



An  
Bord  
Pleanála

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

### Inspector's Report ABP-311591-21

#### Strategic Housing Development

Construction of 399 no. build-to-rent apartments, retail unit and associated site works.

#### Location

Heuston South Quarter, St. John's Road West/Military Road, Kilmainham, Dublin 8  
([www.heustonsouthquartershd.ie](http://www.heustonsouthquartershd.ie))

#### Planning Authority

Dublin City Council

#### Applicant

HPREF HSQ Investments Ltd

#### Prescribed Bodies

1. Irish Water
2. An Taisce-the National Trust for Ireland
3. An Comhairle Ealaíon
4. Fáilte Ireland

- 5. Department of Housing, Local Government and Heritage
- 6. The Heritage Council

**Observer(s)**

14 submissions received  
An Taisce  
Ciaran Cuffe MEP  
DAU  
Frank McDonald  
The Heritage Council  
ICOMOS  
Irish Water  
Lucy Riordan  
NTA  
OPW  
Paul Leech  
Robin Mandal  
Sally Starbuck  
Sinead Woodhead

**Date of Site Inspection**

18<sup>th</sup> January 2022

**Inspector**

Lorraine Dockery

## Contents

1.0 Introduction .....	4
2.0 Site Location and Description .....	4
3.0 Proposed Strategic Housing Development .....	5
4.0 Planning History.....	7
5.0 Section 5 Pre Application Consultation .....	8
6.0 Relevant Planning Policy .....	12
7.0 Third Party Submissions .....	20
8.0 Planning Authority Submission .....	21
9.0 Prescribed Bodies.....	<b>Error! Bookmark not defined.</b>
10.0 Oral Hearing Request.....	27
11.0 Assessment.....	28
12.0 Appropriate Assessment.....	101
13.0 Environmental Impact Assessment .....	1217
14.0 Recommendation .....	150

## 1.0 Introduction

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

## 2.0 Site Location and Description

- 2.1. The subject site, which has a stated area of 1.08 hectares, comprises part of the wider Heuston South Quarter (HSQ) urban block, which has been partly built out. The block is bounded by Military Road to the east, St. John's Road West to the north and the grounds of the Royal Hospital Kilmainham (RHK) to the south and west. Completed residential and commercial blocks bound the subject site to the east and south. An existing public plaza is located to the east of the subject site. Existing uses within HSQ include residential, office, retail and childcare.
- 2.2. The site forms part of the wider HSQ site and comprises of a part developed/unfinished development from the early 2000s. This remaining parcel of land is proposed to be progressed in two parts. This current SHD application site, which is known as Site A, forms one element. The second part is known as Site B and adjoins the application site on its northern boundary. This is also in the ownership of the prospective applicant and is to be subject of a separate application for an office and hotel development.
- 2.3. Ground levels on the site were previously reduced and the Formal Gardens of the RHK are elevated above the current site. Temporary landscaping was undertaken on the site pending its longer-term development.
- 2.4. There is vehicular access to the overall HSQ site via a signalised junction from St. John's Road West, which provides access to basement level car parking. A second access from Military Road provides vehicular and bicycle ramped access to the basement car park.
- 2.5. St. John's Road West forms part of the Busconnects Lucan Core Bus Corridor (CBC) proposals.

### 3.0 Proposed Strategic Housing Development

- 3.1. The proposal, as per the submitted public notices, comprises of a residential development of 399 no. 'Build To Rent' residential units, a retail unit of 120 m<sup>2</sup>, together with ancillary site works, on a site of 1.08 hectares.
- 3.2. The proposal includes for partial demolition of basement levels -1 and -2 and podium level, together with works to St. John's Road West.
- 3.3. The following tables set out some of the key elements of the proposed scheme:

Table 1: Key Figures of Overall Development

<b>Site Area</b>	1.08 hectares
<b>No. of residential units</b>	399 BTR apartments
<b>Other Uses</b>	Retail- 120m <sup>2</sup> Residential Amenity Facilities- 533 m <sup>2</sup>
<b>Other Works</b>	Ancillary works to wider basement- 2818 m <sup>2</sup> Upgrade works to St. John's Road access- 587m <sup>2</sup> Double ESB substation/switchrooms
<b>Demolition Works</b>	2,684 m <sup>2</sup>
<b>Density</b>	369 units/ha
<b>Height</b>	3-18 storeys (over double basement/podium areas)
<b>Plot Ratio</b>	1.29
<b>Site Coverage</b>	26.7%
<b>Dual Aspect</b>	50% (stated)
<b>Public Open Space Provision</b>	Not stated
<b>Communal Open Space Provision</b>	2,139 m <sup>2</sup>
<b>Part V</b>	40 units - 5 x studio; 20 x one-bed; 15 x two-bed

<b>Parking</b>	80 car spaces (includes for 4 disabled and 4 car club spaces); 710 bicycle spaces
<b>Access</b>	From two existing vehicular access points, one from St. John's Road West and another on Military Road.

Table 2: Overall Unit Mix

	Studio	1 bed	2 bed	3 bed	Total
Apartments	46	250	103	-	399
<b>As % of total</b>	<b>11.5%</b>	<b>62.7%</b>	<b>25.8%</b>	-	<b>100%</b>

Table 3: Summary of Blocks

<b>Block</b>	<b>Height*/ Uses</b>
Block A	NE corner of site <b>18 storeys over podium</b> 154 apartments
Block B	SE corner of site <b>Part 8- part 12 storeys over podium</b> 81 apartments Retail unit at ground/podium level
Block C	<b>Up to 12 storeys over podium</b> 86 apartments
Block D	SW corner of site <b>5 storeys over basement</b> 35 apartments
Block E	NW corner of site <b>Part 3- Part 5 storeys over basement</b> 43 apartments

- 3.4. In term of site services, a new water connection to the public mains is proposed, together with a new connection to the public sewer. An Irish Water Pre-Connection Enquiry in relation to water and wastewater connections was submitted with the application, as required. It states that the proposed connections can be facilitated, subject to conditions. In addition, a Design Submission was included with the application, in which Irish Water state that they have no objections to the proposal, based on the information provided.
- 3.5. It is anticipated that the duration of the construction phase will be approximately 24-30 months.
- 3.6. A letter of consent from Dublin City Council, Executive Manager states that they have no objection to the inclusion of lands in the control of Dublin City Council (indicated green on drawing 'Site Location' HSQ-CSC-XXXX-SK-C-0010 (Rev. P03)) for the purpose of making a planning application. This is without prejudice to the outcome of the planning application process.
- 3.7. The application is accompanied by an EIAR and NIS.

## 4.0 **Planning History**

- 4.1 The application site and the wider area, have been subject to a number of planning applications in recent years. These mainly comprise the parent application and subsequent amending applications. These are set out in section 6 of the submitted Planning Report and also within the Chief Executive Report.

The main application of relevance is:

PA Ref. 2656/03 ABP Ref. PL29S.206528:

Permission GRANTED for a mixed-use development on the overall HSQ site that extended to 3.9 hectares, which included for offices (48,531-sq.m.), 267 number residential units, 30 number one bedroom live/work units, museum/art gallery, retail and restaurants, hotel/conference centre.

The proposal consisted of ten buildings, ranging in height from two to 12 storeys and the application was accompanied by an Environmental Impact Statement (EIS). The

permitted development was subject to numerous amending applications and all elements of the parent permission were modified. Completed elements of the development comprise blocks 3, 4, 7, 8, 9 and 10, providing approx. 80,000-sq.m of commercial floorspace and 345 apartments.

## 5.0 Section 5 Pre Application Consultation

5.1 A Section 5 pre application consultation took place via Microsoft Teams due to Covid-19 restrictions on the 23<sup>rd</sup> March 2021. Representatives of the prospective applicant, the planning authority and An Bord Pleanála were in attendance. Following consideration of the issues raised during the consultation process and having regard to the opinion of the planning authority, An Bord Pleanála was of the opinion that the documentation submitted required further consideration and amendment to constitute a reasonable basis for an application for strategic housing development to An Bord Pleanála (ABP-309058-21).

### 1. *Heuston South Quarter*

Further consideration and/or justification of the documents as they relate to the development strategy for the site and relationship with existing and proposed development within the overall Heuston South Quarter urban block. Particular regard should be had to the following:

- The overarching design principles for the wider urban block.
- The selection of materials and finishes in buildings and open spaces.
- The design and management of pedestrian, cycle and vehicular access for all existing and proposed uses across the block.
- The design and layout of water and drainage service provision.

### 2. *Royal Hospital Kilmainham*

- a. Further consideration and / or justification of the documents as they relate to the development strategy for the site and the relationship with the Royal Hospital Kilmainham. In particular, further consideration and/or planning rationale in respect of the proposed developments interaction with the Cone of Vision and guiding principles set out in the Dublin City Development Plan in respect of SRDA 7 Heuston and Environs.



- b. Further consideration and / or elaboration of the documents as they relate to the design of the pedestrian connection between the proposed development and the Formal Gardens of the Royal Hospital and possible architectural heritage impacts arising.
- c. Further consideration and / or justification within the documents as they relate to the design of the archway connection between Block A and C and its relationship with the setting of the Royal Hospital and its Formal Gardens.

Further consideration of these issues may require an amendment to the document and / or design proposals submitted.

### 3. *Residential Amenity*

- a. Further consideration and / or justification of the documents as they relate to the overall quality of residential amenities, having regard to the extent of private amenity space proposed and the provisions of the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*, and in particular SPPR 7 and SPPR 8 set out therein.
- b. Further consideration and / or justification of the documents as they relate to the potential impact of the proposed development on the residential amenities of existing adjoining residential amenities in respect of overlooking, daylight and sunlight / overshadowing. The relationship of the development with existing adjoining development should be illustrated in cross sections and contextual elevations.

Further consideration of these issues may require an amendment to the documentation and/or design proposals submitted.

Furthermore, the prospective applicant was advised that the following specific information should be submitted with any application for permission:

- 1. A revised assessment of Sunlight, Daylight and Overshadowing, which includes an examination of impacts on adjoining lands and development, including potential impacts on the Formal Gardens of the Royal Hospital.

2. A detailed assessment of microclimate and in particular wind comfort within private, communal and public amenity spaces, to include rooftop open space. The assessment should also consider any impacts on existing adjoining private and communal amenity spaces. The assessment should assess the effectiveness of any identified mitigation measures to achieve the required comfort criteria.
3. A revised Landscape and Visual Impact Assessment which should:
  - a. Have regard to existing and permitted / proposed development on adjoining lands and give consideration to summer and winter views having regard to the influence of foliage on views in the area.
  - b. Provide an assessment of impact of the development in respect of additional views, including views from:
    - St. John's Road West, to the east of and including the original Heuston Station terminal building.
    - St. John's Road West on the approach to the city from the west.
    - Wolfe Tone Quay.
4. A Social and Community Infrastructure Audit of existing facilities within the area demonstrating how the proposal will contribute to the range of supporting community infrastructure. This should be accompanied by an assessment of the capacity of schools and childcare facilities in the area to accommodate the needs of the proposed development.
5. A report that specifically addresses the proposed materials and finishes to the scheme including specific detailing of finishes, landscaping and paving, pathways, entrances and boundary treatments. Particular regard should be had to the requirement to provide high quality, durable and sustainable finishes which have regard to the context of the site.

The rationale for the choice of materials should be clearly set out, having regard to the relationship of the development with the Royal Hospital.
6. Landscaping proposals including an overall landscape masterplan for the development site including detail of tree planting, the quantity, type and location of all proposed hard and soft landscaping including details of public lighting, pedestrian entrances and boundary treatments and potential greening of

retaining walls in the scheme. Detail shall include a rationale for the planting / vegetation selected having regard to the daylight and sunlight characteristics of the site.

7. a. A Traffic and Transport Impact Assessment (TTIA) which should consider cumulative impacts with existing and proposed adjoining development. The scope of this assessment should be discussed in advance with Dublin City Council.
  - b. A report demonstrating compliance with the principles and specifications set out in DMURS and the National Cycle Manual. This should incorporate a Quality Audit that includes (i) a Road Safety Audit, (ii) an Access Audit, (iii) a Walking and Cycle Audit.
  - c. A Parking Strategy and Mobility Management Plan. This plan shall provide a justification for the quantum and design of cycle storage / parking facilities having regard to the provisions of the Apartment Design Guidelines.
  - d. The items raised in the report of the Dublin City Council Transportation Planning Division, dated 26<sup>th</sup> January 2021.
8. Where the applicant is not the legal owner of any land or structure affected by the proposed development, the written consent of the owner to make the application. In particular, confirmation of the consent of the Office of Public Works to the proposed east – west connection between the proposed development site / Heuston South Quarter and the Formal Gardens of the Royal Hospital Kilmainham should be submitted.

### **Applicant's Statement**

A statement of response to the Pre-Application Consultation Opinion was submitted with the application, as provided for under section 8(1)(iv) of the Act of 2016. This statement attempts to address the points raised above.

A Material Contravention Statement was submitted with the application in relation to (i) minimum floor areas (ii) unit mix (iii) block configuration (iv) minimum internal apartment space standards and (v) private amenity space. These matters shall be addressed further within the main planning assessment.

## 6.0 Relevant Planning Policy

### National Planning Policy

The following list of section 28 Ministerial Guidelines are considered to be of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual)
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities
- Architectural Heritage Protection, Guidelines for Planning Authorities
- Design Manual for Urban Roads and Streets
- The Planning System and Flood Risk Management (including the associated Technical Appendices)
- Urban Development and Building Heights, Guidelines for Planning Authorities
- Childcare Facilities – Guidelines for Planning Authorities
- Climate Action Plan
- Appropriate Assessment of Plans and Projects in Ireland - Guidelines for Planning Authorities

### Other policy documents of note:

- National Planning Framework

### Objective 4

Ensure the creation of attractive, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

### Objective 13

In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These

standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

#### Objective 27

...to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.

#### Objective 35

Increase residential density in settlement, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

- Regional Spatial & Economic Strategy for the Eastern & Midland Regional Assembly
- Dublin Metropolitan Area Strategic Plan
- Housing For All

#### Local Planning Policy

The Dublin City Development Plan 2016-2022 is the operative City Development Plan.

#### Zoning:

The lands are zoned 'Objective Z5' which seeks 'To consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity'.

Residential and retail uses are deemed permissible in principle under this land use zoning objective.

The stated purpose of this zoning is "to sustain life within the centre of the city through intensive mixed-use development, to provide a dynamic mix of uses which

interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night.....”

Adjoining lands within the RHK complex are zoned ‘Objective Z9’ which seeks to ‘preserve, provide and improve recreational amenity and open space and green networks’.

### SDRA 7

The site is located within the designated Strategic Development and Regeneration Area (SDRA) 7 - Heuston Station and Environs Area.

Chapter 15 deals with Strategic Development and Regeneration Areas. A number of guiding principles have been set out for SDRA 7 in section 15.1.1.10. Other significant landbanks within this SDRA include a permitted SHD mixed-use development at Parkgate Street and the Clancy Barracks residential led development, in the grounds of the former Clancy Army Barracks. Heuston Station and the Dublin Bus Conyngham Road Depot are identified as other potential redevelopment sites.

The following guiding principles apply to significant landbanks within SDRA7:

1. To develop a new urban gateway character area focused on the transport node of Heuston Station with world class public transport interchange facilities, vibrant economic activities, a high-quality destination to live, work and socialise in, public realm and architectural designs of exceptional high standard and a gateway to major historic, cultural and recreational attractions of Dublin City.
2. To incorporate sustainable densities in a quality contemporary architecture and urban form which forges dynamic relationships with the national cultural institutions in the Heuston environs.
3. To ensure the application of best practice urban design principles to achieve: - A coherent and legible urban structure within major development sites. - A prioritisation on the provision of public space. - A successful interconnection between the development site and the adjacent urban structure.
4. To protect the fabric and setting of the numerous protected structures and national monuments, many of which are major national cultural institutions.

5. To incorporate mixed-use in appropriate ratios in order to generate urban intensity and animation. This will require the major uses of residential and office to be complemented by components of culture, retail and service elements
6. To improve pedestrian and cycle linkages throughout the area and through key sites, with a particular focus on seeking the following new linkages / improvements: along St John's Road West; from St John's Road to the Royal Hospital Kilmainham via Heuston South Quarter, subject to agreement with the OPW/RHK, on the nature of the proposed linkage; from Dr Steevens' Hospital to IMMA, with consideration given to a new path along the banks of the river Camac.
7. As a western counterpoint to the Docklands, the Heuston gateway potentially merits buildings above 50 m (16-storeys) in height in terms of civic hierarchy. Sites particularly suited for tall buildings include: - OPW building: corner site on OPW lands adjacent to Dr Steevens' Hospital and Park, and opposite the south façade of the station building. - CIE building: site to the north of the station building on the river relating to the West Terrace and River Terrace. Any new mid or high-rise buildings must provide a coherent skyline and not disrupt key vistas and views.
8. The 'cone of vision', as set out in the 2003 Heuston Framework Plan, represents a significant view between, the Royal Hospital Kilmainham and the Phoenix Park extending from the west corner of the north range of the Royal Hospital Kilmainham, and the north-east corner of the Deputy Master's House to the western side of the Magazine Fort and east edge of the main elevation of the Irish Army Headquarters (former Royal Military Infirmary) respectively. Any new developments within this 'cone' shall not adversely affect this view. A visual impact analysis shall be submitted with planning applications to demonstrate this view is not undermined.
9. Other important visual connections to be respected include Chesterfield Avenue to Guinness Lands and from key parts of the City Quays to the Phoenix Park (Wellington Monument).

