visual and residential amenities; to safeguard the amenities of future occupants; in interests of protecting

ecology and in the interest of proper planning and sustainable development of the area

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. Prior to the commencement of development, the applicant shall submit a design for bird friendly glazing installed in accordance with the methodology set out hereafter:

That a combination of the following strategies is used to treat a minimum of 85 per cent of all exterior glazing within the first 16 m of the buildings above grade including clear glass corners, parallel glass and glazing surrounding interior courtyards and other glass surfaces:

(a) Low reflectance opaque materials.

(b) Visual markers applied to glass with a maximum spacing of 50 mm x 50 mm.

(c) Building integrated structures to mute reflections on glass structures.

The glazing design for the development shall be in accordance with these strategies and shall be submitted to the planning for its written agreement, prior to the commencement of any development works on site

Reason: To minimise the mortality of the local ecology bird species

9. Prior to the occupation of the development, a schedule of proposed uses for the proposed ground floor retail unit shall be submitted for written agreement of the planning authority. In addition, prior to the occupation of this unit, details of openings, signage, shopfronts and layout/window treatment of the subject unit shall be agreed in writing with the planning authority.

Reason: In the interests of the 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 and having regard to Condition Number 3(g) above, 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. A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations or points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of electric vehicle charging points or stations at a later date. Such proposals shall be submitted to and agreed in writing with the planning authority prior to the occupation of the development. The car parking space for sole use of the car sharing club shall also be provided with functioning electric vehicle charging stations or points.

Reason: To provide for and or future proof the development such as would facilitate the use of electric vehicle.

13. Electric charging facilities shall be provided for bicycle parking and proposals shall be submitted to and agreed in writing with the planning authority prior to the occupation of the development.

Reason: In the interests of orderly development and to provide for and future proof the development as would facilitate the use of electric bicycles.

14. 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.

15. Prior to commencement of development, the developer shall enter into water and or wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

16. 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.

17. 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. Render shall not be used as an external finish.

Reason: In the interest of visual amenity and durability.

18. Proposals for a development name, commercial unit identification 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.

19. 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. (a) Commercial unit shall not be subdivided, unless authorised by a further grant of planning permission.

(b) No external security shutters shall be erected for the commercial premises other than at services access points unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interests of clarity.

22. The site shall be landscaped in accordance with a landscape scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within 3 years of planting shall be replaced in the first planting season thereafter.

Reason: In the interest of residential and visual amenity.

23. Site development and building works shall be carried only out between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 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.

24. 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.

25. 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.

26. The site development and construction works shall be carried out in such a manner as to ensure that the adjoining roads are kept clear of debris, soil and other material, and cleaning works shall be carried on the adjoining public roads by the developer and at the developer’s expense on a daily basis.

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

27. 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.

28. 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.

29. 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.

30. 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.

31. The developer shall pay to the planning authority a financial contribution in lieu of public open space provision in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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

Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Note: In deciding not to accept the Inspector's recommendation to reduce the height of Block A by 5 floors, the Board had regard to the concerns of the planning authority and the Inspector that Block A should be reduced in height by the removal of five storeys to form a 13-storey building.

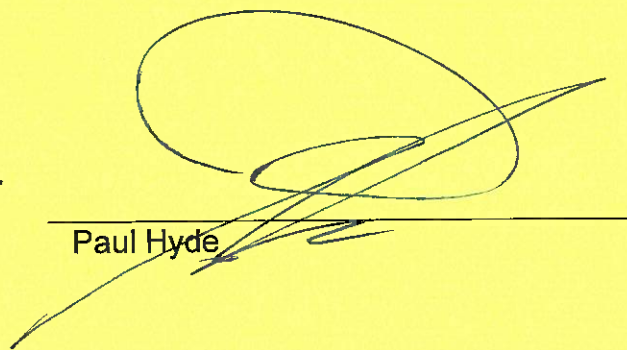
The Board noted that the inspector's recommendations were "*related to concerns regarding how it*" (Block A) "*will integrate with future development proposals and does not relate to concerns regarding potential impacts on the architectural heritage of the area.*" The Board was satisfied that the height of the block as proposed was acceptable in terms of design and visual appearance and did not accept that a "*lack of clarity regarding development proposals on the adjoining site to the north*" would constitute an acceptable reason to reduce the height of or omit the proposed 18-storey building (Block A) at this time.

The proposed Block A is situated in an area zoned appropriately for the height and density proposed and in compliance with local, regional and national policy in this regard. The Board is satisfied that the future development of the adjoining zoned lands to the north would not be unduly prejudiced or compromised and would be capable of taking account of and relating to the context as set by the current proposal before the Board and it is not considered that it would be inappropriate or premature to provide a building of this scale and height on appropriately zoned lands. In this regard each proposal is decided on a case-by-case basis on its planning merits and against local, regional, and national policy as outlined in the reasons and considerations above.

Furthermore, the Board accepted and agreed with the Inspector's opinion "*that while this block (ie. Block A) may impinge marginally on the identified CoV, its impact would not be so great as to warrant a refusal of permission or amendment to its location/height for this reason*".

The Board also had regard to the submissions of third parties including ICOMOS, and including prescribed bodies such as The Heritage Council and An Taisce who expressed concerns re. impact on architectural heritage, views and visual amenity, but in this regard, and with the exception of the Board's views in respect of Block A, as outlined above, the Board agreed with the Inspector in her assessment of the potential visual impact and impact on the identified CoV, and impact on the architectural heritage of the surrounding area as a result of the proposed development, and subject to the amendments proposed by condition and as recommended by the Inspector, the Board was satisfied that the proposed development could be accommodated on the site, and that design was such as not to result in an undue adverse impact on the amenity or heritage of the area, and subject to conditions attached is in accordance with the proper planning and sustainable development of the area.

Board Member



Paul Hyde

Date: 29/03/2022