



An
Bord
Pleanála

S. 4(1) of Planning and Development (Housing) and Residential Tenancies Act 2016

Inspector's Report ABP-305828-19

Strategic Housing Development	177 apartments, 2 shops, a café and a community room
Location	Between Main Street and Balscadden Road, Howth, Dublin 13
Planning Authority	Fingal County Council
Applicant	Crekav Trading GP Ltd.
Prescribed Bodies	Irish Water Department of Culture, Heritage and the Gaeltacht Fáilte Ireland
Observers	Charles Sargent Thomas P. Broughan T.D.

Balscadden Road SAA Residents
Association

Jeannette Byrne

Cllr. David Healy

William Morgan

Brian F Lynch

James P and Kathleen C Owens

Damian and Bernardine Jennings

Donna Harkin

Michael and Pamela Hilliard

Elaine Hassett and Joshua Hilliard

Lorcan Blake

Jonathan Quinn

Melanie and Patrick McCaughey

George Cooke

C Taylor

Marlene McCormack

Tom and Mary Fitzpatrick

Paula Connolly

Jack Kinane

John and Pam Towers

Sylvain and Helen Borel

Susan Watson

John and Catherine Beckett

Sean Haughey

Carolyn O'Laoire

Peter and Paula Lynskey

Samuel Keegan

Cllr. Cian O'Callaghan

Sally O'Donovan

Una Sealy
Aisling Wright
Eoghan and Jenni Ryan
Dermot Quinn
Finian McGrath T.D.
Blanaid Ring
Nathalie Hourihan
Blanaid Ring
Gemma and John Blood
Norman Newcombe
Melissa Curtis
Geraldine Mahony
Maeve Curtis
Terence Duffy
Jim and Helen Kilroy
Colm Flanagan
Claire Kilroy
Hillwatch c/o Seabarm Philip
O'Connor
Paul Scott
Noel Kelly
Christian and Nicole Gulmann
Kathy Keane
Patrick and Helan Hobbs
Louise Marks
Colm Daly
Greg Howard
Katherine and Sinead McCormack
Douglas Cousins
Laura Hourihan

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Deirdre McMahon
Joe and Kay White
Nadine Hobbs
Kevin & Grainne Mallon
Antoinette Daly
Lesley Watts
Patrick G Brazel
Gavin Brazel
Rosaleen and Frank Hobbs
Paul and Mairead Byrne
Brendan and Siobhan Clifford
Paula McEvoy
Deborah Hewson and Gerry Rothwell
Lara Marlowe
Angela and Norman Fullam
Robert Orr
Senator Aodhán Ó Ríordáin
Hugh Byrne
Denise Mitchell
Des Gilroy
Friends of Balscadden Bay
Senator Catherine Noone
Ciara Ní Laoi
Catherine Tattersall
David and Leona Kane
Cllr. Aoibhinn Tormey
Darragh O'Connor
Peter and Helena Courtney
Norbert Reilly
Lynn Reilly

Bryan Byrne

Date of Site Inspection

16th February 2020

Inspector

Stephen J. O'Sullivan

Decision Quashed

Contents

1.0 Introduction	7
2.0 Site Location and Description.....	7
3.0 Proposed Strategic Housing Development.....	8
4.0 Planning History.....	9
5.0 Section 5 Pre Application Consultation.....	10
6.0 Relevant Planning Policy.....	12
7.0 Third Party Submissions.....	19
8.0 Planning Authority Submission.....	23
9.0 Prescribed Bodies.....	26
10.0 Screening	26
11.0 Assessment.....	34
12.0 Recommendation.....	46
13.0 Reasons and Considerations	46
14.0 Conditions	48

Decision Quashed

1.0 Introduction

- 1.1. This is an assessment of a proposed strategic housing development submitted to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016.

2.0 Site Location and Description

- 2.1. The site is in Howth c15km north-east of Dublin city centre. It has a stated area of 1.55 hectares. It is to the west of the Balscadden Road, east of Main Street/Abbey Street and south of the Martello Tower which is a protected structure/national monument. The frontage onto Main Street is part of the town or village centre of Howth. Balscadden Road runs parallel and close to coast.
- 2.2. The application site is the accumulation of three land parcels. Plot A is a brownfield site and largely comprises the former Baily Court Hotel and its associated structures. The hotel is located on Main Street and comprises a three storey structure set back from the street. It is vacant. Plot B is in the southern part of the site and is greenfield. It is bound to the east by Balscadden Road. The dwellings in Asgard Park, a mature development of residential properties, are located to the south of this part of the site. A steep planted slope forms the western boundary of this plot. Plot C is the largest element of the accumulated site and accommodates the Edros building and which is adjoined to the north by the Martello Tower which is elevated above the northern area of subject site. A public pathway runs along the north and north eastern boundaries of the site facilitating access from the path to the Martello Tower to the Balscadden Road. A ridge is located along the western side with the rear gardens of the houses fronting onto Abbey Street, generally located at a lower ground level than the subject site. The eastern boundary fronts on Balscadden Road and a car park with palisade fencing. The site also contains part of Balscadden Road adjoining footpath on the eastern side of the carriageway.
- 2.3. The site changes considerably in level. The northern area of the site is at a lower level falling from the Martello Tower mound having been quarried historically and now accommodating the derelict Edros building and accompanying grounds. The lands to the south rise significantly with an embankment adjoining the Balscadden Road. The land rises by c. 15 metres from north to south. While the site addresses Main Street, part of it is to the rear of properties along Abbey Street which is further

north of Main Street. The Balcadden Road is one way to traffic travelling away from the Harbour. Balcadden Bay is located to the east of Balcadden Road.

3.0 Proposed Strategic Housing Development

- 3.1. The proposed development would provide 177 apartments, two shops, a café and a community room.

The proposed housing mix would be as follows-

1 bedroom units	2 bedroom units	3 bedroom units	Total
44	103	30	177

The development would involve the demolition of the sports hall, hotel and other structures on the site. The gross floor area of the residential development would be 18,211m². The floor area of commercial premises would be 757m² of which the community room would be 161m², the café 71m², one shop would be 429m² and the other 96m².

- 3.2. The development would be comprised of 4 buildings. Block A would stand on the frontage to Main Street currently occupied by the hotel. It would be a 3-storey building with a pitched roof. The ground floor would contain the 429m² shop with 8 apartments above. The floor plans indicate that this shop might also be used as a café. Block M would be near the western boundary of the site with the Health Centre on Main Street. It would be a 3 storey building with a pitched roof. It would contain the 96m² shop on the ground floor with 2 apartments above. Block B would stand on the southern part of the site. It would contain the community room of 161m² and 50 apartments. Block C would occupy the northern part of the site. It would contain the café of 71m² and 117 apartments over five storeys.
- 3.3. The layout of the development would provide a public space off Main Street enclosed by Blocks A, M and B, another public space on Balcadden Road and a pedestrian street between them. Communal open space would be provided within Block C and the south of Block B.
- 3.4. 146 car parking spaces would be provided, including 6 on-street spaces on Main Street in front of Block A, 26 beneath a podium behind block B accessed from

Balscadden Road, 112 beneath Block C accessed from Main Street and 2 surface spaces. 406 bike spaces would serve the apartments. The development includes a proposal to build 1.8m footpath on the far side of Balscadden Road.

4.0 Planning History

4.1. ABP – PL06F.301722: In September 2018 the board decided to grant permission under the SHD procedure for a development on the current site that would provide 164 apartments, commercial/retail space, a community room and associated site works. This decision was quashed by the High Court on 20th January 2020. The previous scheme was similar but not identical to that currently proposed. Conditions of note include:

Condition 2: Revised plans and details regarding internal floor to ceiling height of ground floor apartments; private amenity spaces serving Blocks B and C, omission of apartments nos C5-16 in Block C, reduction in roof ridge level to corner section of Block A and stepping down of roofs to the adjoining sections of this building; omission of overhang at first floor level at the corner of Block A; revised materials to Block A.

Condition 5: Pedestrian access shall be permanently open to the public 24 hours a day.

Condition 7: Community Room.

Condition 8: Compliance with GDG Geotechnical Survey.

Condition 9: Works to ensure stability of the mound to the Martello Tower.

Condition 10: Landscaping including treatment of retaining walls to be clad in local Howth stone.

Condition 26: A construction traffic management plan shall be agreed and all construction traffic shall enter and leave the site via Balscadden Road. The stated reason for this condition refers to public safety and residential amenity.

4.2. There have been several other planning applications relating to separate parts of the site, including permission to replace the hotel with 7 apartments granted under Reg. Ref. F13A/1310, PL06F. 242959 and another to replace the sports hall with 23 residential units granted under Reg. Ref. 14A/0108. Under Reg. Ref. F07A/1349,

PL06F. 227972 the board refused permission for 64 houses in September 2008 after the council had decided to grant permission in material contravention of its development plan at the time under which that part of the site was zoned open space and high amenity.

- 4.3. More recently in June 2016 the board refused permission under Reg. Ref. 15A/0545, PL06F. 246183 for 9 houses in the southern part of the site on Balscadden Road for a reason which stated that the proposed development would, by reason of its design, height and scale, contravenes specific Objective 528 of the Fingal County Development Plan 2011-2017 and would be visually incongruous at this prominent and highly sensitive location in Howth near the Martello Tower and village centre within the Howth Special Amenity Area buffer zone and adjacent to the Architectural Conservation Area for the historic core of Howth.
- 4.4. ABP-306102-19: An application for permission for 512 apartments on a site c1km to the west of the current site on the other side of Howth Village was lodged under the SHD procedure on 9th December 2019. This is referred to as the Techrete site.