#### Cone of Vision

The Indicative Framework for the SDRA (Fig 5.2 City Development Plan) identifies a Cone of Vision (COV) in respect of point 8 of the SDRA principles which aims to protect views within this range of view. The COV extends from the west corner of the

north range of the RHK to the north-east corner of the Deputy Master's House to the western side of the Magazine Fort and West edge of the main elevation of the Irish Army Headquarters. A visual impact analysis demonstrating that this view is not undermined is required with all planning applications.

The subject site is located within the Royal Hospital Conservation Area.

There are a number of Protected Structures within the vicinity of the site, including those within the RHK complex and within Clancy Barracks (see below for detailed description).

RPS No. 5244 Military Road, Dublin 8 Royal Hospital (Kilmainham), former Adjutant General's office, former Deputy Master's offices, steel house, tower at western gate, garden house in Formal Gardens, garden features, entrance, gates and walls

Chapter 5 Quality Housing

Chapter 11 Built Heritage and Culture

The following policies are noted:

Policy SC7: To protect and enhance important views and view corridors into, out of and within the city, and to protect existing landmarks and their prominence.

Policy SC25: To promote development which incorporates exemplary standards of high-quality, sustainable and inclusive urban design, urban form and architecture befitting the city's environment and heritage and its diverse range of locally distinctive neighbourhoods, such that they positively contribute to the city's built and natural environments. This relates to the design quality of general development across the city, with the aim of achieving excellence in the ordinary, and which includes the creation of new landmarks and public spaces where appropriate.

Policy SN1: It is the policy of the Council to promote good urban neighbourhoods throughout the city which are well designed, safe and suitable for a variety of age groups and tenures, which are robust, adaptable, well served by local facilities and public transport, and which contribute to the structure and identity of the city, consistent with standards set out in this plan.



Policy SN2: It is the policy of the Council to promote neighbourhood developments which build on local character as expressed in historic activities, buildings, materials, housing types or local landscape in order to harmonise with and further develop the unique character of these places.

Policy QH6: To encourage and foster the creation of attractive mixed-use sustainable neighbourhoods which contain a variety of housing types and tenures with supporting community facilities, public realm and residential amenities, and which are socially mixed in order to achieve a socially inclusive city.

Policy QH7: To promote residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.

Policy QH17: To support the provision of purpose-built, managed high-quality private rented accommodation with a long-term horizon

Policy CHC1: To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

Policy CHC2: It is the policy of Dublin City Council to ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:

- a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest
- b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances
- c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials
- d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure

- e) Protect architectural items of interest from damage or theft while buildings are empty or during course of works
- f) Have regard to ecological considerations for example, protection of species such as bats.

### Height

Section 4.5.4 of the operative City Development Plan deals with taller buildings and states that '*Clustering of taller buildings of the type needed to promote significant densities of commercial and residential space are likely to be achieved in a limited number of areas only. Taller buildings (over 50m) are acceptable at locations such as at major public transport hubs, and some SDRAs...There are also a few areas where there are good transport links and sites of sufficient size to create their own character, such that a limited number of mid-rise (up to 50m) buildings will help provide a new urban identity. These areas of the city are the subject of a local area plan, strategic development zone or within a designated SDRA.*'

Figure 39 *Building Height in Dublin Context* identifies four sites within the city as having potential for High Rise 50m+ buildings,

### Section 16.7 Building Height in a Sustainable City

#### Section 16.7 Building Height

- Low Rise/Outer City- Maximum Height 16m/5 storeys for residential
- Within 500m of a DART station - Maximum height 24m/8 storeys for residential

#### Section 16.7.2 Assessment Criteria for Higher Buildings

All proposals for mid-rise and taller buildings must have regard to the assessment criteria for high buildings as set out below:

- Relationship to context, including topography, built form, and skyline having regard to the need to protect important views, landmarks, prospects and vistas
- Effect on the historic environment at a city-wide and local level
- Relationship to transport infrastructure, particularly public transport provision

- Architectural excellence of a building which is of slender proportions, whereby a slenderness ratio of 3:1 or more should be aimed for
- Contribution to public spaces and facilities, including the mix of uses
- Effect on the local environment, including micro-climate and general amenity considerations
- Contribution to permeability and legibility of the site and wider area
- Sufficient accompanying material to enable a proper assessment, including urban design study/masterplan, a 360 degree view analysis, shadow impact assessment, wind impact analysis, details of signage, branding and lighting, and relative height studies
- Adoption of best practice guidance related to the sustainable design and construction of tall buildings
- Evaluation of providing a similar level of density in an alternative urban form.

#### Map J - Strategic Transport and Parking Areas

- Zone 2, immediately adjacent to Zone 1- the development is in close proximity to good public transport links. Car parking provision is restricted in Zone 2 on grounds of good public transport links
- Residential car parking standard of maximum 1 space /residential unit. Cycle parking 1 space per unit for all zones.

#### **Designated Sites**

The site is located within the vicinity of the following European Designated sites:

#### Special Areas of Conservation (SAC)

- South Dublin Bay SAC (Site Code 000210)
- North Dublin Bay SAC (Site Code 000206)

#### Special Protection Areas (SPA)

- South Dublin Bay and River Tolka Estuary SPA (Site Code 004024)
- North Bull Island SPA (Site Code 004006)

## 7.0 Third Party Submissions

7.1 In total, 14 submissions were received, of which 5 no. of these are from Prescribed Bodies (An Taisce; Department of Housing, Local Government and Heritage; Heritage Council; Irish Water and NTA). A submission was also received from the OPW. The remaining submissions are from residents of properties in the vicinity, elected representative and other interested parties and the issues raised are broadly similar in nature. The contents of the submissions received from Prescribed Bodies are further detailed below in section 8. All submissions have been taken into account in my assessment. Reference is made to more pertinent issues, which are expanded upon, within the main assessment:

Principle of Development- some submissions support the principle of the development of this site; suggestions made for redesign of proposal

Build to rent model- considered to be a sub-standard BTR housing scheme; extent of BTR permitted in wider area; does not lead to creation of sustainable communities

Height, Scale, Density and Design- gross over-development of the site; totally inappropriate scale for the surrounding area and should not be permitted; overbearing; concerns regarding scale and massing; does not respect the principles of sustainable development and, rather than protecting the environment, diminishes it; plot ratio and site coverage concerns; more appropriate to have a taller block facing St. Johns Road West rather than simply apply a 'cookie cutter' design to much of the site.

Quality of Apartment Design- poor standard of design; extent of one bed units; extent of single aspect units; lack of private open space; quantity of storage space; quality of roof gardens; wind tunnelling; concerns regarding relaxation of space standards

Impacts on Existing Residential Amenities- impacts on light due to height; proximity of blocks/separation distances; privacy concerns; overlooking; noise from amenity areas

Architectural Heritage- impacts on RHK and its gardens; historic landmark; RHK's Formal Garden would be compromised and proposal would irrevocably damage its setting; impacts on views; proposal fails to protect historic context of the site; impacts

of noise, overlooking, overshadowing and privacy on RHK; visual intrusion; will detract from historic character; impact on the historic zone of the RHK will be permanent, negative and profound; no Historic Landscape Assessment in the EIAR; documentation does not assess any impacts of development on architectural designed landscape heritage setting of the gardens or terrace walk

Amenities/Access to Open Space- loss of open space; concerns regarding appropriateness of gate in RHK; concerns regarding bird strike; quality of landscape strategy report and wind analysis report

Environmental- query regarding information within NIS relating to spring wells and biodiversity

Other Matters- description of development by ABP; wording of public notices (information regarding height; description of site); carbon emissions; archaeological concerns; impacts on flight paths; legal matters regarding ownership; no cultural component to proposal; appears to be a co-living proposal

## **8.0 Planning Authority Submission**

8.1 In compliance with section 8(5)(a) of the 2016 Act the planning authority for the area in which the proposed development is located, Dublin City Council, submitted a report of its Chief Executive Officer in relation to the proposal. This was received by An Bord Pleanála on 30<sup>th</sup> November 2021. The report may be summarised as follows:

### **Information Submitted by the Planning Authority**

Details were submitted in relation to the site description, proposed development, planning history, observations, pre-application consultations, South Central Area Committee meeting, external consultees/interested parties, inter-departmental reports, planning policy context, zoning and policy, appropriate assessment, EIA, proposed development, planning assessment. A summary of representations received was outlined, together with a summary of comments from Area Committee Meeting. Recommended condition attached.

## Summary of Inter-Departmental Reports

### Drainage Division:

No objections, subject to conditions

### Transportation Planning Division:

No objections, subject to conditions

### Parks and Landscaping Division:

No objections, subject to conditions

### Housing & Community Services:

The applicant has previously engaged with the Housing Department in relation to the above development and are aware of the Part V obligations pertaining to this site if permission is granted.

### City Archaeologist:

Advises that site has been previously archaeologically resolved

### Waste Regulation and Enforcement Unit:

Conditions attached

### Air Quality Monitoring & Noise Control Unit

Conditions recommended

8.2 A thorough and comprehensive assessment of the proposal has been undertaken by the planning authority and reference has been made to same within the main body of my report. The assessment concludes as follows:

- the development, as proposed, is consistent with the relevant provisions of the Dublin City Development Plan 2016-2022.
- Recommends that An Bord Pleanála consider a grant of permission, subject to conditions relating to, inter alia, reduction in height/setback of Blocks D and E; the reduction in height of Block A to 13 storeys and removal of arch element between the upper levels of Blocks A and C.

8.3 The report includes a summary of the views of relevant Elected Members, as expressed at the South Central Area Committee meeting held via zoom due to Covid-19 restrictions on 20/10/2021 and are broadly summarised below:

- Height and density- excessive, unsuitable and unsustainable; impacts on nearby Royal Hospital and its surrounding gardens; impacts on proposed Garda HQ building; unimpeded views across to Phoenix Park will be lost
- Design and layout- greener building with greenery along the sides of blocks would be appropriate; private open space provision; lack of dual aspect units; amenity of GF units looking onto retaining wall
- Transport- welcomed bicycle parking provision and limited car parking provision; disappointed by number of disabled spaces proposed
- BTR- principle of proposal
- Parks and Amenities- loss of green spaces; gardening/growing plants by residents on roof gardens
- Part V- concerns regarding road noise and air quality for residents

## **9.0 Prescribed Bodies**

9.1 The applicant was required to notify the following Prescribed Bodies prior to making the application:

1. Irish Water
2. An Chomhairle Ealaion
3. Failte Ireland
4. The Heritage Council
5. An Taisce- the National Trust for Ireland
6. Department of Housing, Local Government and Heritage (Built Heritage and Nature Conservation)

9.2 In total, five Prescribed Bodies have responded (including a response from the NTA) and the following is a brief summary of the points raised. Reference to more pertinent issues are made within the main assessment.

## Irish Water:

### *Water*

In order to accommodate the proposed connection to Irish Water network, approximately 100m of new 200mm ID pipe main is required to connect the site development to the existing 450mm HDPE main. A bulk meter needs to be installed on this main and linked with telemetry online. Irish Water currently does not have any plans to extend its network in this area. Therefore, the applicant will be required to fund the network extension(s) to service this development and connect to the Irish Water Network. It is expected these works will be in the public domain.

### *Wastewater*

The physical connection point for the proposed development will be determined at connection application stage.

### *Design Acceptance*

The applicant is entirely responsible for the design and construction of all water and/or wastewater infrastructure within the development redline boundary, which is necessary to facilitate connection(s) to Irish Water's network(s), as reflected in the applicants Design Submission.

Recommended conditions attached.

## Department of Housing, Local Government and Heritage

Detailed and comprehensive report received, which is broadly summarised below. Matters raised are further expanded upon within my assessment.

### *Archaeology*

On the basis of the archaeological report and the contents of EIAR no further archaeological mitigation measures are required for the construction phase of the proposed development.

### *Nature Conservation*

The Department of Housing, Local Government and Heritage accepts the assessment as contained in the submitted NIS. Recommended conditions attached in the event of planning permission being granted for proposal



## The Heritage Council

Detailed report received with main concerns relating to (i) the scale of the development brief to the site, and the quality of the architectural articulation of the building form, volume, and surface finishes; (2) the impact it would have on the setting of a built heritage asset of international importance, the Royal Hospital, Kilmainham, which adjoins the development site, and other structures, landmarks and places of national and regional importance, and at an arrival point or gateway to Dublin from the West, and (3) the impact on (a) the historic urban landscape of Dublin, considered as a candidate World Heritage Site, and (b) other designated heritage assets.

Report also raises concern regarding BTR nature of proposed development and considers that such development is not necessarily the appropriate answer to Dublin or Ireland's housing needs.

Report concludes that the development as proposed, would be inconsistent with, and adversely affect, the existing scale and character of the historic city and the established character of the local area and would seriously detract from the setting and character of protected structures, streetscapes and areas of conservation value and, in particular, the internationally important former Royal Hospital, Kilmainham, one of the National Cultural Institutions. The development will have a significant overbearing impact on the setting and historic gardens of the Royal Hospital Kilmainham. A 'cone of view' is indicated in the Development Plan for the area to underline this significance. If the Board considers that the integrity and authenticity of Dublin as candidate World Heritage Site ought to be a material consideration in the planning decision, these potential impacts should be evaluated, individually and collectively. In particular the impact of the proposed development on the Royal Hospital, Kilmainham and its gardens, grounds and setting, ought to recommend the basis for refusing this permission.

## An Taisce

Detailed report submitted which strongly objects to the proposed development on the following grounds:

1. The massive encroachment of the proposed development into the identified Cone of Vision view from the north front of the Royal Hospital flagrantly

disregards the Dublin City Development Plan 2016-22 objectives for this view line which has been carefully followed and observed by existing development at Heuston South Quarter to date

2. On account of its scale, design, massing, orientation and proximity, the proposed development does not protect the pre-eminently important late-17th century Royal Hospital building (Protected Structure), its historic natural landscape setting and its attendant buildings, a nationally and internationally important ensemble
3. The proposed development would radically and adversely change the setting of the Royal Hospital Formal Garden from a walled garden set within a parkland adjacent to a major public building to effectively an urban garden enclosed and overlooked on one side by a large wall of modern development

Report concludes that the proposed development in close proximity to the Royal Hospital Kilmainham is in serious conflict with a range of relevant City Development Plan and other provisions and does not respect the extraordinarily sensitive interface with, and setting of, the major historic landmark of the Royal Hospital and its landscape, formal walled garden and attendant buildings, including views to and from the building and from within the walled garden. It is considered that there is no means by which the impact of the current proposal on the Royal Hospital can be mitigated and that it is incompatible with the proper planning and sustainable development of the area and as such must be refused permission.

In addition, a report was also received from the National Transport Authority (NTA) and is summarised as follows:

#### National Transport Authority

The consolidation of development into city centre sites is a key mechanism in reducing the demand for travel and in the facilitation and promotion of public transport use, walking and cycling as modes of transport. As such, the proposed development is considered to be broadly consistent with the land use planning principles of the Transport Strategy, subject to the other planning considerations.

Considers that the long-term sustainability and attractiveness of high-density residential development in central locations such as Heuston South Quarter is of critical importance.

It is not evident that the proposed development is consistent with referenced transport and land use objectives related to diversity of tenure, a wider demographic profile, or social inclusion. Failure to achieve these objectives may undermine the strategic transport aim to deliver high-density consolidated development.

Notes extent of car parking proposed and are satisfied with same.

Recommends condition in relation to BusConnects arrangements and access.

The attention of the Board is drawn to the fact that a submission was received from the Office of Public Works (OPW) and ICOMOS, both of which are summarised below:

#### OPW

The OPW wishes to emphasise that it is not opposed to the principle of development proposed in this application and they consider that the appropriate completion of the Heuston South Quarter scheme should be viewed as a positive and welcome step.

However, they express serious concerns in relation to the quantum and location of development proposed in this iteration. These concerns relate to

- significant detrimental impact on the architectural and historical setting of the Royal Hospital building (and attendant 17th century Formal Gardens),
- effect of this development on the historical visual connection between the Royal Hospital Kilmainham and the Phoenix Park which forms an integral part of the buildings setting and wider relationship;
- due to its sheer mass and height, will significantly intrude on the visitor experience at this important destination; the 'essence' and sense of 'place-making' of the formal 17th century gardens will be lost particularly when viewed from the terraces;
- impact of the development on 'cone of vision' and unlike previous planning applications on this site, the building line/alignment of the residential blocks are not set back to protect the 'cone of vision'
- considers that Blocks E and D will have an intrusive and unacceptable impact on the architectural character and historic setting of the protected structure.