5.0 Section 5 Pre Application Consultation

- 5.1. A pre-application consultation with the applicants and the planning authority took place at the offices of An Bord Pleanála on Thursday 16th May 2016 in respect of a proposed development on the site. The main topics raised for discussion at the tripartite meeting were as follows:

1. Urban Design, Height and Materials
2. Construction Route Options
3. Outstanding FCC Matters
4. Any other matters

Copies of the record of the meeting and the inspector's report are on this file.

- 5.2. The board issued an opinion on which stated that the submitted documents constituted a reasonable basis for an application for strategic housing development.
- 5.3. The opinion also stated that the following specific information should be submitted with any application for permission –

1. Revisions to the architectural drawings to account for the conditions imposed under ABP 301722-19.
2. Full rationale for the preferred construction traffic route as well as the alternative considered from a traffic and environmental perspective..

5.4. Applicant's Statement

- 5.4.1. The applicant's response to item 1 of the board's opinion states that the current application proposes 177 apartments on the site rather than the previously authorised 163 units. Most of the additional units would be contained in a extra floor in Block C. This floor is cut short to maintain a proper distance from the Martello Towner and the houses along Abbey Street. A car park is proposed for the first floor of Block B which would be accessed from the Balscadden Road. To accommodate this car park 3 units have been omitted from Block B and the courtyard has been raised a level. An additional penthouse unit has been added to the north-east corner of Block B. The pile walls have been re-aligned to allow a shallower slope on the southern boundary of the site. The current design incorporates changes required under the conditions of the previous permission including ceiling heights of 3m on the ground floor of units in blocks Band C that face the pedestrian street and 2.7m for other ground floor units. Winter gardens are provided for apartments facing onto the pedestrian street. The roof ridge level of block A has been reduced by 1.5m. The overhang at first floor level has been omitted from the front of that building and light coloured brick will be used. The pedestrian street will be permanently open to the public. The turning radius from Main Street will be 3m. 3 car parking spaces are reserved for car sharing. All basement spaces in block C will allow electric vehicles to be charged. A bin marshalling area is proposed on Balscadden Road. The northern retaining wall will be clad in local stone and the plaza will be paved and include trees.
- 5.4.2. In relation to item 2 the applicant considers that there are 3 viable routes for construction traffic from the site to Sutton Cross– option 1 along Main and Abbey Street to the Harbour Road, option 2 from Main Street then up Thormanby Road past the Summit and option 3 along Balscadden Road to the Harbour Road. Other documents provide a rationale for the chosen route and all have been ecologically assessed. No significant impact on ecology or on the Howth Head SAC is foreseen subject to the implementation of mitigation measures.

6.0 Relevant Planning Policy

6.1. National Policy

- 6.1.1. The government's housing policy is set out Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016. The overarching aim of this Action Plan is to ramp up delivery of housing from its current under-supply across all tenures to help individuals and families meet their housing needs.
- 6.1.2. The government published the National Planning Framework in February 2018. Objective 3a is that 40% of new homes would be within the existing built up areas of settlements, while objective 3b is that 50% of new homes in cities would be within their existing footprints as defined in the census. Objective 10a and table 4.1 set a minimum population target for Dublin of 1,408,000 in 2040 compared to the figure of 1,173,000 recorded in 2016. Objective 11 is to favour development that can encourage more people to live or work in existing settlements. Objective 13 is that in urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria. Objective 35 is to increase residential density in settlements by various means including infill development.
- 6.1.3. The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas were issued by the minister under section 28 in May 2009. Section 1.9 recites general principles of sustainable development and residential design, including the need to prioritise walking, cycling and public transport over the use of cars, and to provide residents with quality of life in terms of amenity, safety and convenience. Section 5.6 states that there is no upper limit on the number of dwellings that could be provided in town centres subject to other normal planning criteria. Section 5.8 states that densities of less than 50 dph on public transport corridors should be discouraged. A design manual accompanies the guidelines which lays out 12 principles for urban residential design.
- 6.1.4. The Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments were issued in March 2018. Section 2.4 states that central and accessible urban locations, including those within walking distance of a DART station, are generally suitable for development at higher densities which is wholly composed of apartments. The minimum floor area for one-bedroom apartments is 45m², for two-bedroom apartments it is 73m² and for three-bedrooms it is 90m². Most of proposed apartments in schemes of more than 10 must exceed the

minimum by at least 10%. Requirements for individual rooms, for storage and for private amenities space are set out in the appendix to the plan, including a requirement for 3m² storage for one-bedroom apartments, 6m² for two bedroom apartments and 9m² for three-bedroom apartments,. In accessible locations a minimum of 33% of apartments should be dual aspect. Ground level apartments should have floor to ceiling heights of 2.7m. Section 4.19 states that the default policy is for car parking to be minimised for apartment schemes in central accessible areas.

- 6.1.5. The minister issued Guidelines for Planning Authorities on Urban Development and Building Heights in December 2018. SPPR 1 restates public policy in favour of increased building height and density in locations with good public transport accessibility . Section 2.3 states that higher density does not necessarily require taller buildings, but increased height is a significant component in making optimal use of the capacity of sites in urban locations.
- 6.1.6. The minister and the minister for transport issued the Design Manual for Urban Roads and Streets (DMURS) in 2013. Section 1.2 sets out a policy that street layouts should be interconnected to encourage walking and cycling and offer easy access to public transport..
- 6.1.7. The minister issued Guidelines for Planning Authorities on Childcare Facilities in June 2001. Section 3.3.1 of the guidelines recommends that new housing areas be provided with childcare facilities at a standard of one facility with 20 spaces for every 75 homes.
- 6.1.8. The minister issued Guidelines for Planning Authorities on Architectural Heritage Protection in 2004. Section 3.10 refers to Architectural Conservation Areas and states that there is an onus on proposers to justify demolish a structure that contributes the their character.

6.2. **Regional Policy**

- 6.2.1. Objective RPO 4.3 of the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Regions 2019-31 supports the consolidation and re-intensification of brownfield sites in Dublin. Outcome RSO 1 would be to better manage the sustainable and compact growth of Dublin as a city of international scale.

6.3. Local Policy

- 6.3.1. The Fingal County Development Plan 2017-2023 applies. The core strategy and settlement strategy in section 2 of the plan identifies Howth as a ‘*Consolidation Area within a Gateway*’. The core strategy is based on target populations for Dublin and Fingal set by the regional planning guidelines in force when the plan was made. The targets are that the population of the Dublin region in 2022 would be 1,464,000 while that of Fingal would be 309,285. This would require a housing stock of 142,144 in Fingal compared to the 105,392 that existed in 2015. Allowing for headroom in accordance with the method stipulated in guidelines from the minister, the current development plan zones enough land, 1,737ha, for the development of 49,541 homes in the county. 16ha of this land is in Howth including the current site. The strategy envisages that this 16ha could accommodate 498 homes. General objectives regarding the settlement strategy are set out in the plan including **SS01** to “*Consolidate the vast majority of the County’s future growth into the strong and dynamic urban centres of the Metropolitan Area while directing development in the hinterland to towns and villages, as advocated by national and regional planning guidance*” and **SS15** to “*Strengthen and consolidate existing urban areas adjoining Dublin City through infill and appropriate brownfield redevelopment in order to maximise the efficient use of existing infrastructure and services*”.
- 6.3.2. Chapter 4 of the plan refers to urban Fingal. It includes a section about Howth. It lays out a strategy to develop village in a manner that will protect its character, and strengthen and promote the provision and range of facilities with future development will be strictly related to the indicated use zones including the infilling of existing developed areas rather than further extension of these areas. Objective HOWTH 1 is to “*Ensure that development respects the special historic and architectural character of the area*”.
- 6.3.3. There are a number of zoning objectives relating to the site as follows:
- **Objective RS – Residential** – part of the southern area of the site is zoned residential, the objective of which is to provide for residential development and protect and improve residential amenity.
 - **Objective TC – Town and District Centre** – the majority of the site is zoned TC, the objective of which is to protect and enhance the special physical and

social character of town and district centres and provide and/or improve urban facilities.

- **Objective HA - High Amenity** – a small linear area of ground to the north of the site adjoining the boundary with the Martello Tower is zoned HA, the objective of which is to protect and enhance high amenity areas.

6.3.4. There is a specific objective that applies to this site, **No 115** which requires that any development – “*Ensure the layout, scale, height and design respects the high amenity status of the surrounding area, the Martello Tower and the village character*”. The Martello Tower is a protected structure (RPS: 570) and the Tower and Motte are a recorded monuments (RMP Ref. DU16-00201 Castle Motte and DU16-002-02 Martello Tower). There is a map based objective ‘*to preserve views*’ along the northern boundary of the site and along the Balscadden Road – Map 10. Part of the site, principally along western boundary of the site facing Main Street and Abbey Street and along the northern boundary of the site addressing the Motte/Martello Tower, is within the boundary of the Howth Village Architectural Conservation Area. The Howth SAAO buffer zone covers part of the site with the western boundary of the SAAO along Balscadden Road and the lands to the north and east of the road including the Motte site within the SAAO.

6.3.5. The development plan also contains the following general objectives and policies:

NH36 – “*Ensure that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area. New development in highly sensitive areas shall not be permitted if it:*

- *Causes unacceptable visual harm*
- *Introduces incongruous landscape elements*
- *Causes the disturbance or loss of (i) landscape elements that contribute to local distinctiveness, (ii) historic elements that contribute significantly to landscape character and quality such as field or road patterns, (iii) vegetation which is a characteristic of that landscape type and (iv) the visual condition of landscape elements.*”

NH60 – “*Strictly control the nature and pattern of development within coastal areas and ensure that it is designed and landscaped to the highest standards, and sited*

appropriately so as not to detract from the visual amenity of the area. Development shall be prohibited where the development poses a significant or potential threat to coastal habitats or features, and/or where the development is likely to result in altered patterns of erosion or deposition elsewhere along the coast.”

DMS 174 - *“Prohibit new development outside urban areas within the areas indicated on Green Infrastructure Maps, which are within 100m of coastline at risk from coastal erosion, unless it can be objectively established based on the best scientific information available at the time of the application, that the likelihood of erosion at a specific location is minimal taking into account, inter alia, any impacts of the proposed development on erosion or deposition and the predicted impacts of climate change on the coastline”*

DMS176 refers to the extractive industry and requires proposals for such development to have regard to the legislation and guidelines that apply to them and to visual impact and the need for sites to be restored.

CH33 – *“Promote the sympathetic maintenance, adaptation and re-use of the historic building stock and encourage the retention of the original fabric such as windows, doors, wall renders, roof coverings, shopfronts, pub fronts and other significant features of historic buildings, whether protected or not.”*

CH37 – *Seek the retention, appreciation and appropriate revitalisation of the historic building stock and vernacular heritage of Fingal in both the towns and rural areas of the County by deterring the replacement of good quality older buildings with modern structures and by protecting (through the use of Architectural Conservation Areas and the Record of Public Structures and in the normal course of Development Management) these buildings where they contribute to the character of an area or town and/or where they are rare examples of a structure type.”*

DMS57 requires *“a minimum public open space provision of 2.5 hectares per 1,000 population”*. DMS57A requires *“that open space should be 10% minimum of the total site area”*.

Objective PM53 – requires *“an equivalent financial contribution in lieu of open space provision in smaller developments where the open space generated by the development would be so small as not to be viable.”*

6.3.6. The Howth Urban Strategy (2008) applies to Howth Village and the subject site. It is not a statutory document, however, provides guidance for development based on analysis of the urban form of the village.

6.4. Designated Sites

6.4.1. The application site includes part of the Special Area of Conservation (SAC) at Howth Head, sitecode 000202, along the Balscadden Road for a distance of c30m. The rest of the SAC lies on the far side of the houses across the road from the site.

6.4.2. The Howth Head Coast SPA sitecode 004113 lies c475m to the east of the site.

6.4.3. The Special Protection Area SPA at Ireland's Eye sitecode 004117 lies c900m to the north.

6.5. Statement of Consistency

6.5.1. The statement says that the proposed development would provide housing at an appropriate density of 114 dph on a brownfield site on a public transport corridor in the town centre of Howth. As such it would provide compact urban growth in keeping with National Planning Framework including objective 10, and with the RSES including objectives RPO3.2 and 3.3. The height and form of the development are in keeping with the guidelines on building height issued in 2018. The location of the site in a town centre near a train station means that it is suitable for higher density apartment development under section 2.4 of the 2018 guidelines on apartment design. The proposed development also exceeds the minimum density of 50dph set out in section 5.8 of the 2009 guidelines on sustainable urban residential development for public transport corridors. The layout and design of the scheme meets the 12 criteria set out in the design manual that accompanied those guidelines. The site is not at risk of flooding and the location of housing here is in keeping with the 2009 guidelines on flood risk management. It is considered appropriate not to include a childcare facility given the size of the scheme and the proportion of one-bedroom apartments, the falling numbers of pre-school children in Fingal recorded between the census in 2011 and 2016 and the existing facilities in the area, and the resultant possibility that a creche would not be viable on the site.

6.5.2. The proposed residential and commercial uses are acceptable under the zoning objectives that apply to the site under the county development plan. The proposed development would provide housing at an appropriate density and form on a

brownfield site in Howth which is designated as a consolidation area by the plan. It would therefore be in keeping with the settlement strategy set out in the plan and its vision and strategy for Howth. The layout, design and height of the proposed buildings are appropriate for the circumstances of the site and would respect the character of the village and its ACA as well as the Martello Tower and its protected status. As such it would be in keeping with objective 115 of the development plan. The proposed development would be in keeping with the various provisions of the plan which are in favour of good design and good housing. The proposed commercial uses and plaza would enhance and enliven the public realm in Howth. A payment can be made in lieu of class 1 open space. The proposed development would also comply with the development management standards in the county development plan. Signage will be in accordance with Malahide Public Realm Strategy. The ESB sub-station would be in an inconspicuous location. 58% of apartments would have dual aspect. Ceilings would be 2.7m high. No more than 7 apartments per floor would be served by a single core. Minimum floor areas for apartments and rooms would be met. Nearly all apartments would exceed the minimum area by at least 10%. Separation distances from the rear of dwellings would be at least 23-29m. The submitted analysis shows that adequate daylight and sunlight would be available to dwellings and spaces in and around the proposed buildings. 2,757m² of communal open space would be provided, and adequate private open space would be provided in balconies or terraces for each proposed apartment. The proposed provision of 146 car parking spaces is at a rate of 0.79 per apartment is appropriate for this site within walking distance of a train station and is in line with the provisions of the 2018 apartment design guidelines, as is the provision of 1 bike space per bedroom. An ecological assessment has been submitted with proper survey information relating to bats.

- 6.5.3. The application was accompanied by a statement of justification for a material contravention of the provisions of the county development plan. It says that the core strategy in the plan allocates a target of 498 housing units to Howth. The proposed apartments could breach this figure when taken in conjunction with the proposal at the old Parsons factory. So the board should regard the proposed development as a material contravention of the provisions of the development plan. The contravention would be justified under section 37(2)(b)(iii) of the planning act by government policy and guidelines issued by the minister under section 28 of the act. This is because

the proposed development would provide housing at an appropriate density in an appropriate form on a brownfield site within the built up area of a town on a public transport corridor. So it would be in line with the National Planning Framework, in particular objectives 3a, 13 and 35, as well as with section 2.4 of the 2018 guidelines on apartment design and section 2.11 of the 2018 guidelines on urban development and building height and section 5.8 of the 2009 guidelines on sustainable urban residential development. It would also be in keeping with objective RSO1 of the RSES.

7.0 Third Party Submissions

7.1. Ninety-six submissions on the application have been received. None of them supported a grant of permission, although several stated that the development of the site in a different way would be welcome because it has been unused for several years. The submissions objected to the proposed development on grounds that can be summarised as follows-

- The height and density of the proposed development is excessive.
- The proposed development would materially contravene provisions of the development plan including the core strategy for the county and the visions set forward for the zones that apply to the various parts of the site. The limit placed on the development of Howth to 498 homes is required to protect its character and amenities and to avoid excessive pressure on its infrastructure, in particular traffic congestion on its constrained road network and the choke point at Sutton Cross. The proposed contravention of the development plan is not justified under section 37(2)(b) of the planning act or otherwise. The proposal is not of strategic or national importance, the objectives of the development plan are clearly against it and it is contrary to the pattern of development in the area and permissions granted in the area since the development plan was made.
- The proposed development is out of keeping with the character of Howth including that of the village/town and the surrounding scenic areas. It would contravene objective HOWTH 1 and specific local objective 115 of the development plan. The village is characterised by narrow plots of a traditional settlement and buildings of a vernacular type. The proposed development

would be an urban type that would seriously injure the character of the area. It would seriously injure the setting of the Martello Tower which is a protected structure and a recorded monument. The development would dominate views from the toward towards Balcadden. The negative impact on the landscape and views of this coastal would be contrary to objectives NH36 and NH60 of the of the development plan. The dullsville apartment blocks and hackneyed design echo schemes in west Dublin or at the Coast/Clongriffin and would be more suited to an industrial estate in Birmingham. They are not appropriate for a site in the buffer zone of a special amenity area or in an Architectural Conservation Area and would contravene the planning policies to protect those areas. The frontage onto Main Street would be of poor quality. It would not properly address the space in front of it because it follows the line of the 1990s extension to the hotel rather than the building line of the original house. The loss of the coach house and former hotel would damage the architectural heritage of the area contrary to objectives CH33 and CH37 of the development plan and section 3.10.3 of the guidelines on architectural heritage protection. The dereliction of the site is not a justification for such a poor development.

- The predominance of residential use is not in keeping with the town centre zoning of that part of the site.
- The proposed development would damage the amenity of the scenic and rural character of the Balcadden Road which is enjoyed by many tourists and walkers. Howth has lost many hotels in recent years and its tourist product needs to be protected. The right of way from Main Street to Balcadden must be protected.
- The proposed development would damage the biodiversity of the site which is in a buffer zone for a special amenity area and the SAC at Howth Head. The NIS does not properly describe the biodiversity on the site upon which sand martins nest.
- The proposed apartments would not meet the needs of the local population for family houses and accommodation for downsizers. They would not be affordable for local people. Recently built houses on the hill remain unsold.
- Howth is not an urban area and it is not appropriate to apply national standards and guidelines that refer urban areas to this scheme. It used to be the case

that the board protected sensitive site from inappropriate development by council, however it is now the board that sensitive sites need to be protected from. A grant of permission would be inconsistent with the previous refusals by the board under PL06F. 227972 and 246183 which recognised the sensitivity of the site.