The OPW considers it reasonable to request that full consideration be given to omitting buildings proposed to be located within the 'cone of vision', and that the

height of buildings located on proximity to this protected corridor be maintained at the heights previously permitted at this site

Highlights that no formal consultation process has taken place with the OPW in relation to this application.

### ICOMOS

Concerns expressed in relation to:

- Impact of proposal on the setting of the RHK, a Protected Structure of international significance
- Proximity, scale and massing of the development in relation to the Terrace Walk and Formal Gardens
- The interface with key views out from and key views towards Royal Hospital, Terrace Walk and Formal Gardens
- Impact on the atmosphere and character of the Gardens currently enjoyed by visitors to IMMA and RHK and the local community

## **10.0 Oral Hearing Request**

10.1 There were no oral hearing requests in this instance.

## **11.0 Assessment**

11.0.1 This assessment is divided into a Planning Assessment, an Appropriate Assessment and an Environmental Impact Assessment. In each assessment, where necessary, I refer to the issues raised by Prescribed Bodies and observers in submissions to the Board, together with the Chief Executive Report, in response to the application.

11.0.2 There is an inevitable overlap between the assessments, with matters raised sometimes falling within more than one of the assessments. In the interest of brevity, matters are not repeated but such overlaps are indicated in subsequent sections of the report.

### **11.1 Planning Assessment**

11.1.1 I have had regard to all the documentation before me, including, *inter alia*, the report of the planning authority; the submissions received; the provisions of the Dublin City Development Plan 2016; relevant section 28 Ministerial guidelines; National Planning

Framework; Dublin Metropolitan Area Strategic Plans; provisions of the Planning Acts, as amended and associated Regulations and the nearby designated sites. I have visited the site and its environs. In my mind, the main issues relating to this application are:

- Principle of Development/'Objective Z5' zoning/SDRA 7- Heuston Station and Environs
- Proposed Build-to-Rent Units
- Unit Mix and Material Contravention
- Design Approach/Plot Ratio and Site Coverage/Density/Aspect/Open Space Provision/Materials Strategy
- Building Height
- Visual Amenity and Impacts on Architectural Heritage
- Impacts on Existing Residential Amenity
- Quality of Proposed Residential Development
- Traffic and Transportation
- Other Matters

11.1.2 The Board is advised, by way of background, that the subject site (as outlined in red) and the adjoining site to north (Site B)(stated to be within same ownership), formed part of the larger HSQ development permitted under ABP Ref. PL29S.206528 (the 'parent permission') in September 2004. A number of amendments have been made to the parent permission in the intervening period. The completed HSQ development comprises approximately 80,000m<sup>2</sup> (GFA) commercial floorspace, and 345 apartments as follows:

- Block 3 /4- situated at the corner of St. John's Road West and Military Road- occupied by Eir
- Blocks 7A and 7B (to the east of the application site)- comprises a mixed-use development of commercial floorspace and 93 residential units
- Blocks 9A to 9H (to the east of the application site)- comprises a mixed-use development of commercial floorspace and 173 residential units; and

- Blocks 8 to 10 (to the south of the application site)- comprises a mixed-use development of commercial development (including an existing childcare facility) and 79 residential units.

11.1.3 I also draw to the attention of the Board to the fact that a Material Contravention Statement has been submitted with the application. It deals with a number of issues including minimum apartment floor areas, unit mix, block configuration, minimum internal apartment space standards and private amenity space. I shall deal with these matters in the relevant sections below, however in the interests of clarity I highlight to the Board that I do not consider any of these matters to be a material contravention of the operative City Development Plan. This is dealt with below.

## **11.2 Principle of Development/'Objective Z5' zoning/SDRA 7 designation**

### Principle of Development

11.2.1 Having regard to the nature and scale of development proposed, namely an application for 399 residential units, together with other mixed uses including retail use (stated to be 8.78% of overall development), all located on lands on which such development is permissible under the zoning objective, I am of the opinion that the proposed development falls within the definition of Strategic Housing Development, as set out in section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016.

11.2.2 The OPW state that they do not object to the principle of the development of this subject site, their concerns relate to the proposal in this current application. They further state that they would welcome the completion of the overall HSQ development. I am of the opinion that the proposed development accords with national policy/guidance, which seeks to secure compact growth in urban areas and deliver higher densities in suitable locations. This is also the opinion of the planning authority. They state that the proposal will deliver a high density development in a strategic location close to major transport infrastructure enabling the city 'to accommodate a greater proportion of its growth within its metropolitan boundaries through regeneration and redevelopment projects' (National Strategic Outcome 1) and 'encourage more people and generate more jobs and activity within the city' (National Policy Objective 11). I would concur with this opinion.

### 'Objective Z5' Zoning Objective

- 11.2.3 The subject site is zoned 'Objective Z5' in the operative City Development Plan, which seeks 'To consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity'. Residential and retail uses are deemed permissible in principle under this land use zoning objective.
- 11.2.4 The stated purpose of this zoning is "to sustain life within the centre of the city through intensive mixed-use development, to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night....."
- 11.2.5 The planning authority state that although the proposal comprises primarily a residential development and therefore does not provide for the mix of land uses envisaged by the Z5 zoning objective, it is acknowledged that this BTR scheme would contribute a significant residential component to the broad mix of uses that currently exists within the SDRA7 designated area and would complement the existing mix of non-residential uses within the wider HSQ. They also reference a future application on Site B for a mixed-use commercial scheme comprising a hotel and office block which will further enhancing the mix of uses within the wider HSQ development. Overall, the planning authority states that they are satisfied that the almost exclusively residential proposal can be considered to comply with the zoning objective as there is currently a vibrant mix of uses, existing and proposed, within the wider area.
- 11.2.6 I note that while residential use is the predominate use proposed, the proposal does also include for a retail unit within Block B of approximately 120 square metres. I am not taking any proposed development that does not have the benefit of a grant of permission into consideration when assessing this proposal. Having regard to the nature and scale of development proposed, taken in conjunction with existing development within the wider area, I am of the opinion that the proposal generally accords with the zoning objective for the site.

### SDRA 7- Heuston Station and Environs

- 11.2.7 I note the site is located within Strategic Development and Regeneration Area 7 (SDRA7) Heuston Station and Environs, as set out in the operative Dublin City

Development Plan. Guiding principles for this SDRA have been outlined in section 15.1.1.10 of the Plan and the proposal generally accords with these guiding principles, further assessment will be undertaken below. A new urban gateway is being created and an appropriate mix of uses is proposed, having regard to the location of the site and the previously permitted uses within the overall complex. Appropriate densities are proposed and the urban design rationale proposed reflects that previously permitted on the wider HSQ site. Matters relating to the protection of the fabric and setting of protected structures and national monuments in the vicinity is dealt with below. The proposal will facilitate the improvement of pedestrian and cycle connections within the area. Matters relating to impacts on views and cone of visions (CoV) are dealt with in detail in the following sections. The merits of taller buildings in a limited number of locations has been recognised in the operative City Development Plan and SDRA 7 states that the Heuston gateway potentially merits a building above 50m in height (Paragraph 7). Sites considered to be particularly suited for tall buildings have been identified, the subject site is not one of the identified sites. The Plan however does not state that the identified sites are exclusively suitable for tall buildings. It states that any new mid or high-rise buildings must provide a coherent skyline and not disrupt key vistas and views. Therefore, I am of the opinion that the principle of a taller building, in excess of 50 metres in height may be acceptable on this site. The planning authority are of the opinion that this area of Dublin has been identified as suitable for proposals of some considerable height. They are of the opinion that the proposal therefore accords with the provisions and objectives of the City Development Plan for this site and would deliver a development ranging from 3- to 18 storeys as provided for in the Plan directly adjacent to a key public transport node, Heuston station, with high frequency commuter and national rail services, high capacity LUAS services and several bus routes. Notwithstanding this, the planning authority note that whilst it is accepted that the proposed development is acceptable in principle in this location, this is a significant and sensitive place in the city and constraints are noted. This is dealt with further below.

11.2.8 This is an area that has undergone significant redevelopment in recent times and this is recognised the operative City Development Plan. The vision for the area, as detailed in the operative City Development Plan is 'to create a coherent and vibrant



quarter of the city that captures the public imagination with high quality services, development, design and public spaces that consolidate and improve the existing strengths of the area'. Taken in conjunction with existing permitted development within the area, I am of the opinion that the proposed development would generally positively contribute to the achieving of this vision, subject to recommended modifications detailed below.

### Conclusion

11.2.9 In addition to the above, I have also had regard to the Council's Core Strategy with respect to housing. The core strategy states that the policies and objectives of the Plan promote intensification and consolidation of the city which will be achieved in a variety of ways including the encouragement of development at higher densities especially in public transport catchments. It is further noted that the policies underpin the creation of a compact city with mixed-use environments, sustainable neighbourhoods and green infrastructure. Policy QH7 of the operative City Development Plan is noted which seeks 'To promote residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area'. I am of the opinion that the principle of a development, which provides for the delivery of 399 units, underpins the principles of a compact city, with good public transport options and a range of services and amenities existing within this established area of the city. I am fully satisfied that the proposal is in compliance with the operative City Development Plan in this regard.

11.2.10 Having regard to all of the above, I am of the opinion that the proposal accords with the zoning objective for the area, with 'residential' and 'retail' being permissible uses within the operative City Development Plan. Such 'Objective Z5' zoned lands can contribute towards the housing requirements of the city. I am also satisfied that the proposal is broadly consistent with the guiding principles of SDRA 7.

## **11.3 Proposed Build-to-Rent Units**

11.3.1 I highlight to the Board that the principle of proposed BTR units has been raised in many of the third party submissions received, including those received from Elected Members and Prescribed Bodies. There is concern with regards the lack of

opportunity this proposed BTR development affords people to buy their own home; the extent of BTR developments within the wider area and the opinion that the BTR nature of the proposal offers a sub-standard form of development. The planning authority has not raised concerns in this regard. The NTA states that it is not evident that the proposed development is consistent with referenced transport and land use objectives related to diversity of tenure, a wider demographic profile, or social inclusion. Failure to achieve these objectives may undermine the strategic transport aim to deliver high-density consolidated development. The Heritage Council raises concerns regarding the appropriateness of BTR and considers that it is not necessarily the appropriate answer to Dublin or Ireland's housing needs.

### Policy Context

11.3.2 The attention of the Board is drawn to the fact that this is a build-to-rent scheme. In the interests of clarity, I note that it is not a co-living scheme, as has been questioned in some of the third party submissions received. Section 5 of the Sustainable Urban Housing: Design Standards for New Apartments, 2020 provides guidance on the build-to-rent (BTR) sector. It is noted that these guidelines were updated in 2020. They define BTR as “purpose built residential accommodation and associated amenities built specifically for long-term rental that is managed and serviced in an institutional manner by an institutional landlord”. These schemes have specific distinct characteristics which are of relevance to the planning assessment. The ownership and management of such a scheme is usually carried out by a single entity. In this regard, a ‘Build to Rent Management Plan’ has been submitted with the application.

11.3.3 I refer the Board to the provisions of Specific Planning Policy Requirement 7 which provides that:

BTR development must be:

- (a) Described in the public notices associated with a planning application specifically as a ‘Build-to-Rent’ housing development that unambiguously categorises the project (or part thereof) as a long-term rental housing scheme, to be accompanied by a proposed Covenant or legal agreement further to which appropriate planning conditions may be attached to any grant of permission to ensure that the development remains as such. Such

conditions include a requirement that the development remains owned and operated by an institutional entity and that this status will continue to apply for a minimum period of not less than 15 years and that similarly no individual residential units are sold or rented separately for that period:

(b) Accompanied by detailed proposals for supporting communal and recreational amenities to be provided as part of the BTR development. These facilities to be categorised as:

(i) Residential support facilities – comprising of facilities related to the operation of the development for residents such as laundry facilities, concierge and management facilities, maintenance/repair services, waste management facilities, etc.

(ii) Residential Services and Amenities – comprising of facilities for communal recreational and other activities by residents including sports facilities, shared TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities, etc.

11.3.4 The statutory notices for the proposed residential development describe the scheme as build-to-rent. The proposal does not appear to be accompanied by a proposed covenant or legal agreement, as required under SPPR 7(a). I am however satisfied that details relating to a legal covenant/agreement could be adequately dealt with by means of condition, if the Board is disposed towards a grant of permission.

11.3.5 In terms of resident support facilities and resident services and amenities, I note that the proposal includes for the provision of dedicated resident's amenities and facilities of stated floor area 533 square metres. The proposed facilities include a gym (102m<sup>2</sup>) and co-working/lounge area (178 m<sup>2</sup>) at lower ground floor level; three lounges (175m<sup>2</sup>) and foyer (78m<sup>2</sup>). The planning authority state that there are concerns regarding the quantum of this resident support and amenities provision relative to the proposed overall 399 unit residential yield, particularly given the significant shortfall in private amenity space provision. I note these concerns of the planning authority and would not disagree with their opinion. I consider that there appears to be a lack of facilities such as work stations, working from home hubs and laundry rooms for example. In terms of workspace provision for example, given the extent of studio units and one-bed units, I would have anticipated a greater amount

of such spaces, in particular given current emerging national policy in relation to remote/working from home. Again, given the floor area in many units, services such as communal laundry facilities are considered to be somewhat of a basic requirement. Such uses would appear to be lacking. Notwithstanding these concerns, I am of the opinion that if the Board is disposed towards a grant of permission, the matter could be adequately dealt with by means of condition. I consider that Unit E-1-01 on the lower ground floor of Block E should be used as an additional area of residential support amenities. There are currently no such facilities proposed within Block E. I shall deal with this matter further below but consider that given daylight/sunlight levels proposed to this unit, it would be preferable to use as a residential amenity space as opposed to a residential unit.

11.3.6 SPPR 8 sets out proposals that qualify as specific BTR development in accordance with SPPR 7. In this regard, no restrictions on dwelling mix apply. I note that the proposal does not accord with the provisions of the operative City Development Plan in terms of unit mix. I shall deal with this matter below in section 11.4. It is noted that some of third party submissions received raise concerns in relation to the proposed unit mix and a perceived lack of family friendly units. The planning authority have not raised concern in relation to this matter. The matter will be dealt with further below.

11.3.7 Under SPPR 8, flexibility also applies in relation to the provision of a proportion of the storage and private amenity spaces associated with individual units and in relation to the provision of all of the communal amenity space (as set out in Appendix 1 of aforementioned Apartment Guidelines), on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development. I shall also deal with these matters in following sections. However, I highlight that I am generally satisfied in this regard.

#### Principle of Build-to-Rent Units

11.3.8 As stated above, I highlight to the Board that the matter of the principle of build-to-rent units has been raised in many of the third party submissions received, including

those received from Elected Members, the Heritage Council and the NTA (See section 11.3.1). The planning authority has not raised concerns in this regard.

11.3.9 At the outset, I fully acknowledge the aforementioned national policy guidance with regards to the provision of BTR development and the need for same in certain areas, catering to those at different stages of the lifecycle; those where home ownership may not be a priority and those who have a preference/need for smaller units. Such build-to-rent units offer choice and flexibility to people and can provide viable long-term housing solutions. The Apartment Guidelines acknowledge that such schemes are larger-scale apartment developments that typically include several hundred units. I also note Policy QH17 of the operative City Dublin City Development Plan, which seeks to support the provision of purpose-built, managed high-quality private rented accommodation with a long-term horizon.

11.3.10 Having regard to the location of the site close to the city centre beside good public transport facilities within an area identified for regeneration (SDRA 7), I am satisfied that the principle of a build-to-rent scheme is suitable and justifiable at this location. It is located close to a host of employment bases, together with educational, sporting, cultural and commercial facilities. I am satisfied that this is an appropriate location for such a BTR development.

11.3.11 I note Policy QH6 and SN1 of the operative City Development Plan in this instance. Policy QH6 seeks to encourage and foster the creation of attractive mixed-use sustainable neighbourhoods which contain a variety of housing types and tenures with supporting community facilities, public realm and residential amenities, and which are socially mixed in order to achieve a socially inclusive city. Policy SN1 seeks to promote good urban neighbourhoods throughout the city which are well designed, safe and suitable for a variety of age groups and tenures, which are robust, adaptable, well served by local facilities and public transport, and which contribute to the structure and identity of the city, consistent with standards set out in this plan. These policies are considered reasonable and I am of the opinion that the proposal is generally consistent with them. The proposal will provide a balance to existing development, namely it will provide good quality rental units catering to individuals and two-person households in the main, within an area which has traditionally been well served with family, owner-occupied homes. Supporting community facilities and public realm amenities exist within the wider area.

11.3.12 I note that some third parties query the extent of BTR developments within the wider area. The applicants state that a review of planning authority register has indicated that there are no other permitted BTR housing schemes within a 250m radius of the subject site. They further contend that as such the proposal will introduce a new housing typology in the locality that will complement and enhance the existing mix and type of apartments at Heuston South Quarter. I would not disagree with this assertion.

### Conclusion

11.3.13 Taken in conjunction with existing development in the area, the proposal will contribute to this attractive mixed-use sustainable neighbourhood by providing a development that is well-designed, safe and adaptable, in an area which is well served with local facilities and public transport, proximate to high capacity, frequent rail, LUAS and bus services at Heuston station. St. John's Road West forms part of the Busconnects Lucan Core Bus Corridor (CBC) proposals. The proposal will contribute positively to this established urban neighbourhood. The proposal will add to the variety of housing types within the area.

11.3.14 There is an acknowledged demand for housing in many sectors of society, with all sectors having varying needs and requirements. This proposed BTR scheme provides accommodation for one of those sectors, namely those where home ownership may not be a priority and/or for those who need/desire a smaller unit. I am satisfied that quality accommodation is being provided for in this instance. I have considered the concerns raised in the submissions received in relation to the lack of sustainable community. I have no information before me to believe that the proposal will not lead to the creation of a sustainable community and no evidence has been put forward in the submissions to validate these claims. If the Board is granting permission for the proposed development, a condition should be attached to any such grant to reflect that this is a build-to-rent scheme, available for long-term rentals only.

11.3.15 Importantly current Government policy in relation to BTR units is noted, as set out in the Apartment Guidelines (2020). Having regard to all of the above, I consider that the principle of BTR on this urban site is acceptable as it is consistent with policies and intended outcomes of current Government policy.

## 11.4 Unit Mix and Material Contravention

11.4.1 Many of the third party submissions received have raised concerns with regard the proposed unit mix, in particular the extent of one-bed and studio units, which they consider would not facilitate in the creation of sustainable communities and would not be suitable for the accommodation of families. Many of the Elected Members have also raised concerns in this regard. The planning authority states that while the proposed mix of units does appear to comply with the Sustainable Urban Housing: Design Standards for New Apartments 2020, they have consistently stated that they would prefer to see a higher percentage of larger family orientated units as part of the scheme. The NTA is of the opinion that it is not evident that the proposed development is consistent with referenced transport and land use objectives related to diversity of tenure, a wider demographic profile or social inclusion.

11.4.2 The proposed unit mix is as follows:

Table 4: Overall Unit Mix

	Studio	1 bed	2 bed	3 bed	Total
Apartments	46	250	103	-	399
<b>As % of total</b>	<b>11.5%</b>	<b>62.7%</b>	<b>25.8%</b>	-	<b>100%</b>

11.4.3 I note that studio and one-bed units comprise over 74% of the proposed residential mix with no three-bed units proposed. The Urban Design Manual, in particular Criteria 03 and 04, 'Inclusivity' and 'Variety', are also noted. This puts forward the idea that in larger developments, the overall mix should be selected to create a mixed neighbourhood that can support a variety of people through all stage of their lives. Presently, the wider area could be described as a mixed neighbourhood and I am of the opinion that the proposed development will contribute positively to that. I also fully acknowledge changing household sizes and note that the NPF states that seven out of ten households in the State consist of three people or less and this figure is expected to decline to approximately 2.5 persons per household by 2040. Again, I reiterate that as this is a build-to-rent development, the provisions of SPPR 8(i) of the Apartment Guidelines apply, which state that that no restrictions on dwelling mix...shall apply. This is the current national policy context in which I am assessing the proposal.

### Unit Mix/Material Contravention

- 11.4.7 The attention of the Board is drawn to the fact that the submitted Material Contravention Statement deals with, amongst other matters, the issue of unit mix. The submitted Statement notes that an abundance of caution approach has been taken to the identification of the provisions referenced and addressed in the Statement.
- 11.4.8 Section 16.10.1 of the Dublin City Council Development Plan 2016-2022, sets out the requirements in relation the mix of dwellings provided as part of new apartment developments, which provides for a maximum of 25-30% one-bedroom units and a minimum of 15% three- or more bedroom units. It continues by stating that the above mix of unit types will not apply to managed 'build-to-let' apartment schemes for mobile workers where up to 42-50% of the total units may be in the form of one-bed or studio units. Communal facilities such as common rooms, gyms, laundry rooms etc. will be encouraged within such developments. This provision only applies to long-term purpose-built managed schemes of over 50 units, developed under the 'build-to-let' model and located within 500 m (walking distance) of centres of employment or adjoining major employment sites. Centres of employment are identified in Fig W Housing Strategy Appendix 2A.
- 11.4.9 I note that the site is within 500m of Ushers F (as per Figure W). Communal facilities for future residents are proposed- this figure is recommended to be increased by way of condition. The proposal is for a long-term, purpose-built managed scheme of over 50 units, developed under the 'build-to-let' model. I note that the planning authority assess the proposal under national guidance and do not refer to the unit mix as being a material contravention of the City Development Plan.
- 11.5.27 I have examined the provisions of section 16.10.1 of the operative City Plan and consider these to be standards, not policy. I am of the opinion that non-compliance with a standard of a Development Plan in a limited number of instances does not equate to a material contravention of that Plan.
- 11.5.28 I note Policy QH1 of the operative City Development Plan which seeks 'to have regard to the DEHLG Guidelines on 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007), 'Delivering Homes Sustaining Communities – Statement on Housing Policy' (2007),



‘Sustainable Urban Housing: Design Standards for New Apartments’ (2015) and ‘Sustainable Residential Development in Urban Areas’ and the accompanying ‘Urban Design Manual: A Best Practice Guide’ (2009)’.

- 11.4.10 This policy seeks to have regard to these aforementioned guidelines (my emphasis). It is noted that since the adoption of the Dublin City Development Plan 2016-2022, the Sustainable Urban Housing: Design Standards for New Apartments (2015) have been updated (December 2020). I note that the planning authority in their Chief Executive Report continually refer to the updated 2020 guidelines (occasionally the 2018 guidelines are referred to but I am assuming that is an error as opposed to a policy stance). One of the main differences between the 2015 and 2020 guidance documents relates to, inter alia, build to rent developments and associated “Specific Planning Policy Requirements” (SPPRs). The ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (December 2020) contains SPPRs in relation to build-to rent developments, namely SPPR7 and SPPR8. Specifically, in relation to unit mix requirements for build-to-rent developments, I note SPPR8 (i), which I acknowledge takes precedence over any conflicting policies and objectives of Development Plans. SPPR8 (i) of the Apartment Guidelines (2020) states that ‘No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise’. It is noted that such SPPRs, which allow for flexibility in relation to build-to-rent developments, were not included in the 2015 guidelines. However, this form of housing tenure was included for in the City Development Plan.
- 11.4.11 With respect to standards set out in section 16.10.1 of the Plan, I note that a degree of flexibility can be applied if a rationale for any alternative, compensatory design measures has been set out. In this regard, I note the provision of outdoor communal amenity space and a range of communal recreational facilities and amenities (3809 square metres of communal outdoor amenity space proposed as opposed to 2155 square metres required).
- 11.4.12 I consider it reasonable to apply the updated section 28 guidance in this regard, which allows for flexibility in relation to build-to-rent developments in terms of unit mix. The City Development Plan does not differentiate between build to sell or BTR, all residential units are treated the same in this regard. The Apartment Guidelines differentiate between build to sell and BTR and state that there should be no

restrictions on dwelling mix in terms of BTR schemes, SPPR 8(i) refers. I note that the City Development Plan continually cross references national guidance while the Chief Executive Report regularly applies both its own standards and current national guidelines. I note that where guidelines have been updated since the Plan was adopted, the planning authority generally reference current guidance. This is the case in relation to this current proposal whereby the planning authority references current guidance in the Chief Executive Report, as opposed to outdated guidance, referred to in the operative City Development Plan. This is considered to be a reasonable approach. As stated elsewhere within my assessment, I consider the proposed development to be broadly in compliance with both the operative City Development Plan and national guidance. While there is some non-compliance with City Development Plan standards in terms of unit mix, I do not consider this to be material in nature. The proposal is in compliance with SPPR8(i) of the aforementioned Apartment Guidelines (December 2020).

11.4.13 In my opinion, while the unit mix may contravene this standard of the operative City Development Plan, I do not consider it to be a material contravention of the Development Plan. The proposal broadly complies with section 16.10.1 of the Plan and meets the standards of the aforementioned Sustainable Urban Housing: Design Standards for New Apartments (2020). The planning authority have not stated that they consider this matter to be a material contravention of the Plan. I am satisfied in this regard.

#### Conclusion

11.4.14 To conclude, I acknowledge the concerns of the third parties, the planning authority and the NTA in relation to this matter and I too consider that some three- bed units would have enhanced the proposed development, allowing it to cater to a wider range of people. Notwithstanding this, I acknowledge the current proposal is catering to a certain cohort of the population, in an urban location that has traditionally been well served with larger units. I also acknowledge changing household sizes and the type of units required to meet current and future demands.

11.4.15 Importantly, I note that as this is a build-to-rent scheme and the provisions of SPPR 8(i) of the aforementioned Apartment Guidelines (2020) apply, which state that no restrictions on dwelling mix shall apply to such schemes. The proposal is considered

to comply with SPPR 8(i) of the aforementioned Sustainable Urban Housing: Apartment Design Guidelines (2020) in relation to unit mix in BTR developments. Finally, I do not consider the proposal to represent a material contravention of the City Development Plan in terms of unit mix, for the reasons addressed above.

## **11.5 Design Approach/Plot Ratio and Site Coverage/Density/Aspect/Open Space Provision/Materials Strategy**

### Context

- 11.5.1 With respect to design and layout, a substantial number of documents accompany the application including an Architectural Design Statement, Public Realm Landscape Strategy Report, photomontages, together with detailed drawings for each block. A Housing Quality Statement provides details about individual apartments. A coherent design strategy has been put forward for the subject site.
- 11.5.2 The site is bound to the north by St. John's Road West and Military Road to the east. The Royal Hospital Kilmainham (RHK) complex bounds the site to the west and south. The lands, which have a stated area of approximately 1.08 hectares form part of a larger development site known as Heuston South Quarter (HSQ). Approximately 60% of the larger HSQ site has been developed, primarily along the northern and eastern parts of the site. It is stated in the documentation that the subject site has been landscaped as an interim measure to improve the aesthetic of the site and its visual amenities pending redevelopment.

### Design Approach

- 11.5.3 The design approach has been raised as a concern in some of the third party submissions received including those from ICOMOS, An Taisce, DAU, the Heritage Council and the OPW. The proposal involves the construction of a primarily residential development, which includes for 399 residential apartments. The percentage of non-residential uses is stated to be 8.78% of the overall development which includes for a retail unit, together with tenant amenity facilities for future residents and works to the existing basement/public realm. The proposal is to be accommodated in five no. blocks- generally 3-18 storeys in height, over basement levels.

- 11.5.4 The layout is such that the development gradually steps up in height as the development moves eastwards. Block A is considered to be a landmark block (18 storeys). Blocks B and C step down in height at their southern ends toward the established building heights of the existing Telford, Kestral and Sancton Wood buildings to the south, south-east and east. The lowest blocks, D and E (which are overall 5-storeys in height), are sited at the western end of the site which adjoins the RHK gardens and its setting. I have some concerns in relation to the design approach, particularly pertaining to the height of proposed Blocks A, D and E and the proposed arch. These matters shall be dealt with below.
- 11.5.5 The subject site immediately adjoins the Royal Hospital Kilmainham (RHK) complex, designated as a Protected Structure in the operative City Development Plan and recognised as being of international significance in the NIAH. Further assessment of architectural heritage is undertaken below.
- 11.5.6 Access is proposed from two existing vehicular access points, one from St. John's Road West and another on Military Road.

#### Plot Ratio and Site Coverage

- 11.5.7 The Heritage Council raise concerns with regards the overall scale of the development, the plot ratio proposed and the quality of the architectural proposition. An Taisce have also raised concerns in relation to the scale of the proposed development. The OPW raise concerns regarding the scale and overbearing nature of the proposal in proximity to the RHK. I highlight to the Board that the overall scale of the proposal has been raised in many of the submissions received. The operative City Development Plan sets an indicative plot ratio standard of 2.5 – 3.0 and site coverage standards of 90% on Z5 zoned lands. The proposed scheme has a plot ratio of 2.9 and a stated site coverage of 26.7%. The planning authority states that the proposed site coverage is appropriate to safeguarding adverse effects of overdevelopment and protects the amenities of existing adjoining and proposed development. They continue by stating that having regard to the character of the surrounding area and the form of development proposed, they consider that the proposed site coverage and plot ratio are acceptable in this context. I would concur with this opinion. Notwithstanding the submissions referenced above, I highlight to

the Board that the matters of plot ratio and site coverage comply with standards set down in statutory City Development Plan.

### Density

- 11.5.8 A number of the third party submissions received, including those of the Elected Members as contained in Chief Executive Report, raise concern with regards the density proposed and consider that the proposal represents overdevelopment of the site in terms of density, scale, bulk and height. The NTA states that that the long-term sustainability and attractiveness of high-density residential development in central areas such as this, is of critical importance. The overall scale, massing and height of the development in proximity to the RHK has also been raised by An Taisce, the OPW and ICOMOS.
- 11.5.9 In terms of quantum of development, the planning authority states that the site is at a location suitable for higher densities in accordance with the 'Guidelines on Sustainable Residential Development in Urban Areas' and Section 4.5.3 of the Dublin City Development Plan, which promotes intensive mixed-use development on well-located urban sites and higher densities within SDRA's and in the catchment of high capacity public transport.
- 11.5.10 Density at approximately 369 units/ha is considered appropriate for this urban location and in compliance with the operative City Development Plan and relevant section 28 ministerial guidelines. The planning authority concur with this opinion and state that the proposed development would support consolidation and densification at this strategic location within the city centre, close to public transport, employment and services. I consider the site to be located in a central and accessible location, in accordance with the 'Sustainable Urban Housing: Design Standards for New Apartments (2020), proximate to good public transport, within walking distance of the city centre. The provision of high-density residential development on the site is considered to be in accordance with the zoning objectives pertaining to the site and with the principles of the SDRA for the area. The proposal is also considered to be in compliance with Policy QH7 of the operative City Development Plan, which seeks 'To promote residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for high

standards of urban design and architecture and to successfully integrate with the character of the surrounding area’.

11.5.11 Having regard to all of the above and notwithstanding the submissions received from third parties and Prescribed Bodies, I am of the opinion that the proposed development on a prime, underutilised site, in a compact form comprising well-designed, higher density units would be consistent with the zoning objective for the site and compliant with the City Development Plan. It would also be consistent with the policies and intended outcomes of current Government policy, including the National Planning Framework, which seeks to increase densities in suitable locations. I therefore consider the proposed density to be acceptable.

#### Aspect

11.5.12 SPPR 4 of the aforementioned Sustainable Urban Housing Guidelines (2020) deals with the minimum number of dual aspect apartments that may be provided within any single apartment scheme and states that a minimum of 33% dual aspect units will be required in more central and accessible urban locations. In total, 50% of the units (201 units) are stated by the applicants to be dual aspect. I have reviewed the drawings and I accept this calculation.

11.5.13 The planning authority have not expressed concern in this regard and consider the proposal to fully accord with the Apartment Guidelines. They also note that no single aspect apartments are north facing. Section 16.10 of the operative City Development Plan deals with aspect and references the 2015 Apartment Guidelines in this regard.

11.5.14 I consider this to be a central, accessible area, as defined in the aforementioned Sustainable Urban Housing Guidelines (2020). It is within an urban area of the city, close to good public transport facilities and numerous employment bases. I am satisfied with the quantum of dual aspect units proposed. I acknowledge that this site is not without its constraints. I consider the proposal to be in compliance with the operative City Development Plan in this regard. I also note SPPR4 in this regard and consider the proposal to be in compliance with same.

#### Open Space Provision

11.5.15 Many of the third party submissions received have raised concerns in relation to this aspect of the proposal, namely concerns regarding the loss of open space for the wider community and the impacts of opening a new connection through the site into

the Formal Gardens of the RHK. The OPW have raised concerns regarding the provision of an opening in the wall of the RHK and state that consent has not been given for such works.

11.5.16 Firstly, in terms of loss of open space, while I acknowledge that the site is currently landscaped, I do not consider it to be designated public open space per se. I note that interim, temporary landscaping measures were put in place to improve the visual amenity of the site (under Ref. 2724/13) pending its redevelopment. Given that these interim measures were put in place to improve the aesthetic of the unfinished works on site, I consider that it would be inappropriate to penalise the applicants now and require the landscaping works to remain permanently in place as public open space. In any event, the site is zoned for development. The planning authority have not raised concern in this regard.

11.5.17 Secondly, in terms of the impacts of opening a new connection through the site into the Formal Gardens of the RHK, I highlight to the Board, that it is stated in the submitted documentation that this current proposal does not include for the provision of any new connection through to the gardens of the RHK. This matter is dealt with in further detail below.