- The proposed development would seriously injure the amenities of neighbouring houses due to overlooking, overshadowing and overbearing, in particular houses along Abbey Street.
- The proposed development would generate traffic which the local road network cannot accommodate and so it would worsen congestion. In particular the streets in the village and along the Harbour are narrow, while all traffic from the peninsula has to use Sutton Cross. Howth is at the end of public transport routes and is not a transport hub that could accommodate such dense development. There are no public transport links from Howth to the major employment centres at the airport and along the M50.
- Inadequate parking is proposed in the development. It would therefore lead to more pressure on the on-street parking in the village that would damage the amenities of the residents and businesses who depend on that parking. The applicant is not entitled to include the public parking area in front of the old hotel in the site and the application is therefore invalid.
- The access from the scheme onto Main Street is on a bend close to a complex junction and would be hazardous. It should be at least twice as wide.
- The ground in the area is unstable and there is a history of landslides and slippage. Development upon it would be contrary to objective DMS174 of the development plan to prohibit development within 100m of the coastline at risk of erosion. The board, council and developer must carry out a full assessment in this regard to avoid a Derrybrien situation. It is outrageous that only a 'proof of concept' has been offered for the groundworks required by the development. A geological fault crosses the site. The proposed development would involve a large amount of excavation and so poses an unacceptable threat to the stability of properties and houses in the vicinity including those at Asgard Park, on Abbey Street and along Balscadden Road. The risk of ground instability also threatens Tower Hill and the tower there and the beach at Balscadden. The

submitted information and proposals regarding excavation and ground stability is inadequate. There are discrepancies between the architect's and engineer's drawings. The estimate that 78,000m³ of material would have to be removed from the site is likely to be an underestimate. Adequate borehole test results have not been submitted. The submitted information does not support the conclusions regarding groundwater and does not address springs that are known to exist. The excavation of material would have to be paused while sheet piles were inserted. The lifespan of the sheet piles is only 50 years. They would not properly protect the gardens at behind the houses at Asgard Park if construction were to be occur there.

- The ground works required to facilitate the construction of the proposed apartments would lead to vibrations that would threaten neighbouring houses and their residents. It would also lead to emissions of noise and dust that would damage natural heritage and human beings. The works are equivalent to a large quarry. The proposed development therefore requires EIA and would be contrary to objective DMS176 of the development plan.
- The steep topography and coastal location of the site leads to high rainfall and flash floods which the application has not properly addressed. The proposed flood measures would require continual maintenance.
- The haulage of material from the site during construction would seriously injure the amenities of the area with HGVs coming or going from the site every 3 minutes. The movements would give rise to noise, air pollution and greenhouse gas emissions and further traffic congestion. Balcadden Road and the Harbour Road are inadequate to cater for such heavy traffic. The alternative route passed the summit also includes narrow stretches of road and passes schools. All routes would have to navigate Sutton Cross.
- The water supply in the area is deficient and cannot support the proposed development.
- The proposed community room should be rented at a nominal cost to a non-profit body to ensure that the community has proposed access to it and to compensate for the loss of the recreational amenity that EDROS used to provide.

- The Strategic Housing Development is unconstitutional and contravenes the Aarhus Directive and its procedures unfairly favour the developer.
- The proposed application is invalid because the previous permission by the board is subject to judicial review.

8.0 Planning Authority Submission

- 8.1. The minutes of the area committee meeting of the council record the councillors' concerns that the proposed development would contravene objective 115 of the development plan; that its height and scale are excessive; that it would have a negative impact on the character of the village and the landscape; that the design onto Main Street is bland and generic; that the removal of soil would affect ground stability and cause traffic problems; that the car parking is inadequate; that the development would cause traffic problems; the SHD process facilitates the lodging of repeat applications on sites with permission and so delays the provision of housing; and that the movement of water through the site is not properly addressed. Councillors stated that the site was suitable for some development and recognised the need for housing, but their opposition to the current proposal.
- 8.2. The report from the Chief Executive stated that a grant of permission would be in keeping with the proper planning and sustainable development of the area. It recommended 34 conditions. Condition no. 3 would amend proposed Block C to reflect the Block C permitted under SHD-301722-18. Condition no. 33 would require an unspecified financial contribution towards open space in addition to the contribution required under the adopted scheme.
- 8.3. The Chief Executive's report states that objective 11 of the NPF supports the proposed brownfield development. The development plan identifies Howth as a consolidation area to which objectives SS15 and 16 would apply. The proposed development would not in itself materially contravene the provisions of the development plan including its core strategy. However the board would need to give consideration to other developments in Howth such as the one at Techrete which in turn would exceed the potential residential units identified in the core strategy. The submission includes a non-statutory urban centre strategy that the council prepared for Howth in 2008. The location of the site in a consolidation area within 1km of the train station with a partial zoning for town centre development indicate that it is an

appropriate place for higher densities under section 5.8 of the 2009 guidelines on sustainable urban residential development. The proposed density of 114 dph is appropriate for this context. The proposed uses are permissible under the zonings of the site. The urban design of the proposal provides for effective pedestrian linkage, urban form, street frontage, passive observation, privacy and new character areas while integrating effectively with the existing streetscape and character of the village core. In relation to objective 115 of the development plan, it is noted that the proposed development increases the height of Block C by 3.75m compared to the authorised one. The northern elevation of this block should be reduced to that of permitted scheme to protect the setting of the Martello tower. Subject to such a change the layout and design of the proposed development area an appropriate modern response to the need to connect the village to Balcadden Bay and to the historic street network. The residents of the proposed apartments would generally have adequate amenity, notwithstanding the high number of single aspect units. Noise insulation should be appropriate to the location of the site in airport noise assessment zone D of the development plan as varied in December 2019.

- 8.4. The report notes that Block B would be 14-19m from the houses on Balcadden Road and so would not overbear them. There would be some overbearing and overlooking of houses on Abbey Street. The windows on the west of Block C and the houses on Abbey Street would be 25-34m and at an angle. The houses are close to a bank which affects their amenity. This part of the site is zoned town centre which envisages a certain level of an intensity of development. So the impact of the proposed development on the houses on Abbey Street would not warrant refusal. The conclusion in the submitted daylight analysis that the development would not unduly impinge on the vertical sky component of the neighbouring houses is noted. It is not considered that the proposed development would affect the potential for their gardens to achieve 2 hours of sunlight on 21st March.
- 8.5. The proposed development would provide a new street and public spaces in the village and is welcomed. However there is concern about the height and blandness of the frontage onto Main Street. The Conservation Officer is concerned that the proposed development would present a long and tall façade towards the Martello Tower. A condition should be attached controlling the permitted materials.
- 8.6. The proposed development would improve connectivity between the village and Balcadden. The links should be permanently open. The site is within walking

distance of the railway station. The proposal for 146 parking spaces would not meet development plan standards but would be in keeping with objective 13 of the NPF and the design standards for new apartments. The proposed 1.8m footpath on the eastern side of Balscadden Road is acceptable. Construction traffic should be directed along proposed route 2 over the hill.

- 8.7. The proposed urban spaces are appropriate on the site given that a green area would suffer from a lack of robustness. The council would not be taking them in charge. The proposed play facility is not large enough to meet the requirements of the apartment design guidelines and a contribution towards the upgrade of the nearby playground at the harbour should be required. A levy of €440,500 is required in respect of open space.
- 8.8. The proposals in relation the Howth Tunnel are noted, as is the absence of an objection from Irish Water. The surface water drainage proposals are acceptable.
- 8.9. The submitted archaeological assessment is noted, and the proposed measures in this regard area acceptable. The submitted ecological assessment is noted. The biodiversity officer indicated that the site does not appear to be used by Sand Martins for nesting.
- 8.10. A proposed community room should be available for use by members of the public and a condition to this effect should be imposed. The ground floor of the buildings along the new street should have floor to ceiling heights of 3m to facilitate conversion to non-residential use. The submitted childcare analysis is robust and it is reasonable not to provide a crèche on the site. The council's housing department has indicated that the Part V proposals are acceptable.
- 8.11. While construction noise and traffic can cause disturbance, it is temporary in nature and can be addressed by condition, as can the disposal of waste during construction. With regard to site stability the submitted structural and geotechnical report is noted. Given that the board has already granted permission for development on the site it is considered that conditions can address matters relating to management and monitoring of works by a suitably qualified engineer.
- 8.12. The board are the competent authority for AA and EIA. Details of mitigation measures to control the invasive species *Allium triquetrum* should have been submitted with the application.

8.13. The submission from the council included analysis of the proposed development under the Howth Urban Centre Strategy and Urban Design Manual issued with the 2009 sustainable urban residential development guidelines. Copies on internal reports from the Transportation Planning Section, the Parks Division, the Conservation officer, The Water Services Department, and the Environmental Health Section, and the Community, Culture and Sports Division.

9.0 Prescribed Bodies

9.1. Irish Water stated that it can facilitate the proposed connection to its networks.

9.2. The Department of Culture Heritage and the Gaeltacht stated that the proposed archaeological measures should be implemented. In relation to nature conservation it stated that a licence would be needed for the removal of Herring Gulls or their nests or eggs. The impact on the adjacent SPA of the use of acoustic scarers has not been assessed. Demolition should take place outside the nesting season. The dewatering of excavations must not affect Natura 2000 sites. Lighting must avoid ecological impacts on sensitive receptors such as bats or invertebrates.

9.3. Fáilte Ireland stated that Howth has major attractions for visitors whose experience should be protected from noise, traffic and visual impacts during construction.

10.0 Screening

10.1. Appropriate Assessment

10.1.1. The conservation objectives of the SAC at Howth Head are to maintain the favourable conservation condition of the habitats of vegetated sea cliffs 1230 and European dry heaths 4030 with regard to specified criteria. The conservation objective for the SPA at Howth Head Coast is to maintain or restore the favourable conservation condition of the species Kittiwake A188. The conservation objectives for the SPA at Ireland's Eye are to maintain or restore the favourable conservation condition of the species A017 *Cormorant Phalacrocorax carbo*, A184 *Herring Gull Larus argentatus*, A188 Kittiwake *Rissa tridactyla*, A199 Guillemot *Uria aalge* and A200 Razorbill *Alca torda*. There are no other Natura 2000 sites upon which the proposed development would have the potential to have an effect, given the nature, scale and location of the proposed development relative to other Natura 2000 sites.