### Context

11.5.18 The site is located adjacent to the historic garden terrace and grounds of the Royal Hospital Kilmainham (RHK), which is a designated conservation area in the operative City Development Plan. As stated elsewhere, there are a number of Protected Structures within the grounds of the RHK, while it is also deemed to be of international significance in the NIAH. The Phoenix Park and Croppies Acre Park lie to the north.

11.5.19 It is noted that a Public Realm Landscape Strategy Report has been submitted with the application documentation. The documentation states that the design of the public realm was informed by several existing conditions including the initial phase of development in the wider HSQ complex; the surrounding greater urban environment and the Royal Hospital Kilmainham. Different landscape proposals have been put forward for each of the proposed public realm areas (LG level; GL/podium and roof terraces). The proposal includes for an east – west pedestrian link through the site

lands to the boundary wall of RHK gardens. All proposed areas are detailed within the submitted documentation.

11.5.20 The Parks and Landscape Division of the planning authority are of the opinion that a well-developed landscape architectural submission is included. They note that the plans include connections to the existing HSQ development, completion of the adjoining central square and provision of a park space with active recreation. All of these proposals are welcomed by the planning authority.

#### Opening of access into Formal Garden of RHK

11.5.21 A key feature of the proposed scheme is the central avenue axis from the boundary of the Royal Hospital Kilmainham (RHK) Formal Garden which extends through the scheme's public realm to the existing HSQ development and onwards towards Military Road. Reference has been made in the submitted documentation to the provision of a new gate in the boundary wall of the RHK to allow access from the site into the Formal Garden. I highlight to the Board that the provision of this, while referenced, does not form part of this current application. The provision of this gate/access has been raised as a matter of concern in many of the third party submissions received, including those from Prescribed Bodies and the OPW. I note that this would involve demolition of an element of the existing wall and gate installation, as well as the arrangements for control of access. It would appear that consent for these works has not been obtained from the OPW. The applicant's state that the connection does not form part of the application and would form the subject of a future application. However, it is noted that the current landscape masterplan provides access by steps and lift to the boundary wall. While the Parks Division of the planning authority state that they have no objections to the proposal, they raise some concern that this creates the potential for unauthorised access. They are of the opinion that the plan in this area should be revised to present a layout without steps/lift and with a suitable terminus to the central axis path, such as with a sculpture. I am satisfied with the proposed steps/lift at this location in terms of providing access. Any unauthorised access would be a matter for law enforcement. In terms of the provision of a sculpture within the overall site, I consider that this matter could be adequately dealt with by means of condition, if the Board were disposed towards a grant of permission.



### Public Open Space

11.5.22 The Development Plan sets out requirements in relation to public open space on Z5 lands, namely a requirement for 10% of the site area (section 16.10.3). The applicant notes that there is some flexibility in this regard, where it acknowledges that in certain instances it will not be appropriate or possible to provide public open space on-site. It is unclear from the documentation the exact figure of public open space proposed. My understanding is that the public open space provision includes for the extension to the existing public plaza to the east of Block A; together with the east-west pedestrian link through the development giving a direct link from the garden wall of the RHK through the development to Military Road. If the Board is disposed towards a grant of permission, this matter could be clarified by means of condition.

11.5.23 The applicants acknowledge that they do not meet the 10% requirement in this instance and have put forward an argument for same. They put forward the justification that the proposed development completes the central square at HSQ and provides a variety of spaces at ground level, complementing those within the development, including a MUGA. They further state that the site is proximate and accessible to significant amenity spaces including the RHK gardens, the Phoenix Park, and the Memorial Gardens. In this regard, the applicants state that the site does not lend itself for the provision of a significant area of public open space and given the provision and proximity of existing nearby spaces, it is considered that a financial contribution in lieu of same would be appropriate in this instance. I accept the argument put forward in this instance, given the locational context of the site close a number of public open spaces and I consider that a financial contribution in lieu of the full amount of public open space provision would be appropriate in this instance. The planning authority have not raised concern in this regard and consider that the payment of a financial contribution in this regard would be acceptable. This matter could be adequately dealt with by means of condition, if the Board is disposed towards a grant of permission.

### Communal Open Space

11.5.24 In terms of communal open space provision, I note that the aforementioned Apartment Guidelines require the following minimum standards:

Table 5:

Studio	4m <sup>2</sup>
One-bed	5m <sup>2</sup>
Two-bed (3 person)	6m <sup>2</sup>
Two-bed (4 person)	7m <sup>2</sup>
Three-bed	9m <sup>2</sup>

11.5.25 Communal open space is proposed as follows:

Table 6:

	No.	Area Required (m <sup>2</sup> )	Area Provided (m <sup>2</sup> )
Studio	46	184	
One-bed	250	1,250	
Two-bed (3 person)	13	78	
Two-bed (4 person)	90	630	
Total	399	2,142	

11.5.26 I note that a total of 94 m<sup>2</sup> of the proposed communal courtyard space between Blocks C and D is being discounted from the quantitative calculation in order to achieve the BRE sunlight penetration exposure standard of 50% for this space. Accordingly, only 866 m<sup>2</sup> of the proposed 960 m<sup>2</sup> of communal courtyard space is counted towards the communal open space provision, resulting in an adjusted/revised total communal open space provision of 3,715 m<sup>2</sup>. I note that this figure significantly exceeds the minimum required level of provision (2,142 m<sup>2</sup>) and is therefore considered to be in accordance with the quantitative requirements of the Guidelines. The planning authority calculate the requirement for outdoor communal amenity space to be 2,155 m<sup>2</sup> and state that a total of 3,809 m<sup>2</sup> of communal outdoor amenity space is proposed. The discrepancy between figures is noted but is not considered to be material. The planning authority continue by stating that the removal of the discounted space referred to above (94 m<sup>2</sup>) from the overall provision would not undermine the proposal given that the extent to which the minimum space

requirements have been greatly exceeded. They further consider that the quantum and quality of the communal open space amenity and recreational areas provide for a suitable level of amenity. Communal open space provision is additional to the proposed internal tenant amenity spaces, which comprise a stated 533m<sup>2</sup>.

#### Private Open Space/Material Contravention

11.5.27 Private open space is provided to 96 of the proposed units within the scheme, in the form of either patio terraces/balconies. This accounts for approximately 23.6% of the proposed units. It is the opinion of the Planning Authority that balconies are not appropriate on the elevations towards the RHK and its gardens. This is in the interest of visual clutter. The planning authority further note that notwithstanding the flexibility allowed for under the 'Sustainable Urban Housing: Apartment Design Guidelines', it is considered that just 23.6% units (94 out of 399) provided with private balconies is very low for a residential scheme of this size. The matter of private open space provision has been raised in some of the third party submissions received, with many raising concerns that private open space is not provided to all proposed units.

11.5.28 I note the concerns expressed by the planning authority and third parties in this regard. I concur with the planning authority that the provision of balconies on the elevations facing the RHK gardens could be considered to add visual clutter and I consider that balconies on these elevations would be inappropriate. I would have welcomed a greater provision of private open space than that currently proposed and I consider that the provision of private open space greatly increases the residential amenity of such units. However, the BTR nature of the proposed development is noted and I refer the Board to SPPR 8(ii) of the aforementioned Apartment Guidelines in this regard which allows for flexibility in the provision of private open space amenity. I must assess the proposal in the context of current national policy guidance. It is also noted that all apartments have access to a range of communal facilities and amenities and that compensatory communal open space is provided in excess of requirements.

11.5.29 The applicants have addressed the matter of **material contravention** of the City Development Plan with regards to private amenity space provision within their submitted Material Contravention Statement. They acknowledge that an abundance

of caution has been applied in this regard. Section 16.10.1 of the Development Plan sets out that private open space shall be provided in the form of gardens or patios/terraces for ground floor apartments and balconies at upper levels. The Plan states that the minimum depth of private amenity open space (balcony or patio) shall be 1.5 m and the minimum area/size shall be as follows:

- Studio unit: 4 sq. m.
- 1-bedroom unit: 5 sq.m
- 2-bedroom unit: 7 sq.m.

11.5.30 The applicants state that a total of 94 units (23.6%) have private amenity space. I note the non-compliance with the above standard of the operative City Development Plan. However, I do not consider this to be a material contravention of the Plan. I highlight to the Board that I am of the opinion that this non-compliance is with a standard of the operative City Development Plan, not a policy of this Plan. I have examined the provisions of section 16.10.1 of the operative City Plan and consider these to be standards.

11.5.31 I again note Policy QH1 of the operative City Development Plan which seeks ‘to have regard to the DEHLG Guidelines on ‘Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007), ‘Delivering Homes Sustaining Communities – Statement on Housing Policy’ (2007), ‘Sustainable Urban Housing: Design Standards for New Apartments’ (2015) and ‘Sustainable Residential Development in Urban Areas’ and the accompanying ‘Urban Design Manual: A Best Practice Guide’ (2009)’.

11.5.32 This policy seeks to have regard to these aforementioned guidelines (my emphasis). It is noted that since the adoption of the Dublin City Development Plan 2016-2022, the Sustainable Urban Housing: Design Standards for New Apartments (2015) have been updated (December 2020). I note that the planning authority in their Chief Executive Report continually refer to the updated 2020 guidelines (occasionally the 2018 guidelines are referred to but I am assuming that is an error as opposed to a policy stance). One of the main differences between the 2015 and 2020 guidance documents relates to, inter alia, build to rent developments and associated “Specific Planning Policy Requirements” (SPPRs). The ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (December

2020) contains SPPRs in relation to build-to rent developments, namely SPPR7 and SPPR8. Specifically, in relation to private amenity space requirements for build-to-rent developments, I note SPPR8 (ii), which I acknowledge takes precedence over any conflicting policies and objectives of Development Plans. SPPR8 (ii) of the Apartment Guidelines (2020) states that 'Flexibility shall apply in relation to the provision of a proportion of the storage and private amenity space associated with individual units as set out in Appendix 1 and in relation to the provision of all of the communal amenity space as set out in Appendix 1, on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development'. It is noted that such SPPRs, which allow for flexibility in relation to build-to-rent developments, were not included in the 2015 guidelines. However, this form of housing tenure was included for in the City Development Plan.

11.5.33 With respect to standards set out in section 16.10.1 of the Plan, I note that a degree of flexibility can be applied if a rationale for any alternative, compensatory design measures has been set out. The HQA indicates that in all instances the minimum area/size requirement for private open space is exceeded and that a minimum balcony depth of 1.5m is achieved in all instances. It is submitted by the applicants that this level of provision of private amenity space is appropriately supplemented through the generous provision of outdoor communal amenity space and a range of communal recreational facilities and amenities (3809 square metres of communal outdoor amenity space proposed as opposed to 2155 square metres required). In addition, the design of the proposed scheme is such that balconies were not considered appropriate on the facades of the buildings that addressed the RHK and its gardens as this had the potential to create visual clutter and this therefore reduced the number of units that could be provided with private open space. I also note the locational context of the site close to a number of quality amenity spaces including the RHK gardens, the Memorial Gardens and the Phoenix Park.

11.5.34 As I have stated in the preceding section relating to unit mix, I consider it reasonable to apply the updated section 28 guidance in this regard, which allows for flexibility in relation to build-to-rent developments in terms of private amenity space. The City Development Plan does not differentiate between build to sell or BTR, all residential units are treated the same in relation to private amenity space. The Apartment Guidelines differentiate between build to sell and BTR and state that there should be

a flexible approach to private amenity space in terms of BTR schemes, SPPR 8(ii) refers. I note that the City Development Plan continually cross references national guidance while the Chief Executive Report regularly applies both its own standards and current national guidelines. I note that where guidelines have been updated since the Plan was adopted, the planning authority generally reference current guidance. This is the case in relation to this current proposal whereby the planning authority references current guidance in the Chief Executive Report, as opposed to outdated guidance, referred to in the operative City Development Plan. This is considered to be a reasonable approach. As stated elsewhere within my assessment, I consider the proposed development to be broadly in compliance with both the operative City Development Plan and national guidance. While there is some non-compliance with City Development Plan standards in terms of private amenity space, I do not consider this to be material in nature. The proposal is in compliance with SPPR8(ii) of the aforementioned Apartment Guidelines (December 2020).

11.5.35 In my opinion, while the private amenity space provision may contravene this standard of the operative City Development Plan, I do not consider this to be a material contravention of the Development Plan. The proposal broadly complies with section 16.10.1 of the Plan and meets the standards of the aforementioned Sustainable Urban Housing: Design Standards for New Apartments (2020). The planning authority have not stated that they consider this matter to be a material contravention of the Plan. I am satisfied in this regard.

11.5.36 To conclude this section, the proposal is considered to comply with SPPR 8(ii) of the aforementioned Sustainable Urban Housing: Apartment Design Guidelines (2020) in relation to private open space provision in BTR developments. I do not consider the proposal to represent a material contravention of the City Development Plan in terms of private amenity space, for the reasons addressed above.

#### Materials Strategy

11.5.37 This is a development of significant scale and the appropriate selection of materials, in terms of colour, tone, texture and durability is therefore crucial. This is particularly important given the sensitivities of the site. The matter of materiality has been considered in the documentation (see section 2.5 of Architectural Design Statement)

and the primary materials for the scheme are brick and stone cladding, which seeks to reflect the materiality of the wider area including the materiality of the RHK. I am generally satisfied with the approach taken in this regard. I am satisfied that if the Board is disposed towards a grant of permission, that exact details relating to this matter could be adequately dealt with by way of condition.

### Conclusion

11.5.38 I am satisfied with the general design approach proposed. I have some concerns in relation to visual impact, in particular with regards the height of Blocks D and E, together with the proposed arch but that shall be dealt with in the following sections. I am satisfied with the plot ratio, site coverage and density proposed, given the locational context of the site and current Government policy in this regard and furthermore as indicated above, I highlight to the Board that the density, plot ratio and site coverage all comply with the operative City Development Plan. The number of dual aspect units is also considered acceptable and in compliance with the operative City Development. In terms of open space provision, I am satisfied with the proposal put forward. A contribution for the shortfall in public open space provision is considered acceptable, given the locational context of the site. In terms of private open space provision, I acknowledge that this is a BTR scheme and the provisions of SPPR 8(ii) of the aforementioned Apartment Guidelines are noted in this regard.

## **11.6 Building Height**

### Building Height

11.6.1 I have considered the third party submissions received, almost all of which raise concerns with regards the height of the proposed development and its impacts at this location, in particular on the setting of the RHK and its gardens. The Elected Members, as contained in the Chief Executive Report, also raise concerns with regards a justification for the height proposed. Many of the submissions received state that the proposed height is such would be out of character with the existing area and would dominate the RHK and impact negatively on its setting. The Department of Housing, Local Government and Heritage, An Taisce, the Heritage Council, OPW and ICOMOS have all raised concerns regarding the height, scale and massing of the proposal in proximity to the RHK and the impacts this would have

on its character and setting. The planning authority acknowledge that this site forms part of significant land bank (SDRA 7 Heuston & Environs) and that the Development Plan indicates that this area has the capacity to accommodate taller buildings. They state that in this context, planning permissions have already been granted for a number of tall buildings within the wider SDRA. Notwithstanding this, the planning authority note the site's location directly adjoining the Royal Hospital Kilmainham and within the 'cone of vision', as set out in the 2003 Heuston Framework Plan, which means that guiding principle 8 of SDRA 7 is pertinent to the assessment of this application. Guiding principle 8 seeks to ensure that "Any new developments within this 'cone' shall not adversely affect" the cone of vision. I shall deal with the 'cone of vision' in the 'Visual Impact' section below.

11.6.2 The subject site is located within the Strategic Development and Regeneration Area (SDRA7) and guidance provided in the operative City Development states that the area has the potential for increased building heights above 50 metres (16-storeys). As such, there is no limit on height in the SDRA 7 area. Notwithstanding this, the site constraints are also noted, which include for it being adjacent to the historic RHK and its gardens. The RHK is designated as a Protected Structure within the operative City Development Plan and it is acknowledged in the documentation to be indisputably Ireland's most significant public building. The NIAH, deems it to be of 'International' significance with categories of special interest being 'Archaeological, Architectural, Artistic, Historical, Social, Technical' (Ref. 50080072). The site is also located within a designated Conservation Area.

11.6.3 The matter of building height is closely related to the following section 'Visual Amenity and Impacts on Architectural Heritage' and I refer the Board to same. I also refer the Board to further assessment under section 15 of the submitted EIAR, Landscape and Visual Impact Assessment.

11.6.4 The proposal seeks to introduce a cluster of tall and mid-rise buildings, ranging in heights from 3-18 storeys. The maximum height proposed is 18 storeys (Block A which is stated as 56.35 metres) and it is classified as a tall building under the definition of the Dublin City Development Plan (defined as buildings over 50m in height). There are also two no. mid-rise buildings, with a height of up to 12 storeys (Block B and Block C with stated heights of 38.35m and 42.65 metres respectively above corresponding podium level). It is noted that the proposed blocks are broadly



comparable to, but higher than development previously permitted in the overall lands (maximum of 14 storeys previously permitted in wider HSQ development).

- 11.6.5 It is noted that the height and massing of the proposed buildings has been addressed in the submitted documentation. A number of visualisations and photomontages have been submitted with the application documentation.
- 11.6.6 Section 16.7 of the operative Dublin City Development Plan deals with the issue of building height and acknowledges the intrinsic quality of Dublin as a low-rise city. There is also a recognised need to protect conservation areas and the architectural character of existing buildings, streets and spaces of artistic, civic or historic importance. Section 16.7.2 identifies building heights for the city and specifically refers to height limits for low-rise, mid-rise and taller development. It is noted that certain specific areas of the city have been identified as being appropriate for heights in excess of 50 metres. The Building Height in Dublin Context Map (Chapter 16, Fig. 39) identifies four locations across the city suitable for buildings of 50m+. Areas are also identified for Medium Rise (max. 50m). As stated above, the subject site is located within SDRA7- an area with the potential for increased building heights above 50 metres (16-storeys).
- 11.6.7 The operative City Development Plan states that in all cases, proposals for taller buildings must respect their context and address the assessment criteria set out in Section 16.7 of the Plan. I have had regard to section 16.7 of the operative City Development Plan in assessing this proposal. I am also cognisant of the Urban Development and Building Heights, Guidelines for Planning Authorities (2018) which sets out the requirements for considering increased building height in various locations but principally, inter alia, in urban and city centre locations and suburban and wider town locations. It recognises the need for our cities and towns to grow upwards, not just outwards. It is acknowledged that the operative City Development Plan Height Guidelines have been superseded by the Urban Building Height Guidelines.
- 11.6.8 Section 3.1 of the Building Height Guidelines present three broad principles which Planning Authorities must apply in considering proposals for buildings taller than the prevailing heights (note my response is under each question):

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

My Opinion: Yes – as noted and explained throughout this report by focussing development in key urban centres and supporting national strategic objectives to deliver compact growth in urban centres. The planning authority is also of the opinion that the site is suitable for a higher density of development in accordance with the principles established in the National Planning Framework

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

My Opinion: The site is located within SDRA 7 where there are no height limitations. Noted that the Development Plan predates the Guidelines and therefore has not taken clear account of the requirements set out in the Guidelines.

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

My Opinion: Site located within SDRA 7 where no height limitations exist.

11.6.9 In addition to the above, I have had particular regard to the development management criteria, as set out in section 3.2 of these Guidelines, in assessing this proposal. This states that the applicant shall demonstrate to the satisfaction of the Planning Authority/An Bord Pleanála that the proposed development satisfies criteria at the scale of relevant city/town; at the scale of district/neighbourhood/street; at the scale of site/building, in addition to specific assessments. I am of the opinion that while the proposal has the potential to generally make a positive contribution to this

area, given the site context adjacent to the RHK and its gardens, there are elements of the proposal that are of concern. I note the following:

At the **scale of city/town**:

- Locational context of the site, being within walking distance of Dublin city centre, the Digital hub and employment bases within the existing HSQ development
- Site is well served by public transport with Heuston station being immediately proximate. The site is also proximate to a high frequency bus corridor. From Heuston station/city centre, national rail and bus links can be easily accessed. Therefore I consider the site to be well served adjacent to high capacity and frequent national and commuter rail services; luas services and national/local bus services.
- Locational context of the site proximate to the historic RHK and its gardens- a designated Protected Structure and overall complex considered to be of international significance
- The proposed taller buildings will provide a focal point within both the wider city skyline and within the development itself- transitions in heights noted with taller buildings located further away in a bid to respect the sensitivities of the adjoining RHK site. The site will establish its own character as a continuum of the existing HSQ development. The variety of heights proposed is noted.
- The extension of the existing public plaza will make a positive contribution to the environment of the wider area.
- A Landscape & Visual Impact Assessment (contained within section 15 of the accompanying EIAR) was submitted with the application documentation. Visual impacts are dealt with in the following section
- I have reservations in relation to heights of Blocks D and E in relation to impacts on adjoining surrounding land uses on the adjacent RHK site. I also have some reservations in relation to the height of Block A (18 storeys) given the lack of clarity in relation to development proposals on the site to its north
- Proposal will introduce new height, architectural expression and layouts into this area. However, in relation to the heights of Blocks D and E in particular, I

am not satisfied that the development proposal would successfully integrate into and enhance the character of the area. However, I am of the opinion that recommended reductions in height detailed below will overcome these reservations

At the **scale of district/neighbourhood and street:**

- The architectural standard proposed, with variety of styles, architectural expression and materiality, is such that that it generally provides a good response to the overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape at this location. Reservations in relation to the design response pertaining to the proposed arch between Blocks A and C are detailed below.
- The proposal will provide an extension to the existing HSQ area and will become a positive addition to the skyline of Dublin, subject to recommended alterations.
- The proposal is not monolithic in nature. It comprises 5 blocks of varying heights and setbacks
- While I acknowledge that this is a predominantly residential scheme, I do note the limited non-residential uses proposed (retail unit). These non-residential uses will be available to the wider community. In addition, on the site immediately to the north, there are plans for a mix-use commercial scheme comprising a hotel and office block (not permitted). The mix of uses within this established area is also noted which include for retail, childcare, office, banking and commercial uses.
- The proposal will contribute to the vitality of the area
- Improved permeability and legibility through the site will be a benefit for the wider community. Permeability is currently limited.
- Notwithstanding the above, I am of the opinion that the impacts of Blocks D and E and the proposed arch on the RHK gardens will be most acute at a local level, from within the gardens themselves
- Concerns regarding visual impacts are dealt with below

At the **scale of site/building**:

- Microclimate reports submitted demonstrate access to natural daylight, ventilation and views and minimise overshadowing and loss of light and has taken account of BRE documents.
- Adequate separation distances are proposed between buildings.
- Site specific impact assessments, included with the application, have been referred to throughout my report and I am generally satisfied in this regard.

### **Specific Assessments**

- AA Screening and NIS concludes that the possibility may be excluded that the development will have a significant effect on any European sites.
- Bat survey concludes that the site offers no potential for roosting bats as there are no mature trees or suitable buildings.
- Bird surveys concluded that no bird species of conservation importance would be expected within the site
- Site Specific Flood Risk Assessment concludes that that the risk of flooding on the proposed development site is minimal.

11.6.10I am satisfied with the principle of building heights such as that proposed within an urban location such as this, within a designated SDRA. This is considered to be a strategic site due to its locational context within an established city location, close to good public transport links. The opportunity for this site to be developed as part of the wider HSQ scheme is to be welcomed. The National Planning Framework – Ireland 2040 fully supports the need for urban infill residential development such as that proposed on sites in close proximity to quality public transport routes and within existing urban areas. I note Objectives 13 and 35 of the NPF in this regard. Objective 13 states that ‘In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected’. Objective 35 promotes an ‘Increase residential density in settlement, through a range of measures

including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights'. I consider this to be one such suitable site located within Strategic Development Regeneration Area (SDRA) 7.

11.6.11 However in this particular instance, the locational context of the site and its constraints in terms of the sensitivities of the adjoining RHK and its gardens must be acknowledged and addressed. In this regard, as I have expressed above, I have concerns regarding some of the heights proposed. Firstly, my concerns relate to the height of Blocks D and E, taken in conjunction with their proximity to the garden wall of the RHK and the impacts this would have, if permitted on the character and setting of the gardens. I do not have concerns in relation to the height of the proposed development on the hospital structure itself, the Deputy Master's House or any structures within the complex. In this regard, my concerns relate solely to impacts on the Formal Gardens and CoV. In addition, I have concerns regarding the lack of clarity regarding possible future development on the adjoining site to the north (referred to as Site B in the submitted documentation) and how this may impact on the development proposal put forward in this current application. I question the appropriateness of the height of Block A in this context.

#### Blocks D and E

11.6.12 As further detailed below in the following section 'Visual Amenity and Impacts on Architectural Heritage', I have reservations in relation to the heights of Blocks D and E, due to their overbearing visual impact on and proximity to the adjoining gardens of the RHK. I would agree with the concerns raised by planning authority, Prescribed Bodies and third parties in this regard, these include submissions from the Department of Housing, Local Government and Heritage; Heritage Council; An Taisce; OPW and ICOMOS. Notwithstanding that these blocks represent the lowest heights within the proposed development, they are the blocks that have the potential to have greatest negative impacts on the gardens of the RHK and for this reason I am recommending that they be reduced in height, insofar as they do not exceed the height of the top of the existing garden wall of the RHK. I am also recommending that these blocks are setback further from the existing garden wall and that the sedum/amenity spaces be retained at roof level. The Board may wish to omit these two blocks from the proposal in their entirety, however I consider that the

aforementioned recommended alterations would be sufficient to negate any negative impacts on the character or setting of the gardens. I have addressed this matter in greater detail in the following section 'Visual Amenity and Impacts on Architectural Heritage'. In the interests of brevity, I won't reiterate but refer the Board to same.

#### Block A

11.6.13 The planning authority is of the opinion that Block A should be reduced in height by the removal of five storeys to form a 13-storey building. This is related to concerns regarding how it will integrate with future development proposals on the adjoining site to the north and does not relate to concerns regarding potential impacts on the architectural heritage of the area or impacts on the 'Cone of Vision' (CoV).

11.6.14 It is noted that section 15: Landscape and Visual Impact Assessment of the submitted EIAR includes the 'proposed commercial phase' within its cumulative visual impact assessments. The planning authority note that a building of significant height and scale – in excess of that proposed under the subject proposal, is outlined in blue on the photomontages. I would concur with the opinion of the planning authority that the building as outlined in blue should be disregarded in the assessment of this application and any subsequent decision. Notwithstanding this, the planning authority are of the opinion that having regard to the planning status of the adjoining site (no development yet permitted) and the unresolved design issues regarding the height of any future development located thereon, that the proposed height of Block A which has been designed to provide a gradual increase in height towards the commercial site, is therefore premature. They consider that the proposed Block A should be reduced in height in order to ensure an appropriate transition in scale from the adjoining future blocks and the existing HSQ development. This would provide for a more coherent skyline at this location. The planning authority recommend that a planning condition could be attached to a grant of planning permission requiring the removal of the top five storeys of Block A (reducing it to a thirteen storey building).

11.6.15 I can see the rationale for the planning authority's opinion in this regard. While I don't have issue with the principle of an 18-storey building at this location, I do question how it will integrate with any future unknown development on the immediately adjoining site. It may be preferable to have the tallest buildings

adjoining St. John's Road West with an appropriate transition in height as one moves back from that roadway. A more preferable option would have been to have a comprehensive development of the entire landholding, as opposed to the piecemeal development of plots, as the adjoining lands to the north are indicated to be within the same ownership. In that way, the overall proposal including relationship between blocks could have been assessed in its totality. However, I acknowledge the limitations imposed by the SHD legislation in this regard. In the absence of a definitive plan for the lands to the north or a grant of permission relating to same, I accept the opinion of the planning authority and consider it appropriate to reduce the height of Block A to 13 storeys at this time. There may be an option to increase its height further at a late date, subject to a separate planning application, if considered appropriate depending on what, if any, development is permitted on the adjoining site to the north. If the Board agrees with this opinion, the matter could adequately be dealt with by means of condition.

#### Conclusion

11.6.16 I acknowledge the concerns raised by the planning authority in this regard, together with those raised within the third party submissions including those from Department of Housing, Local Government and Heritage; Heritage Council; An Taisce: OPW and ICOMOS. I acknowledge national guidance in relation to the consolidation and densification of development site within urban areas. While the principle of heights proposed may be generally acceptable at such a location within a SDRA, the site sensitivities of this particular site require attention. I consider that the heights of Blocks D and E are inappropriate at this location and if permitted would detract from the character and setting of the adjoining gardens of the RHK. In addition, I am of the opinion that the lack of clarity regarding development proposals on the adjoining site to the north renders the provision of an 18-storey building at this location inappropriate and premature at this current time. I am satisfied with the heights of the remainder of the blocks proposed. I consider that the alterations recommended above would satisfactorily address these concerns. I am of the opinion that the recommended alterations could be adequately dealt with by means of condition, if the Board is disposed towards a grant of permission.



## 11.7 Visual Amenity and Impacts on Architectural Heritage

- 11.7.1 This section is closely linked to the preceding section 'Building Height' and I refer the Board to same.
- 11.7.2 I also refer the Board to section 14 of the submitted EIAR which deals with Cultural Heritage: Architectural Heritage and section 15 of the submitted EIAR which deals with 'Landscaping and Visual Impact Assessment'. Further assessment of this matter is dealt with within the relevant EIAR sections below.
- 11.7.3 A Visual Impact Assessment, Landscape Design rationale and photomontages have been submitted with the application. The submitted documentation shows the proposed development in the context of the existing surrounding area. A rationale for the proposed height has been outlined and this is set out above.
- 11.7.4 The submissions of third parties including Prescribed Bodies and the planning authority are noted in this regard. Almost all of the third parties raise concerns regarding impacts of the proposal on visual amenities and concerns regarding impacts on RHK. It is noted that the planning authority, Department of Housing, Local Government and Heritage, OPW, the Heritage Council, ICOMOS and An Taisce as well as other third parties all raise concerns in relation to the visual impacts of the proposal and its impacts on the Royal Hospital Kilmainham and its gardens and on the identified CoV (see more detailed summary of their concerns in section 9 above).

### Context

- 11.7.5 The Royal Hospital Kilmainham was originally constructed in 1684 as a hospital and retirement home for old and injured soldiers. It is designated as a Protected Structure (RPS No. 5244) in the operative City Development Plan with the description as follows:

*'Royal Hospital (Kilmainham), former Adjutant General's office, former Deputy Master's offices, steel house, tower at western gate, garden house in Formal Gardens, garden features, entrance, gates and walls'*. It is also noted that the East gate lodge, Royal Hospital is also designated as a Protected Structure (RPS No. 5245).

- 11.7.6 It is stated in the documentation that the Royal Hospital Kilmainham is indisputably Ireland's most significant public building. The NIAH, deems it to be of 'International' significance with categories of special interest being 'Archaeological, Architectural, Artistic, Historical, Social, Technical' (Ref. 50080072). The record states that the Royal Hospital is Dublin's earliest large-scale classical building, and makes a strong contribution to the architectural heritage of the city. The chapel has been described as the finest surviving seventeenth-century interior in Ireland.
- 11.7.7 It is noted that there are a number of other designated Protected Structures within the wider area and other structures included in the NIAH record. These have been detailed within the Architectural Heritage & Visual Impact Assessment and I refer the Board to same (pages 19-26 inclusive).