10.1.2. The submitted appropriate screening report provides information that establishes that the current situation of the application site does not provide *ex situ* habitats that support the conservation objectives of the above cited SPAs to any significant degree. Four pairs of Herring Gull were recorded as nesting in the roof of the vacant hotel. The application site is c900m from the SPA at Ireland's Eye which was recorded as having 300 breeding pairs in 2015. The roofs of other buildings in Howth were occupied by other pairs of Herring Gull. From the separation distance from the application site and the SPA at Ireland's Eye, the relative size of the populations on either site and elsewhere in Howth, it is clear that the proposed development would not be likely to have a significant effect of the population of Herring Gulls in that SPA. Appropriate assessments under article 6 of the Habitats Directive are concerned with the effects of projects on sites designated to protect habitats and species. Direct interference with species is subject to article 12 of the directive which is implemented in Ireland by a separate licensing system under the Department of Arts, Culture and the Gaeltacht, which would control any removal of birds, nest or eggs from the site or acoustic measures to achieve this. This system would also govern whether acoustic scarers were used for this purpose. The submitted documentation including does not propose the use of acoustic scarers, although the ecological impact assessment makes a passing hypothetical reference to them. It would not be proper or useful to attempt to supplement or supplant the licensing system under article 12 of the habitats directive by decisions under planning legislation under article 6. The screening report provides information regarding the noise from that would be generated during construction of the proposed development and its potential effect on bird populations based on the experience of similar projects in similar circumstances. The submitted information establishes that the construction of the proposed development would not be likely to affect the species for which the SPAs are designated as a result of disturbance, loss of habitat or otherwise. The occupation of the development would render the use of the site similar to that which prevails in the vicinity in the centre of Howth and would not have the potential to affect the SPAs.

10.1.3. Part of the site is within the SAC for Howth Head. The part of the application site which is within the SAC is a street with a carriageway surfaced in tarmac and a narrow footpath of concrete. The application site does not contain the habitats that are the subject of the conservation objectives of the SAC either within or without the

boundaries of the SAC. The proposed development would not have the potential to have a direct effect on the SAC, therefore.

10.1.4. The application site is on serviced land within the existing built up area of the city. The proposed development would be served by the city's water supply and foul sewerage network and by the municipal surface water drainage system for Howth. Its impact at the outfall of the foul drainage network systems would be negligible, given the scale of the proposed development in the context of the city. The surface water drainage system includes the usual attenuation, SUDs features and interceptors so the stormwater runoff from the development would not be likely to have any significant effect on downstream habitats or species, whether in relation to the quality or quantity of runoff or otherwise. The proposed residential and ancillary commercial uses would be similar to those that are established in the centre of Howth and the proposed activities would not give rise to pollution or disturbance that was likely to have a significant effect on any habitats or species in the vicinity of the application site. Therefore the occupation and use of the proposed development would not have the potential to have likely significant indirect effects on the SAC at Howth Head.

10.1.5. The method whereby the proposed housing and ancillary structures would be built on the applicant's landholding is set out in the submitted construction and environmental management plan. The plan provides details of how the works would be carried out, including the ways in which emissions of air and water would be controlled including those of dust, sediment or other pollutants, as well controls on vibration and noise. These are described as mitigation measures in the submitted documents. However they are not measures that are designed or intended specifically to mitigate a putative potential for an effect on a Natura 2000 site. They constitute the standard approach for construction works in an urban area. Their implementation would be necessary for a housing development on any brownfield site in order to protect the amenities of the occupants of neighbouring land regardless of proximity or connections to any Natura 2000 site or any intention to protect a Natura 2000 site. It would be expected that any competent developer would deploy them for works on a site in a town whether or not they were explicitly required by the terms or conditions of a planning permission. Building the proposed housing would require more excavation than many other housing schemes because the site slopes. It also involves the installation of sheet piling, which is not frequently

the case for housing schemes. However neither the nature or scale of the excavation or piling is unprecedented or extraordinary and many cities and towns have similar hilly areas on which urban development has occurred. The efficacy of the ways in which the construction of housing on the applicant's landholding would limit emissions to water and air, including dust, and of noise and vibration has been established by their prior implementation of other similar projects. It is therefore evident from the information before the board that the proposed construction on the applicant's landholding would be not be likely to have a significant effect on the Howth Head SAC in relation to air, water, noise, vibration, disturbance of otherwise.

10.1.6. The proposed development also includes works outside the applicant's landholding to widen the footpath along the Bascadden Road. Some of these works are inside the SAC and others would be outside it but close to the habitats for which it is designated. The excavation on the applicant's landholding would generate a significant number of movement by HGVs to remove material. One of the proposed routes for the haulage of that material would be along Bascadden Road through the SAC and near to the habitats for which it is designated. The Bascadden Road is narrow, steep and does not appear to be founded in accordance with modern standards. The diversion of heavy traffic along it would give rise to a potential effect on the habitats in the SAC from vibration, dust and spillage. An alternative haul route no. 2 would also pass through the SAC at Carrickbrack Road near Somalia, but would do so on a road whose alignment and structure more closely conforms to modern standards and which already accommodates substantially more traffic than the Bascadden Road and where it would not have the potential to have a likely significant effect on the SAC. The proposed works to the Bascadden Road and the use of route option 3 along it for construction traffic therefore has to the potential to affect the SAC and so an appropriate assessment would have to be completed before consent could be granted for them. This conclusion differs from that reached by the board under the previous application ABP-301722-18. The different conclusion reflects the evolving case law on what counts as mitigation measures for the purposes of AA screening, most recently set out in the judgement of the High Court in the IGP Solar 8 case, 2019 JR 33.

10.1.7. It is entirely conceivable that mitigation measures could be set out that would allow a stage 2 appropriate assessment to be completed that concluded that the roadworks and traffic on the Bascadden Road would not have an adverse effect on the SAC,

otherwise the normal maintenance of the road and works to the houses on its coastal side would be prohibited. The submitted NIS includes a section of text that is headed mitigation measures. The submitted ecological impact report includes similar text, and there are cross references between them and the construction environmental management plan and a separate air quality and climate report, a vibration management plan, and a Control of Works within the Howth Head SAC, pNHA Management Plan. However none of the individual documents describe the mitigation measures with the degree of clarity or precision that would be needed to complete a stage 2 appropriate assessment, nor do they provide a coherent evidential basis that would support a conclusion beyond reasonable scientific doubt that the mitigation measures which they seem to propose would avoid any adverse effect on the SAC. The submitted documents when considered as whole do not provide a clear or coherent description of the proposed measures either. Therefore adequate information is not before the board to complete a stage 2 appropriate assessment of the potential for an effect on the SAC of the proposed works and heavy traffic on the Balscadden Road.

10.1.8. However, for reasons of traffic safety that are set out below, it is recommended that the proposed works and heavy traffic on the Balscadden Road would be excluded from any development that would be authorised on foot of the current application in any event. The board may not grant permission for a development that would be likely to have significant effects on a Natura 2000 site unless an appropriate assessment of the of the implications for the site in view of the site's conservation objectives has been completed. However a grant of permission for the proposed development as recommended in this report, which excludes the proposed works and heavy construction traffic on the Balscadden Road, would constitute a consent for a project that was not likely to have significant effects on any Natura 2000 site either individually or in combination with any other plan or project, as is evident from the information before the board, and would not be subject to the prohibition in article 6(3) of the Habitats Directive and national legislation which implements it.

10.1.9. The development for which permission is recommended would not be likely to have any effect on any Natura 2000 site that would be rendered significant in combination with the effects of any other plan or project.

10.1.10. It is therefore concluded that, on the basis of the information on the file, which is adequate in order to issue a screening determination, that the development for

which permission is recommended below, either individually or in combination with other plans or projects, would not be likely to have a significant effect the Special Area of Conservation at the Howth Head 000202, the Special Protection Area at the Howth Head Coast 004113 or the Special Protection Area at Ireland's Eye 004117 or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not required.

10.2. Environmental Impact Assessment

10.2.1. The current proposal is an urban development project that would be in the built-up area of a town. It is therefore within the class of development described at 10(b) of Part 2 of Schedule 5 of the planning regulations and an environmental impact assessment would be mandatory if it exceeded the threshold of 500 dwelling units or 10 hectares, or 2ha if the site is regarded as within a business district. Most of the site is zoned for town centre development which would support a conclusion that it is in a business district. However the predominant use in the area is residential with a relatively small scale of commercial activity along Main Street. In either event the proposed development of 177 apartments on a site of 1.55ha would be below the threshold for EIA. The applicant estimates that c78,000m³ of material would have to be removed from the site. Submissions on the application stated that this estimate did not take adequate account of bulking that would occur during handling and that the volume of material to be removed from the site would be likely to be more than 90,000m³. Submissions argued that the level of excavation entailed by the proposed development means that it should be assessed as a quarry. This is not accepted. The proposed development is not a quarry or a project for the extraction of stone, gravel, sand or clay. It is a project is to provide housing and ancillary commercial accommodation. To treat is as a quarry or extraction project would involve a clear departure from the words used in the EIA directive and national implementing legislation in their ordinary meaning or, for that matter, their technical meaning. There is no objective justification to adopt the suggested interpretation of that the proposed housing scheme is a quarry or is like a quarry for the purposed of EIA. Housing development generally involves groundworks. The sloping nature of the current site means that more excavation and removal of earth is required than would normally be the case with housing development. However its scale and extent is neither extraordinary or unprecedented. This is the case whether the figure for the volume of material to be removed that provided by the applicant or those provided in

other submissions proved to be more accurate. Many cities and towns include areas that have slopes similar to that on the current site and they does not pose exceptional challenges to their development for urban housing. The works included in the proposed development in respect of the excavation and removal of earth and to stabilise the ground before and after construction do not alter its status as an urban development of dwellings under class 10(b) of Part 2 of Schedule 5 of the planning regulations . Although it is also noted that if a quarry or extraction project was proposed on this application site of 1.55ha is it be less than half the threshold 5ha for an EIA in that hypothetical situation.