#### Cone of Vision (CoV)

- 11.7.8 I highlight to the Board that one of the primary matters for consideration in this application relates to the impact of the proposal on the designated 'cone of vision' (CoV). This 'cone of vision', as set out in the 2003 Heuston Framework Plan and subsequently in the operative City Development Plan, represents a significant view between, the Royal Hospital Kilmainham and the Phoenix Park extending from the west corner of the north range of the Royal Hospital Kilmainham, and the north-east corner of the Deputy Master's House to the western side of the Magazine Fort and east edge of the main elevation of the Irish Army Headquarters (former Royal Military Infirmary) respectively. The operative City Development Plan stipulates that any new developments within this 'cone' shall not adversely affect this view (see Fig 5.2 City Development Plan). Point 8 of the SDRA principles aims to protect views within this range of view.
- 11.7.9 A series of photomontages have been prepared- 24 viewpoints which seeks to show the proposed residential scheme within both its immediate setting and in more distant views (see Appendix 14A of submitted EIAR for locations). Whether the view is within the identified Cone of Vision (CoV) is also indicated.
- 11.7.10 The locations may be summarised as follows:

Table 7:

View	Location	Operational Phase Visual Impact	Cumulative Visual Impact	Is view within CoV*? (applicants summary)
1	View SW from St. John's Road West/Heuston Station	Imperceptible, neutral, long-term	Slight negative	No
2	View W from car park Dr. Steevens' Hospital	Imperceptible, neutral, long-term	Moderate neutral	No
3	View NW from James's Street	Imperceptible, neutral, long-term	Imperceptible, neutral	No
4	View N from rear of Deputy Masters House	Imperceptible, neutral, long-term	Imperceptible, neutral	Yes Gandon's Cupola on the former Royal Infirmary and the Magazine Fort in the Phoenix Park are not visible as they are obscured by intervening vegetation
5	View N from rear of Deputy Masters House	Slight negative tending towards imperceptible, neutral, long-term	Imperceptible, neutral	Yes Gandon's Cupola is visible approx. 700m in the distance to the north. Proposed development obscures views of the Cupola in this photomontage
6	View NE from the central axis of the Royal Hospital	Slight negative tending towards imperceptible neutral, long-term	Imperceptible, neutral	Yes Proposed cumulative development retains views of the Cupola. Provides an edge to the Formal Gardens. Screens out discordant views to the rear.
7	View NE from in front of Royal Hospital	Slight neutral tending towards	Slight to moderate negative	Yes Proposed cumulative development retains

		imperceptible neutral, long-term		views of the Cupola. Provides an edge to the Formal Gardens. Screens out discordant views to the rear.
8	View NE from top of RHK garden access steps	Slight neutral tending towards imperceptible, long- term	Slight to moderate negative	Yes Proposed cumulative development retains views of the Cupola. Provides an edge to the Formal Gardens. Screens out discordant views to the rear.
9	View E from the central focal point of the RHK Formal Gardens	Slight negative tending towards imperceptible, long- term	Slight negative	No
10	View E from the pavilion in the Formal Garden RHK	Slight neutral tending towards imperceptible, long- term	Moderate negative	No
11	View E from northern end of RHK Formal Gardens	Slight neutral tending towards imperceptible, long- term	Moderate negative	No
12	View E from corner of the Formal Garden RHK.	Slight neutral tending towards imperceptible, long- term	Slight neutral	No
13	View E from western edge of Formal Gardens	Slight negative tending towards imperceptible, long- term	Moderate negative	No
14	View E from centre of Bully's Acre.	Slight neutral tending towards imperceptible, long- term	Moderate negative	No

15	View NE from Bully's Acre	Slight neutral tending towards imperceptible, long-term	Slight negative	No
16	View NE from Richmond Tower, South Circular Road	Imperceptible neutral, long-term	Imperceptible neutral	No
17	View E from St John's Road West.	Imperceptible neutral, long-term	Slight neutral	No
18	View E from St John's Road West.	Imperceptible neutral, long-term	Slight neutral	No
19	View SE from Magazine Fort in the Phoenix Park	Imperceptible neutral, long-term	Slight neutral	At W edge of CoV. North Tower & roof of RHK is only partially visible with buildings and vegetation screening views between the RHK and Magazine Fort.
20	View S from Chesterfield Avenue, Phoenix Park	Imperceptible neutral, long-term	Slight negative	No
21	View S from Chesterfield Avenue, Phoenix Park	Imperceptible neutral, long-term	Slight negative	No
22	View S from DPP's Office Infirmary Road	Imperceptible neutral, long-term	Slight neutral	No
23	View SW from Croppy Acre, Wolf Tone Quay	Imperceptible neutral, long-term	Slight neutral	No
24	View SW from Wolfe Tone Quay	Imperceptible neutral, long-term	Slight negative	No

\*CoV= Cone of Vision

11.7.11 The applicants contend in the submitted VIA that the area within the CoV, in particular the Royal Infirmary Building has been significantly altered over the past 150 years due to natural tree growth, infrastructure development and the addition of numerous large developments. They are of the opinion that the most significant view is from the central axis of the Formal Gardens and not the extremities, where the views are compromised and distant landmarks are unseen. They contend that viewpoints to either side of the central axis are therefore less significant as they are effectively creating new and different cones of vision. The applicants further contend that a CoV based on a central axis at the principle vantage point at the RKH building represents a normal and more relevant range of vision resulting in a more acute CoV. This is shown on page 28 of the submitted Architectural Heritage & Visual Impact Assessment (AHVIA). Consequently, they are of the opinion that the relationship between the proposal to both the garden and north range of the RHK is more important than aligning buildings to preserve a very small and distant/unseen landmark. The proposal has therefore been designed to respond to the much reduced CoV as set out in the submitted AHVIA.

11.7.12 In response to this, the planning authority are of the opinion that any reduction in the Cone of Vision (CoV) contravenes the City Development Plan and its provisions to protect the Cone of Vision, the RHK and its setting. They are of the opinion that the CoV should not be reduced to a static viewpoint but should instead be a transient view across the frontage of the RHK and the former Deputy Masters House. From this range the Gandon cupola of the former Military Hospital is visible, as shown by Baseline View 05 of the submitted photomontages. The planning authority state that the CGI of the proposal when viewed from View 05 shows that the proposal would intrude into the CoV to the extent that the protected views towards the Royal Military Infirmary to the east would be compromised. The planning authority acknowledge the impact of permitted developments within the wider area. However, they are of the opinion that this should not perpetuate further erosion of the CoV. In these terms, the Planning Authority is not satisfied that the proposal complies with the relevant policy 'test' in respect of any development within the cone of vision as set out under Point 8 of the SDRA principles. Other Prescribed Bodies have set out similar concerns and in the interests of brevity I shall not reiterate.

11.7.13 I appreciate the international cultural heritage significance of the Royal Hospital complex, which comprises of the protected structures and their setting, the ancillary structures within the cultural landscape, the interdependent relationship to its Formal Gardens, the enclosing walls of the Formal Garden and historic boundaries, the protected views to and from the site and the inter-relationships and historic landscape connections to the Phoenix Park and across the river valley. I recognise that these gardens are a uniquely important example of late 17<sup>th</sup> century designed landscape. I concur with the opinion of the Heritage Council when they state that the Royal Hospital grounds contains an array of structures of historical and architectural significance. Their inter-relationship, inter-visibility and the backdrop of trees and roofs that frame them, make this a place of distinctive character.

11.7.14 In terms of impacts on CoV, I acknowledge the concerns of the planning authority and other Prescribed Bodies including the Department and other third parties. I note that this CoV has been in place since 2003. I acknowledge the desire to keep these lines of vision uninterrupted and protect this range of view. The applicants contend that the area within the CoV, in particular the Royal Infirmary building has been significantly altered over the past 150 years due to natural tree growth, infrastructure development and the addition of numerous large developments. I would not disagree with this assertion. I agree with the planning authority and other Prescribed Bodies that the cone of vision should not be reduced to a static viewpoint. However notwithstanding this, I consider that there is merit in the point made by the applicants when they contend that the most significant view is from the central axis and not the extremities. I would agree that the view towards the Phoenix Park and the Royal Military Hospital cupola is at its best from the central axis. Given the distances involved and the level of development in the intervening area, as one moves east from the central axis the view of the Military hospital and cupola is lessened. I would not agree with the applicants assertion however that by the time one reaches the Deputy Master's House, they are no longer visible. They are visible until one is standing at the far eastern side of the Deputy Master's House. However, they are no longer visible when viewed from the podium level alongside the eastern side entrance to the Deputy Master's House (Garden Galleries entrance). What is more clearly visible however from in front of the Deputy Master's House is development within the intervening area. The proximity of the Telford building to this structure is

noted. I also note from the documentation that there is no formal planned arrangement between the RHK, the Military Hospital and the Magazine Fort. I also note that the Magazine Fort has already been obscured from this view due to development at the Clancy Barracks. The proposed development will not have any impacts on views of the Magazine Fort or Wellington Monument from within the designated CoV.

11.7.15 The Department state that the RHK as originally envisaged and evidenced by historical images was considered as a landmark building, a focal point in the city and its urban context. They acknowledge that the extent of its reach and influence on the developing city has been greatly reduced over time as the city has expanded. Its surviving integrity and understanding of its cultural landscape significance is critical/prerequisite to future planning proposals. I would concur with this opinion of the Department insofar as its cultural landscape significance is critical in the evaluation of any planning application that may have the potential to impact upon this complex of international significance. I acknowledge that it was originally envisaged as a landmark, a focal point in the city. While the extent of its reach and influence may be lessened by modern urban development, I consider that it remains a landmark today, irrespective of the fact that development has expanded greatly around it. It is a landmark by virtue of its archaeological, architectural, artistic, historical, social and technical significance. The proposed development does not physically impinge on the grounds of the RHK. Concerns regarding the visual impingement of Blocks D and E are dealt with below. The proposed development is located on lands that were considered appropriate for development and zoned for such within the operative City Development Plan. Contrary to opinions expressed within the submissions, I am satisfied that the documentation before me carries out sufficient assessment of the proposal and that there is adequate information before me to comprehensively assess the proposal.

11.7.16 The Department have expressed concern regarding the scale and massing of the proposal, adjacent to the already established development, together with the inclusion of a proposed further phase on the setting of RHK assemblage of protected structures buildings and cultural landscape. They are of the opinion that the proposal as submitted represents a greater impact and overbearing presence to the amenity of the RHK and its planned landscape arising from its close proximity and proposed



interconnection to the Formal Gardens. I highlight to the Board that any future development on an adjoining site, referenced elsewhere in this report, does not form part of this current application (within the red line boundary). I can only assess the impacts of the proposal before me. Further impacts, if any, created by any further proposed development on adjoining lands will be a matter for assessment at that time. In addition, I again note the reference to opening a connection in the wall of the RHK gardens to facilitate access through the site and that this is not included within the current proposal. I am only assessing what is proposed in this current application within the red line boundary and as advertised in the submitted public notices. Therefore, while the concerns of the Department are noted in this regard, these elements do not form part of the current proposal.

11.7.17 The Heritage Council raises concerns regarding the impacts of the proposal on views from the Phoenix Park. Having examined the information before me in this regard, I consider that impacts on such views would not be so great as to warrant a refusal of permission. The Department notes that there is no historic landscape assessment included in the EIAR. I note that an historical assessment of the area has been undertaken in section 2 of the submitted Architectural Heritage and Visual Impact Assessment.

11.7.18 In my opinion, the two elements of the proposal that have greatest potential to impact negatively on the visual amenity of the area, the cone of vision and the character and setting of the RHK are proposed Blocks D and E and the arch between Blocks C and A. As stated elsewhere in this report, I am of the opinion that any impacts in this regard relate only the Formal Gardens themselves and not to impacts on the hospital building, the Deputy Master's house or any other structures within the overall complex. This is due to the orientation of the site; the location of these aforementioned structures relative the proposed development site; the proximity of existing development and importantly the level differences involved.

#### Blocks D and E

11.7.19 In terms of Blocks D and E, while I acknowledge that they are the blocks of lowest height, I am of the opinion that given their height and location in such close proximity to the Formal Garden, they have the greatest potential to detract significantly from the character and setting of the adjoining RHK complex, to impact on the

aforementioned 'Cone of Vision' (CoV) and on the visual amenity as viewed from the gardens of the RHK. From an examination of the Chief Executive report, it appears that it is these two blocks with which the planning authority also have greatest concern in terms of impacts on the CoV and in their recommended conditions, they advise a reduction in their height/relocation. As stated elsewhere in this report, their recommended reduction in height of Block A relates to other planning matters as opposed to impacts on CoV or architectural heritage.

11.7.20 I agree with the opinion of the Department that this element of the design is not a sensitive response to the international cultural significance of the site. I agree with the third parties when it is stated that the height of these blocks should be reduced. In my opinion, it is the top two storeys that have the potential to have the greatest impact. I am also of the opinion that the covering of these elements in green foliage in the submitted drawings/photomontages, together with the change in materiality at upper levels, indicates that the applicants themselves consider that this view requires softening. In my opinion, notwithstanding that the blocks further east are of greater height, they have greater separation distance and read as part of the existing HSQ development. Whereas, the height and location of Blocks D and E as proposed dominates the view from within the garden and reads from certain viewpoints as if they are in fact part of the gardens. They visually impinge upon the setting of the gardens and detract significantly from it. In my opinion, they give a sense of over-bearance and enclosure that was never intended. I refer the Board to Views 04W and 05S in the submitted photomontage booklet in this regard.

11.7.21 Therefore, I consider that Blocks D and E should be reduced in height by two storeys, level with the top of the existing garden wall. In addition and notwithstanding that when reduced by two storeys they will not be unduly visible when viewed from within the gardens, I am of the opinion that these proposed Blocks D and E should be relocated a further 5 metres in an easterly direction. This would provide for a greater separation distance between them and the protected gardens. This area should be screened and landscaped appropriately. The roofs of these blocks should be retained as proposed with sedum/amenity roof finishes. The relocation eastwards of these blocks may also give added protection to the integrity of the wall, as raised in some of the submissions received. I however do not have undue concerns in relation to integrity of wall (see below). Given the separation

distances with proposed Blocks A and C, this relocation is achievable in my opinion without detriment to the amenities of any of these blocks. I am satisfied that this matter could be adequately dealt with by means of condition, if the Board is disposed towards a grant of permission.

#### Arch between Blocks A and C

11.7.22 I am also of the opinion that the proposed arch between the upper levels of Blocks A and C should be omitted from the proposal and these should read as two stand-alone buildings. The planning authority, together with some Prescribed Bodies and third parties, have raised concerns in this regard and the impacts of this arch on the visual amenity of the area. I would concur with this opinion and would also question its suitability at this location. The submitted photomontages show that this monumental style element would be fully visible when viewed from within the RHK gardens and wider area. I would agree with the opinion of the planning authority that this is an unnecessary element that adds to the overall visual massing of the proposal, particularly at the more apparent upper floor levels of these buildings. The fenestration proportion and finishes offer little relief in terms of the resultant heavy massing of development at this high level. The height and general appearance of the arch would also undermine the formal tree planted axis by unnecessarily obscuring a well-defined historical view. The Board is referred to View 9S in the submitted photomontages. I consider that this element should be omitted.

11.7.23 I am satisfied that this matter could be adequately dealt with by means of condition, if the Board is disposed towards a grant of permission.

#### Block A

11.7.24 The planning authority is also of the opinion that Block A should be reduced in height by the removal of five storeys to form a 13-storey building. This is related to concerns regarding how it will integrate with future development proposals and does not relate to concerns regarding potential impacts on the architectural heritage of the area. I have dealt with this matter above in the preceding section on Building Height. I am of the opinion that while this block may impinge marginally on the identified CoV, its impact would not be so great as to warrant a refusal of permission or amendment to its location/height for this reason.

### Remaining Blocks

11.7.25 I am satisfied that given the separation distances involved, the heights proposed, the design rationale and the extent of existing development within the HSQ, that the remaining blocks would not impact on the visual amenity or architectural heritage of the area, to such an extent as to warrant a refusal of permission.

### Impact on Boundary Wall with RHK

11.7.26 Concerns have been raised in some of the third party submissions received regarding possible impacts of the proposed development on the boundary wall with the RHK. I note that the perimeter secant pile wall was installed in 2003 to facilitate excavation of the site and mitigate risks of movement or deflection of adjoining lands or buildings. It is stated in the submitted documentation (section 17 of EIAR) that a full record of the RHK boundary wall, which is in close proximity to the development site will be taken in the form of photographic survey and stone accurate survey drawings prior to construction. A suitably qualified Conservation Architect will review this record to ensure it is sufficiently detailed. Protection measures for the wall will be developed ahead of the works, to ensure that there is no damage from construction debris etc. A suitably qualified Conservation Architect will review the protection measures to be put in place. Vibration monitoring will be undertaken during the construction phase to ensure that there is no vibration impact on the wall. Should monitoring be required on any other structures within the RHK grounds, this will also be undertaken during construction. Neither the planning authority nor the Department have raised concerns in this regard. I am satisfied in this regard.

### Impact on Architectural Conservation Areas

11.7.27 The Heritage Council have raised concerns regarding impacts on the setting of (a) the Thomas Street and Environs ACA (They consider that the proposed development is likely to impact on vistas along Thomas Street looking west) (b) The Crumlin Village ACA (They consider that the proposed development is likely to impact on vistas along St. Agnes Road looking north-north-east over the Garda Station) (c) The Capel Street ACA (They consider that the proposed development is likely to impact on vistas out of the area along Chancery Street looking west), and (d) Phibsborough, Prospect Square and Great Western Square ACAs. The Heritage Council are of the opinion that although distant, the proposed development may

have an impact on the setting of the above ACAs and that the proposal would become a constant background presence in the city, an unintentional landmark and signifier.

11.7.28 I note the concerns raised by the Heritage Council in this regard and I agree that the proposal may be a landmark on the city skyline, especially as one travels into the city from the west. I don't have issue with the creation of a landmark at this location nor do I have issue with the proposal becoming a signifier of one's location within the city, provided that the proposal offers a positive addition to the skyline. Given the distances involved and the intervening urban development, I have no information before me to validate the claims that the proposal may have negative impacts on the setting of these aforementioned ACAs. The planning authority have not raised concerns in this regard, neither have the Department. I am of the opinion that any impacts on the setting of these ACAs would not be so great as to warrant a refusal of permission.

#### World Heritage Site Designation

11.7.29 I note the concerns expressed by the Heritage Council in relation to impacts of the proposal on the integrity and authenticity of Dublin as candidate World Heritage Site. The planning authority have not raised concern in this regard. While I acknowledge the concerns raised, I have no information before me to believe that the proposal would have any material bearing on the designation, or otherwise, of Dublin as a World Heritage Site.