10.2.2. The criteria at schedule 7 to the regulations are relevant to the question as to whether the proposed sub-threshold development would be likely to have significant effects on the environment that could and should be the subject of environmental impact assessment. The application was accompanied by an EIA screening report which includes the information required under Schedule 7A to the planning regulations. With regard to characteristics, the size of the proposed development is well below the applicable thresholds. It is possible that it would be carried out in conjunction with the apartment development on the Techrete site which was previously authorised or in conjunction with the current proposal for that site which is the subject of application ABP-306102-19. However the Techrete site is over a kilometre away and their joint scale and the connections between them would not be significant enough to warrant an EIA for the current case. The proposed development on the Techrete site will be subject to its own EIA. The occupation of the proposed residential and commercial premises would not give rise to an significant use of natural recourses, production of waste, pollution, nuisance or a risk of accidents. The proposed development is in an urban area served by municipal drainage and water supply on a site that was previously subject to works and is currently vacant. As stated in the paragraph above, the proposed development would require more excavation than most housing developments, but the slopes that would have to be addressed during construction would not be extraordinary for an urban area. Therefore, subject to the exclusion of the proposed works in an SAC, the location of the proposed development and the environmental sensitivity of the geographical area would not justify a conclusion that it would be likely to have significant effects on the environment. The proposed development does not have the potential to have effects whose impact would be rendered significant by its extent,

magnitude, complexity, probability, duration, frequency or reversibility. In these circumstances, the application of the criteria in Schedule 7 to the proposed sub-threshold development demonstrates that it would not be likely to have significant effects on the environment and that an environmental impact assessment is not required before a grant of permission is considered. This conclusion is consistent with the EIA screening assessment report submitted with the application.

Decision Quashed

11.0 Assessment

11.1. The planning issues arising from the proposed development can be addressed under the following headings-

- Policy
- Ground stability
- The character and heritage of the area
- Residential amenity
- Access and parking
- Water supply and drainage
- Other issues

11.2. Policy

- 11.2.1. The proposed development would be in keeping with government policy to increase the supply of housing set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016.
- 11.2.2. The urban location of the site is a matter of fact. The site is within the built up area of Dublin as defined in the census. The proposed development would therefore contribute to the achievement of objectives 3a, 3b, 11 and 35 of the National Planning Framework, as well as to the achievement of the target population of 1,408,000 for the city in 2040 set out in table 4.1 of the framework under objective 10. The proposed development is within walking distance of a railway station and so its development with apartments at a net density of 114dph is in keeping with section 5.8 of the 2009 sustainable urban residential guidelines and section 2.4 of the 2018 guidelines on apartment design and SPPR1 of the 2018 guidelines on building height.
- 11.2.3. It is noted that the proposed development of 177 dwellings does not contain a childcare facility. Given the small area of the site and the proportion of one-bedroom apartments, it is not considered that this departure from the advice at section 3.3.1 of the 2001 guidelines on childcare facilities would warrant a refusal of permission.
- 11.2.4. The proposed development would contribute towards objective RPO4.3 of the RSES to support the consolidation and re-intensification of brownfield sites in Dublin.

- 11.2.5. The proposed uses are permissible under the zoning objectives that apply to the various parts of the site under the county development plan including that part of the site zoned for High Amenity. Although the scheme is predominantly residential, there would be a sufficient number of active uses at ground floor level to reflect the town centre location and zoning of most of the site. Refusing permission for the proposed development would not be likely to increase the amount of hotel accommodation in Howth, even if a clear planning need to do so had been established. The proposed development would be within the metropolitan consolidation area identified in the development plan and so would be in keeping with objectives SS01 and SS15 of that plan.
- 11.2.6. The core settlement strategy set out in the county development plan states that the 16ha zoned for development in Howth could accommodate 498 new homes. Another 512 homes are currently proposed at the Techrete site. Several submissions stated that this means that the currently proposed development would materially contravene the development plan by exceeding the target population set out for Howth; and that this target was put in place to protect the character of Howth and limit the pressure on infrastructure there so a breach would not be justified. The prospective applicant submitted that the proposed development should be treated as a material contravention of the core strategy of the development plan but that it would be justified by national policy in favour of development on public transport corridors within towns and cities.
- 11.2.7. The judgment of the High Court in Heather Hill Management Co. vs An Bord Pleanála 2019 JR 20 found that a grant of permission for a housing scheme that breached a population allocation for a settlement set out in a core strategy constituted a material contravention of the provisions of a development plan. This implies that number specified in an allocation operates as a cap rather than merely as a target that provides a rational basis for the to determine how much land should be zoned in a settlement. The judgement also restated the position that a question as to whether a permission materially contravened a development plan was not one on which the courts would give the board's conclusion any particular weight. In these circumstances it would be advisable to treat the proposed development as one that would materially contravene the provisions on the development plan in respect of the population allocation for Howth, although the board did not treat the similar proposal under ABP-301722-18 in this way.

11.2.8. The proposed material contravention of the county development plan is justified by objectives 3a, 3b, 10, 11 and 35 of the national planning framework, section 5.8 of the 2009 guidelines on sustainable residential density, section 2.4 of the 2018 guidelines on apartment design and SPPR1 of the 2018 guidelines on building height all of which support denser residential development of the type proposed on sites like the current one. It would also be justified by objective RPO4.3 of the RSES for the same reason. It would also be justified by the government's policy to provide more housing set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016. As such a grant of permission can be made under section 37(2)(b)(iii) of the planning act. The proposed development falls within the definition of strategic housing set out in Planning and Development (Housing) and Residential Tenancies Act 2016 and is supported by objectives SS01 and SS15 of the development plan, so it would also be justified by reference to section 37(2)(b)(i) and (ii) of the act.

11.2.9. Howth was transferred from the administrative area of Dublin Corporation to the county in 1985, a year after the railway between it and the city centre was electrified. Census returns show that the area's population fell by 11% over the following thirty years since then, from 9,327 in 1986 to 8,294 in 2016. It is not accepted, therefore, that population growth has been a threat to the character of the area or that it has placed undue pressure on its infrastructure. Rather the limited renewal of the area's housing that has occurred in recent decades in conjunction with smaller household sizes has resulted in a dispersal of population away from the traditional centre of Howth. This pattern is frequently associated with a worsening of traffic congestion even when the population is falling as a larger share of the remaining population lives further away from local services and public transport facilities resulting in longer journeys and a greater reliance on travel by car. This is why the national, regional and local policies set out in the preceding encourage the replenishment of the population of urban centres on public transport corridors with higher density development including apartments. The principle of the proposed development is clearly supported by these policies. Conversely unreasonable restrictions on the provision of the housing on the site would contravene national, regional and local planning policies.

11.3. **Ground stability**

11.3.1. Numerous submissions objected to the proposed development due to its potential impact on ground stability particularly in relation to the structures on neighbouring land, including the Martello Tower and the houses at Asgard Park and along the Balscadden Road, Main Street and Abbey Street. These concerns reflect the fact that the site occupies sloping ground on a partly excavated hill largely comprised of a moraine of gravel and sand. The northern part of the site has been graded to a level of c20m aOD by the prior excavation of a substantial amount of sand and gravel. The south-eastern part of the site along the boundary of the curtilages of the houses at Asgard Park has a level of c35m, with steep bank between it and the northern part of the site. There is also a bank on the eastern side of the higher ground of the site down the a part of the Balscadden Road that is c23m, and another on its western side down to the former hotel. The level of Main Street directly in front of the hotel is c20m. The Martello Tower stands on a promontory with a level of c27m and there is another bank between it and the flat part of the current site. The proposed development involves establishing a level of c20m across the site, removing the sandy gravel in the southern part of the site so that its level is similar to that in the northern part of the site and at the frontage onto Main Street in the south-western part of the site. The pedestrian street through the scheme and the ground floor apartments would have a level of c20m. Proposals are submitted to insert 5 sheet pile walls parallel the south-eastern part of the site boundary (with the back of the gardens at Asgard Park) to retain the higher ground to the south. The car park behind Block B nearest that boundary would have a floor level of 23.45m. There would also be excavation in the northern, flat part of the site to provide a basement car park below Block C at a level of 17m. Retaining walls are also proposed along the north of the site below the promontory upon which the Martello Tower stands, and to the east of the site along the banks between it and the houses on Abbey Street.

11.3.2. The proposed development would be built at a level above the bedrock. It would not be likely to be affected by the recorded geological fault crossing the site, nor would it be likely to affect the sewer laid in the Howth Tunnel in the bedrock below.

11.3.3. The geomorphology of the site and surrounding land is not so prone to instability as to preclude urban development on the site. This is reflected by its zoning and the previous grants of permission by the council and the board for development upon it. The slopes on and around the site and the depth of regolith mean that proper

consideration should be given any proposed ground works there. The details submitted with the application demonstrate that such consideration has been given. They include information on the existing conditions on the site and the proposals to protect the stability of ground during and after construction. A report from a separate set of engineers was submitted by the applicant which reviewed the proposals and stated that they were acceptable. Submissions from other parties questioned the adequacy of the submitted information, in particular in relation to the borehole survey, the estimates of the volume of material that would be removed from the site and the various depictions of the sheet pile walls on the submitted drawings. Objections were also made to the description of the proposed design for the retaining structures as a proof of concept rather than a full construction design, the reference to a 50 year estimated life span for the piles, and the statement that the sheet piling was not designed to support construction in the back gardens of neighbouring houses. Nevertheless the board is advised that the submitted information and proposals regarding ground stability are comprehensive and coherent. It is usual for drawings submitted with planning applications to be distinguished from construction drawings that are issued to contractors on site. A grant of planning permission does not relieve a developer of the obligation to carry out a project in a competent manner with due regard to the property of others. The current application adequately addresses the issue of ground stability, and a grant of permission would not give rise to a threat to the integrity of adjoining properties, including the Martello Tower to the north and the houses on Asgard Park, Balscadden Road and Abbey Street.

11.4. The character and heritage of the area

- 11.4.1. The proposed development would open up a new pedestrian route from the village centre to the coastal Balscadden Road. This would make a strong positive contribution to the character of the area. So would the proposed open space between the Balscadden Road and the Block C and the urban space enclosed by Blocks A, B and M. Block A would front Main Street. Contrary to certain of the submissions, its scale, design, form and layout would be appropriate and sympathetic to its situation in the historic village centre and the Architectural Conservation Area there. It would preserve the scale and rhythm of the streetscape and the enclosure of the space in front of the church. It would also provide a proposed pedestrian footpath across the site frontage that would ameliorate the

obstruction caused by the car parking there. The former hotel and coach buildings are not protected structures and their demolition does not require exceptional circumstances. However they are historic buildings in an architectural conservation area some consideration should be given to their protection in accordance with objectives CH33 and CH 37. In the current case the significant amenity that would be provided by the new pedestrian street and urban space justifies the proposed replacement of the historic buildings on the site. The proposed development would therefore be in keeping with section 3.10 of the guidelines for planning authorities on Architectural Heritage Protection.

11.4.2. The architectural design of the apartment buildings achieves a satisfactory standard. The proposed light coloured brick finish and four to five storey heights restrain the visual impact they would have on the surrounding area. In particular the frontage to the Balcadden Road would be appropriate for its elevated and coastal situation, while the frontage on the northern site boundary would not overbear or compete with the Martello Tower above it. It is noted that this element of the proposed development is somewhat higher than that which the board had permitted under ABP-301722-18. However national planning policy, as stated in the guidelines on building height that were issued in 2018 after the previous board decision, is now more clearly in favour of higher buildings in appropriate locations. It is not considered, therefore, that the height of Block C should be reduced in the manner recommended by the council. The historic setting of the Martello Tower was on a coastal promontory overlooking what was a major harbour at the time the tower was erected and which then became a fishing port and suburban settlement after the railway came to Howth. It was not and is not a rural feature. The proposed residential development of the site would be in keeping with the this historic setting of tower and would not interfere with important views to or from it. While the current state of the site would not justify a sub-standard scheme, the current proposal would ameliorate the expanse of waste ground and derelict structures which currently degrade views south from the tower. It is therefore concluded that the proposed development would be in keeping with the architectural heritage and historic character of Howth and would make a significant positive contribution to its current amenities. As such it would be in keeping with objectives 115, HOWTH 1, NH36 and NH60 of the development plan and with the provisions of the Special Amenity Area

Order for Howth and its designation of a buffer zone. The site is in an urban area and the proposal is for housing so objectives DMS174 and DMS 176 do not apply.

- 11.4.3. The habitats on the site are described in the submitted ecological impact assessment. They consist of buildings and artificial surfaces; dry meadows and grassy verges; scrub; exposed sand, gravel or till; and recolonising bare ground. The habitats are not rare or of high ecological value. Their loss would not significantly injure the biodiversity of the area. The site surveys show that the site does not support species of flora or fauna of such value or rarity that would justify refusing permission or substantially amending the proposed housing development on zoned and serviced urban land. Legal controls on the disturbance of species of fauna including bats, herring gulls or sand martins that might occur during construction are imposed under a separate statutory code. The assessment submitted with the application sets out how such compliance would be achieved. It is therefore concluded that the proposed development would not damage biodiversity or the natural heritage of the area.
- 11.4.4. The monitoring of works proposed in the archaeological report submitted with the application was accepted in the report from the Department of Culture, Heritage and the Gaeltacht as the appropriate response to the potential for remains on the site. They should be required by the conditions of any permission

11.5. Residential amenity

- 11.5.1. The proposed buildings would maintain adequate separation distances from neighbouring houses on Abbey Street, Main Street, Asgard Park and Balscadden Road and would not unduly overlook, overshadow or overbear other residential properties, contrary to the assertions made in some of the submissions on the application. The bank at the back of the houses on Abbey Street along the boundary with the current site and the fact that the Block B would be opposite the front of the houses on Balscadden Road diminishes the impact that the proposed apartments would have on them. The submitted construction and environmental management plan sets out the means by which potential for effects on adjoining properties during from noise, vibration and dust would be controlled. The proposed controls are typical for residential construction and are likely to prevent serious injury to the residential amenities of neighbouring properties, although some disturbance could occur during the construction phase. This would not justify refusing permission or

substantially modifying the proposal for housing on zoned and serviced land in an urban area.

- 11.5.2. The proposed apartments would provide their occupants with a reasonable standard of residential amenity. They would meet the standards set out in the 2018 guidelines including those which are the subject of SPPRs including SPPR 1 relating to housing mix; SPPR 3 on unit size; SPPR 4 of the appropriate proportion of dual aspect units on accessible site; SPPR 5 on ceiling heights; SPPR 6 on the number of units per lift core; and the requirements for room sizes and private and communal open space set out in the appendix.
- 11.5.3. The application site is limited in size and mostly zoned for town centre use. It is not an appropriate location to provide Class 1 open space under the categories set out in the development plan. The council has requested a financial contribution in lieu of what it regards as a shortfall in open space based on the provisions of the development plan. The construction of an apartment scheme on town centre land without providing a public park would not be an exceptional circumstance and council has not specified the works for which such a contribution might be used. It is therefore unclear whether specific exceptional costs would arise that would provide a legal basis of special financial contribution under section 48(2)(c) of the planning act. However the applicant has stated its agreeability to such a condition, a similar one was imposed on the previous grant of permission by the board and any contribution would be subject to repayment with interest under the safeguards set out in section 48(12) of the act if it were not properly spent. So a similar contribution is recommended below. The council has not indicated its willingness to take charge of the proposed community room. A condition requiring that it be controlled by a non-profit body whose existence and identity are not specified would not be sufficiently precise or enforceable.

11.6. **Access and parking**

- 11.6.1. The site is in a city where there is a substantial demand for housing. The site is in an area whose population has fallen and then stagnated in recent decades. The site adjoins a town centre with a range of commercial and social services. The site is within walking distance of a railway station. Preventing or restricting the development of housing on the current site would displace the latent demand to housing to other areas which are not likely to be so close to local services and public

transport facilities. It would therefore tend to increase the distances that people have to travel and to increase the share of that travel which occurred by private car, the ultimate effect of which would be to increase congestion on the city's road network. This conclusion is based on the current circumstances of the site and does not presume public transport connections from Howth to the airport or along the M50. Refusing permission for the proposed development would not alleviate the traffic congestion which occurs in the area, including that at Sutton Cross. It would have little or no effect on the level of traffic generated by visitors to Howth. The general concerns regarding traffic stated in the submissions on the application would not justify refusing the current application or substantially amending the proposed development.

11.6.2. There would be two vehicular entrances to the proposed development, one from Main Street and one from Balscadden Road. The design, layout and position of both accesses are acceptable and their use would not give rise to traffic hazard or the obstruction of road users. Wider junctions threaten the safety of vulnerable road users and are contrary to the current standards set out in DMURS. The revised layout of the area in front of Block A on Main Street would provide a continuous and commodious footpath and would remedy the existing obstruction to pedestrian movement on that part of the street. The Balscadden Road in its current condition could accommodate the limited additional traffic by private car that would arise from the use of the proposed access there to serve the 26 parking spaces behind Block C.

11.6.3. The proposed development would provide 146 car parking spaces to serve 177 apartments, 2 shops, a café and a community room. The applicant states that the amount of parking aims to maintain the rate of 0.8 spaces per apartment that was contained in the scheme that the board previously approved. This provision is rather high, given that the rationale for higher density development on this site is a reduction in car dependency and the advice at section 4.19 of the apartment design guidelines that parking for flats in accessible locations should be minimised. The board might considering reducing the provision by condition, possibly by the omission of the 26 spaces behind Block B and the vehicular access from the Balscadden Road. The application of the standards in the 2017 county development would require an excessive amount of car parking that would not be in keeping with the 2018 guidelines. On-street parking in Howth is not currently

regulated. If there is excessive demand on such parking or the council decides to preserve access to it for residents of existing houses, then the implementation of measures by the roads authority would be a more appropriate way of doing this than the prevention of housing development on zoned land.

11.6.4. The Balscadden Road along the eastern side of the site is has a narrow footpath along its opposite side only. The carriageway is also restricted in width. The road is steep. It has a restriction on entry near the northern end of the site boundary and so has largely one-way traffic the harbour up to this point. The road carries a limited amount of vehicular traffic. It carries a high level of pedestrian traffic because it leads from the harbour and railway station towards the cliff walks around Howth. In this context the proposal to widen the footpath to 1.8m would be counterproductive. The current state of the road is not particularly unsafe. It indicates to drivers that the road has to be shared with a large number of walkers and that they must drive accordingly. The narrow footpath provides a refuge for pedestrians to use while cars pass slowly. A footpath widened to 1.8m would be wholly inadequate to safely accommodate the volume of pedestrians using the road. Its presence would be likely to mislead drivers that they could pass pedestrians as they normally would on an urban street. So it would increase traffic speeds without adequately protecting pedestrians and thus increase traffic hazard. It should therefore be omitted from any proposed development.

11.6.5. The construction of the proposed development would give rise to movements by heavy vehicles. The excavation required to develop this sloping site means that its construction would generate more heavy traffic than would otherwise be the case. Three route options for construction traffic between the site and Sutton Cross were submitted. Route 1 is out the western side of the site onto Main Street, then down Abbey Street, then along the Harbour Road and the Howth Road. Route 2 would run from Main Street up Thormanby Road past the summit and then along Carrickbrack Road and Greenfield Road. Route 3 would run from the eastern side of the site down Balscadden Road to the Harbour Road and then along the Howth Road. The Balscadden Road is narrow and steep and its structure may not be deeply founded. It is not suitable to carry the heavy traffic that would be generated during construction of the proposed development. The use of route 3 should therefore be prohibited by the conditions attached to any permission. This would be at variance from condition no. 26 on the permission issued by the board under ABP-301722-18.

My advice that the board should adopt a different position in this case is not based on any change in circumstances or new information. It is that a different position should be taken in the interests of traffic safety.

11.6.6. The use of route 1 along Main Street and the Harbour Road would not give rise to such safety concerns. However it would give rise to a risk of congestion and the obstruction of road users between the site and the Howth Road. There would also be a potential for further congestion along the Howth Road if the current proposal were implemented at the same time as the proposal for housing on the Techrete site. Route 2 is longer and would require laden trucks to climb up towards the summit. It would also pass the schools at Santa Sabina and St. Fintan's. However the width and structure of the roads along Route 2 and the setback of buildings from it are more suitable for heavy traffic than those along Abbey Street and Harbour Road on route 1. This use of this route would occasion some noise and disturbance to properties along the route during the period of construction but would not cause traffic hazard. The use of route 2 would therefore be acceptable having regard to traffic safety and its likely effects on property along the route and is therefore recommended. This position is in keeping with the advice from the council.

11.7. **Water supply and drainage**

11.7.1. Irish Water have submitted that it can facilitate the proposed connections to its water supply and foul sewerage networks.

11.7.2. The proposed development includes a surface water drainage system that have a single outfall at the existing 600mm sewer along Main Street. The system would include SUDS features and attenuation storage that would reduce the runoff rate to greenfield level. Interceptors are also proposed to control the emission of hydrocarbons in the runoff. The council has indicated that the proposed system is generally acceptable, subject to compliance with its specifications in certain regards. The site does not have a recorded history of flooding and the sandy soils upon it would not provide significant flood storage in its current condition. The submitted surface water drainage proposals have due regard to the circumstances of the site. They are therefore considered acceptable and sufficient to demonstrate that the proposed development would not be at undue risk of flooding and would not give risk to an undue risk of flooding on other land, and that it would be in keeping with the 2009 guidelines on flood risk management.

11.8. Other issues

11.8.1. The applicant has asserted that it has the requisite legal interest in the land between Main Street and the hotel buildings to carry out the development. The assertions to the contrary are noted, but neither they nor the current or prior circumstances and use of this piece of land would provide a sufficient basis to discount the applicant's assertion and declare the application invalid. The fact that a previous decision to grant permission for development on the site was subject to judicial review would not a basis to refuse to consider the current application which was made in accordance with the provisions set out in statute and regulations. That review has concluded with a High Court order dated 16th January 2020 quashing the previous decision by the board to grant permission under ABP-301722-18. The submissions asserting that the legislative provisions establishing and regulating the SHD procedure are unconstitutional and unfair are noted, but the board may not set those provisions aside or decide to disregard them.

Decision Quashed

12.0 Recommendation

12.1. I recommend that permission be granted subject to the conditions set out below.

13.0 Reasons and Considerations

Having regard to the following -

- (a) the site's location within the built-up urban area in Howth on lands mainly zoned for town centre and residential development under the Fingal Development Plan 2017-2023;
- (b) the policies and objectives in the Fingal Development Plan 2017-2023;
- (c) the National Planning Framework 2040,
- (d) the Regional Social and Economic Strategy for the Eastern and Midlands Region 2019-2031,
- (e) the Guidelines for Sustainable Residential Developments 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,
- (f) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in March 2018,
- (g) the Guidelines for Planning Authorities on Urban Development and Building Height issued by the Department of Housing, Planning and Local Government in December 2018,
- (h) the Guidelines for Planning Authorities on The Planning System and Flood Risk Management (including the associated technical appendices) issued by the Department of the Environment, Heritage and Local Government in November 2009,
- (i) the nature, scale and design of the proposed development;
- (j) the availability in the area of a wide range of social and transport infrastructure including a railway station;
- (k) the pattern of existing and permitted development in the area;
- (l) the submissions and observations received, and
- (m) the report of the Inspector,

it is considered that, subject to compliance with the conditions set out below, the proposed development would respect and enhance the historic and architectural character of the area, would be acceptable in terms of urban design, height and quantum of development, would not seriously injure the amenities of the area or of property in the vicinity, would not damage the natural heritage of the area, would not give rise to flooding in the area, and would be acceptable in terms of pedestrian and traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The board considered that a grant of permission that could materially contravene the allocation of 498 homes to Howth under the core strategy and settlement strategy set out in section 2 of the Fingal County Development Plan 2017-2023 would be justified in accordance with sections 37(2)(b)(i),(ii) and (iii) of the Planning and Development Act 2000, as amended, having regard to -

- the government's policy to ramp up delivery of housing from its current under-supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016,
- objectives 3a, 3b, 10, 11 and 35 of the National Planning Framework,
- section 5.8 of the 2009 Guidelines for Sustainable Residential Developments in Urban Areas issued in 2009
- section 2.4 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018
- SPPR1 of the Guidelines for Planning Authorities on Urban Development and Building Height issued in December 2018,
- objective RPO 4.3 of the Regional Social and Economic Strategy for the Eastern and Midlands Region 2019-2031, and
- objectives SS01 and SS15 of the county development plan,

all of which support denser residential development consisting of apartments on public transport corridors within the built up area of Dublin city and its suburbs, as is proposed in this case.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment Screening exercise in relation to the potential effects of the proposed development on the Special Area of Conservation for the Howth Head sitecode 000202 and the Special Protection Areas for the Howth Head Coast sitecode 004232 and Ireland's Eye sitecode 004117, taking into account the nature, scale and location of the proposed development, the omission of the proposed works and construction traffic on the Balscadden Road required by the conditions below, the information submitted with the application, the Inspector's report and the submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that the development that is authorised by this permission would not be likely to have a significant effect on the above European Sites or on any other European Site in view of the sites' conservation objectives, either individually or in combination with any other plan or project, and that a Stage 2 Appropriate Assessment is not required.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development in relation to the criteria set out Schedule 7 to the Planning and Development Regulations 2001, as amended, having regard to the information submitted with the application including the EIA Screening Assessment Report, the Inspector's report and the submissions on file. In completing the screening exercise the board adopted the report on the Inspector and concluded that, having regard to the characteristics and location of the proposed development, as a mainly residential scheme on serviced urban land, and to the characteristics of its potential impacts, the proposed development would not be likely to have significant effects on the environment and that an environmental impact assessment is not necessary in this case.

14.0 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, such issues may be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity

2. The proposed widening of the footpath along the Balscadden Road shall be omitted from the proposed development.

Reason: To protect pedestrians and to safeguard the structural integrity of the road

3. Pedestrian access to the western and eastern plazas, the pedestrian street and the northern pathway around Block C shall be permanent, open 24 hours a day, and no gates, security barrier or security hut shall be permitted at the entrances to this development from Balscadden Road, Main Street or the pathway access to the Martello Tower or within the development in a manner which would prevent pedestrian access between the areas identified above

Reason: In the interests of social inclusion

4. The community room in Block B shall be made available for use by the residents of the development and the wider community. Within three months of the first occupation of the development by residents, the management arrangements for this community use shall be agreed with the planning authority. Any proposed change of use from community space shall be subject of a separate application for planning permission.

Reason: in the interests of clarity and ensuring adequate provision of community space

5. The materials, colours and finishes of the authorised buildings, the treatment of boundaries within the development and the landscaping of the site shall generally be in accordance with the details submitted with the application

unless the prior written consent of the planning authority has been obtained for variations to them.

Reason: In the interests of visual amenity

6. Details of the proposed shopfronts for the permitted commercial units shall be submitted for the written agreement of the planning authority prior to the occupation of those units, along with proposals for the management of waste and the control of odours. Thereafter any signs, screens, shutters or other such features and any ducts or air handling equipment on the exterior of the permitted buildings shall comply with the requirements of the planning authority.

Reason: In the interests of visual and residential amenity

7. Construction traffic shall generally use route option no. 2 between the site and Sutton Cross save in exceptional circumstances where the prior written consent of the planning authority has been obtained. Construction traffic shall not use the Balscadden Road. Otherwise the works required to complete the permitted development shall be carried out in accordance with the methods and subject to the controls set out in the various reports submitted with the application including–

- The Structural and Geotechnical Engineering Report,
- The Construction Environmental Management Plan,
- The Air Quality and Climate Impact Report,
- Vibration Management Plan and
- The Ecological Impact Assessment Report.

A record of daily checks that the works are being undertaken in accordance with the applicable reports shall be kept for inspection by the planning authority. The developer shall provide contact details for the public to make complaints during construction and provide a record of any such complaints and its response to them, which may also be inspected by the planning authority.

Reason: To protect adjoining properties, the amenities of the area and road safety during construction.

8. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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 residential amenities of property in the vicinity.

9. Proposals for street and block names, numbering schemes and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and numbers shall be provided in accordance with the agreed scheme. The proposed names shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority.

Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

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.

11. Water supply and 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 interests of public health

10. The applicant or developer shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health

12. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities within each block 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

13. 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 (where they are not in the areas to be taken in charge) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: in the interests of sustainable transportation

14. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that 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,

- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination. The Ministry of War boundary markers associated with the Martello Tower shall be protected in full during the course of the development and maintained thereafter.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

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 amenity of property in the vicinity and the visual amenity of the area

16. 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 provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public 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 or maintenance 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 and maintenance of the development until taken in charge

17. 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

18. 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

19. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of public open space. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Stephen J. O'Sullivan
Planning Inspector

19th February 2020