#### Conclusion

11.7.30 I acknowledge the concerns expressed in the submissions received. The proposal, will without doubt, have impacts on views within the surrounding context and from various vantage points across the city. Views are ever-changing, often fleeting. Views within the CoV have been compromised over the years. In my opinion, it is the impacts on the historic, Formal Gardens that the proposal has the potential to have the greatest impact rather than on the hospital structure itself or other structures within the complex. I highlight to the Board that on reading some of the third party submissions, including those from some of the Prescribed Bodies, one could be forgiven for thinking that an undeveloped, pristine landscape surrounds the RHK complex with no development evident in the near or far distance. This is not

the case. While within the Formal Gardens and wider RHK complex, the existing development within HSQ is clearly evident as is development in the distance including the Clancy Barracks development, the Criminal Courts, Heuston station infrastructure, the new Children's hospital, the Chocolate Factory development and many other developments. This is to be expected within a thriving, developing city.

11.7.31 I consider that subject to the amendments recommended above, any impacts on the CoV or on RHK complex would not be so great as to warrant a refusal of permission or further amendments. I have examined all the documentation before me and I acknowledge that the proposal will result in a change in outlook as the site changes from its current underutilised use to a site accommodating development of the nature and scale proposed. As the site is opened up, it will become more visually prominent than is currently the case. Without doubt, there will be significant long term impacts on the visual landscape context of the area. This is inevitable when dealing with taller buildings and is not necessarily a negative. The skyline is an ever evolving entity. The context in which the RHK complex sits is very different today from when it was originally constructed. The skyline within the CoV is very different today than when the CoV was first created, back in 2003. This is to be expected within an evolving, dynamic, growing city.

11.7.32 I have inspected the site and viewed it from a variety of locations. I have also reviewed all the documentation on the file. I am of the opinion that while undoubtedly visible, the proposal (subject to recommended alterations) would not have such a detrimental impact on the character and setting of key landmarks and views within the city, including views within the CoV as to warrant a refusal of permission. There is greater potential for visual impacts at a more local level and this is acknowledged. Subject to recommended changes, I consider the transition in scale to be acceptable in this instance having regard to the mixed character of the area. I have no doubt that the proposed development will add to this existing character, bringing a new dimension to this area of the city. I am satisfied that the proposed development will not impact negatively on the character or setting of historic structures; will add visual interest; will make a positive contribution to the skyline and will improve legibility within this city area and that, subject to recommended changes, its height, scale and massing is acceptable in townscape and visual terms. The planning authority recommend a grant of permission for the proposed development, subject to

amendments detailed above. The Department are not recommending a refusal of permission.

11.7.33 I am very cognisant of the balance that is required to be achieved between protecting architectural heritage whilst accommodating growth and development within a thriving city. When this architectural heritage is of international importance, as is the case in this current application, achieving this balance becomes even more difficult. Subject to the recommended revisions set out above, I am of the opinion that the proposal will make a positive contribution to the urban character of the city and will result in the appropriate, planned extension of this urban quarter. I am satisfied that, subject to recommended alterations, the proposal will comply with Policy SC7 of the operative City Development Plan, which seeks “To protect and enhance important views and view corridors into, out of and within the city, and to protect existing landmarks and their prominence”. The proposal in its totality will contribute to the city’s built environment and will become a positive addition to the skyline of the city. Subject to recommended revisions above, this will be achieved without detriment to the visual amenity or architectural heritage of the area.

## **11.8 Impacts on Existing Residential Amenity**

### Context

- 11.8.1 Concerns regarding impacts on existing residential amenity have been put forward in many of the observer submissions received, including concerns regarding overlooking, overshadowing and loss of light, together with privacy concerns. The planning authority note that in terms of the VSC assessment, only nine windows would receive a minor impact of 6% or less reduction in daylight while overall the majority of the existing residences were found to achieve full compliance with BRE standards. They continue by noting that in terms of APSH assessment there would be no negative impact on the sunlight to adjacent residential buildings as a result of the proposed development.
- 11.8.2 In terms of impacts on existing residential amenity, at the outset I acknowledge that, without doubt, there will be a change in outlook as the site moves from its current level of development to that accommodating a high density development, such as that proposed. This is not necessarily a negative. I am cognisant of the relationship

of the proposed development to neighbouring dwellings. In my opinion, a sufficient distance is being maintained from existing properties to ensure that any impacts are in line with what might be expected in an area such as this, and therefore are considered not to be excessively overbearing given this context. There is an acknowledged housing crisis and this is a serviceable site, zoned for residential development in an established city area, where there are good public transport links with ample services, facilities and employment in close proximity. I have no information before me to believe that the proposal if permitted would lead to the devaluation of property in the vicinity.

#### Daylight and Sunlight

11.8.3 In designing a new development, I acknowledge that it is important to safeguard the daylight to nearby buildings. BRE guidance given is intended for rooms in adjoining dwellings where daylight is required, including living rooms, kitchens, and bedrooms.

It is noted that loss of daylight and overshadowing forms one of the key objections from local residents. I note the layout of the proposal is such that a significant separation distance is proposed between the proposed development and nearby residential properties and the attention of the Board is drawn to this fact. This is addressed further below.

11.8.4 The Building Height Guidelines refer to the Building Research Establishments (BRE) 'Site Layout Planning for Daylight and Sunlight – A guide to good practice' and ask that 'appropriate and reasonable regard' is had to the BRE guidelines. However, it should be noted that the standards described in the BRE guidelines are discretionary and are not mandatory policy/criteria and this is reiterated in Paragraph 1.6 of the BRE Guidelines. Of particular note is that, while numerical guidelines are given with the guidance, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design, with factors such as views, privacy, security, access, enclosure, microclimate and solar dazzle also playing a role in site layout design (Section 5 of BRE 209 refers). The standards described in the guidelines are intended only to assist my assessment of the proposed development and its potential impacts. Therefore, while demonstration of compliance, or not, of a proposed development with the recommended BRE standards can assist my



conclusion as to its appropriateness or quality, this does not dictate an assumption of acceptability or unacceptability.

- 11.8.5 I note that the criteria under section 3.2 of the Building Height Guidelines at the scale of site/building include the performance of the development in relation to minimising overshadowing and loss of light.
- 11.8.6 A 'Daylight and Sunlight Report' was submitted with the application. The information contained therein generally appears reasonable and robust. I note that the submitted Report has been prepared in accordance BRE BR209 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice', 2<sup>nd</sup> Edition 2011; British Standard BS 8206-2:2008 – "Lighting for Buildings – Part 2: Code of Practice for Daylighting"; British Standard BS EN 17037:2018; Irish Standard IS EN 17037:2018; Design Standards for New Apartments - Guidelines for Planning Authorities 2020 and the Dublin City Development Plan 2016. I have considered the report submitted by the applicant and have had regard to BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting) and BRE 209 – Site Layout Planning for Daylight and Sunlight: A guide to Good Practice (2011). The latter document is referenced in the section 28 Ministerial Guidelines on Urban Development and Building Heights (2018). While I note and acknowledge the publication of the updated British Standard (BS EN 17037:2018 'Daylight in Buildings'), which replaced the 2008 BS in May 2019 (in the UK), I am satisfied that this document/UK updated guidance does not have a material bearing on the outcome of the assessment and that the more relevant guidance documents remain those referenced in the Urban Development and Building Heights Guidelines. I have carried out an inspection of the site and its environs.
- 11.8.7 As stated above, the matter of daylight/sunlight/overshadowing has been raised in many of the third party submissions received. The planning authority have not raised concern in this regard.

#### Daylight

11.8.8 In relation to daylight, paragraph 2.2.7 of the BRE Guidance (Site Layout Planning for Daylight and Sunlight - 2011) notes that, for existing windows, if the VSC is greater than 27% then enough skylight should still be reaching the window of the existing building. Any reduction below this would be kept to a minimum. BRE Guidelines recommend that neighbouring properties should retain a VSC (this assesses the level of skylight received) of at least 27%, or where it is less, to not be reduced by more than 0.8 times the former value (i.e. 20% of the baseline figure). This is to ensure that there is no perceptible reduction in daylight levels and that electric lighting will be needed more of the time.

11.8.9 Properties analysed are set out in section 5 of the report- 3 blocks in total (Kestral, Sancton Wood and Telford buildings). These are the buildings in closest proximity to the subject development and all windows fronting the proposed development were analysed. The VSC assessment is based on a measure of the proposal’s impact against a hypothetical ‘mirror image’ of the existing adjoining buildings; this approach accepted under the BRE Guidelines where existing properties adjoin an undeveloped site. Due to its distance, aspect in respect to the proposed development and existing mature trees between the proposed development and the RHK, it was deemed to be outside of the assessment zone. This is considered reasonable. I also refer the Board to the fact that as detailed above, I am recommending that the height of Blocks D and E be reduced insofar as they do not exceed the maximum height of the existing RHK wall.

11.8.10 See below for properties and impact classification:

Table 8:

Property	Windows Examined	Pass	Minor Adverse (<6%)	Major Adverse
Block A (Kestral building)	72	70	2	-
Block B (Sancton Wood)	119	119	-	-
Block D (Telford)	138	131	7	-
Total	329	320	9	-

11.8.11 I am satisfied that all relevant properties have been considered. The results show that of the windows analysed, all comply with BRE guidance, with a VSC of 27% or

greater being achieved, with the exception of 9 windows. Nine windows (2 within the Kestrel building and 7 within the Telford building) have a 'Minor Impact' classification, which is defined as a reduction in the order of 6% or less of the former value. The block that would be most impacted upon by the proposed development in this regard, is Ref. Block D 06 1, with three windows marginally falling below the threshold by less than 2%.

11.8.12 The above is noted and I am of the opinion that the results confirm that access to daylight for existing surrounding properties, when compared with their existing baseline experience, will not be unduly compromised as a result of the proposed development. All units in Kestral and Sancton Wood comply with BRE guidance, with the exception of two windows. All comply with BRE guidance in relation to the Telford building, with the exception of 7 windows, all of which are marginally non-compliant. The VSC results indicate that the proposed development will have a generally negligible impact (97% pass; 3% Minor Adverse Impact; 0% Major Adverse Impact) on the majority of the surrounding buildings.

11.8.13 I am of the opinion that the scale of any proposed development adjacent to existing development would need to be very low rise to cause no impact to the levels of daylight in the existing apartments. I note the height of the proposed development and consider it to be appropriate for this area (subject to recommended alterations), given its locational context and current national guidance in this regard. I note the proximity of the existing blocks to the site boundary as outlined in red. It could be reasonably argued that they take more than their fair share of light given their proximity. I note the proposed open space to the east of Blocks A and B and to the south of Blocks B, C and D. This aids in increasing separation distances and also provides a wider planning gain from an environmental, visual and ecological perspective. In addition to the above, I note other compensatory measures proposed (see section 7 of submitted Report), which include for a significant quantum of communal open space. The design rationale is noted whereby buildings are set away from the boundaries. The planning gain associated with the regeneration of this site is noted and is in accordance with both national and local policy objectives. The location of the site within the SDR 7 is again acknowledged. I also raise the possibility that the units within the adjoining development may be dual-aspect, however this is not confirmed.

11.8.14 I am of the opinion that any impacts on nearby properties are on balance acceptable, having regard to the limited nature of the impacts on the windows of these identified properties, to the existing open nature of the site and to the need to deliver wider planning aims, including the delivery of housing and the development of an underutilised urban site.

#### Sunlight

11.8.15 The impact on sunlight to neighbouring windows is generally assessed by way of assessing the effect of the development on Annual Probable Sunlight Hours (APSH) and Winter Probable Sunlight Hours (WPSH). A target of 25% of total APSH and of 5% of total WPSH has been applied and is applied only to windows that face within 90 degrees of due south. The BRE Guidelines suggest that windows with an orientation within 90 degrees of due south should be assessed. The only windows facing within 90 degrees of due south that could be affected by the proposed development are those in the Kestral building of which all (100%) achieved the BRE Guideline recommended values for safeguarding annual access to sunlight. As with VSC, mirrored massing has been utilised for the benchmark for assessment. Of the same blocks analysed for WPSH, all achieved the BRE Guideline recommended values. In relation to the conclusions of the report, as it relates to sunlight, I am satisfied that impacts of the development on sunlight levels to surrounding property will be minor, and are on balance, acceptable.

#### Overshadowing

11.8.16 In relation to overshadowing, BRE guidelines state that an acceptable condition is where external amenity areas retain a minimum of 2 hours of sunlight over 50% of the area on the 21<sup>st</sup> March. All amenity spaces adjoining the proposed development site boundary that could potentially be impacted, were assessed in relation to potential overshadowing. It is noted that the existing amenity plaza will not be negatively impacted by the proposed development as it still achieves 75% sunlight availability. I am content that the proposed development would not unduly overshadow surrounding amenity spaces, over and above the current situation. I highlight to the Board that the gardens of the RHK were not assessed in this regard. Some of the third party submissions received raise this as a concern. While this is acknowledged, I note the height of the proposal nearest the RHK gardens

(recommended to be further reduced to no higher than existing boundary wall and further setback from the boundary wall). I also note the orientation of the site, the separation distances proposed and the design and layout of the proposal. I am satisfied that the proposal would not have undue impacts, in terms of overshadowing on the gardens of the RHK.

### Conclusion

11.8.17 I do not consider there to be significant impact upon surrounding residents' daylight and sunlight as a result of the proposed development. The level of impact is considered to be acceptable. In my opinion, and based upon the analysis presented, the proposed development does not significantly alter daylight, sunlight or overshadowing impacts from those properties existing and this is considered acceptable. The proposed development is located on a site identified for residential development, in a designated Strategic Development and Regeneration Area. Having regard to the scale of development permitted or constructed in the wider area and to planning policy for densification of the urban area, I am of the opinion that the impact is consistent with emerging trends for development in the area and that the impact of the proposed development on existing buildings in proximity to the application site may be considered to be consistent with an emerging pattern of medium to high density development in the wider area. This is considered reasonable. While there will be some impacts on a small number of windows within the Kestral and Telford buildings, on balance, the associated impacts, both individually and cumulatively are considered to be acceptable. The planning authority have not raised any concerns in relation to this matter.

### Overlooking and impacts on privacy

11.8.18 I highlight to the Board that the matter of overlooking and impacts on privacy has been raised as a concern in some of the third party submissions received. I note that the applicant's cover letter includes a detailed assessment of the relationship of proposed Blocks B, C and D with the neighbouring residential blocks to the east (Kestrel Building); the south-east (Sancton Wood) and the south (Telford and Hibernia building).

11.8.19 Block B is separated by approximately 21.1 to 21.5m from the western elevation of the Kestrel Building.

- 11.8.20 I would concur with the opinion of the planning authority when they state that the separation distance of in excess of 20m is sufficient to safeguard the residential amenities of residents within the Kestrel apartments by avoiding excessive levels of overlooking from occurring.
- 11.8.21 I note that the southern and lower end of Block B is situated closer to the adjoining Sancton Wood building with a separation distance of approximately 12.6m. The submitted elevational drawings and floorplans for Block B indicate south facing windows serving open plan living rooms. The applicant has suggested that a planning condition could be attached to a grant of planning permission requiring these south facing windows of Block B to be fitted with obscured glazing to mitigate against such impacts. The Planning Authority would question the appropriateness of obscuring the glazing to habitable rooms within the development. I would also question this measure in terms of residential amenity for future occupiers. I am satisfied that given the locational context of the site within an urban area, that this separation distance is sufficient.
- 11.8.22 Given the separation distances proposed (of between 14 and 23m), I am satisfied that the proposal would have adequate separation distances to the Telford building and would not unduly impact on their residential amenity in terms of overlooking or impacts on privacy.
- 11.8.23 In terms of the relationship between Block D and the existing Telford building to its south, I note the separation distance proposed. The applicant has suggested the use of a planning condition requiring the south facing living room windows of Block D to be fitted with obscured glazing in order to mitigate against overlooking impacts. The Planning Authority would question the appropriateness of using obscured glazing to habitable rooms. I would concur with the opinion of the planning authority in this regard and I consider that an acceptable separation distance is proposed without the need for any obscuring of glazing, given the urban location of the site.
- 11.8.24 The issue of overlooking has been raised in some of the submissions received. I note the separation distances proposed. Given the locational context of the site, the orientation of existing and proposed development, together with the design rationale proposed, I consider that matters of overlooking would not be so great as to warrant a refusal of permission. Given the urban location of the site, a certain degree of

overlooking and overshadowing is to be anticipated. It is also to be anticipated that one would see other development from their property. I am satisfied that impacts on privacy would not be so great as to warrant a refusal of permission. This is an urban area and the overall scale of development reflects its location. The site is zoned for residential development and the principle of a dense scheme at this location, accords with national policy in this regard.

### Noise

11.8.25 The matter of construction noise and impacts on amenity, including impacts of noise on the Formal Gardens of the RHK, has been raised in some of the third party submissions received.

11.8.26 Given the nature of the development proposed, I do not anticipate noise levels to be excessive. I acknowledge that there may be some noise disruption during the course of construction works. Such disturbance or other construction related impacts is anticipated to be relatively short-lived in nature. A condition should be attached to any grant of permission regarding construction hours. The nature of the proposal is such that I do not anticipate there to be excessive noise/disturbance once construction works are completed. I note that an Outline Construction Management Plan has been submitted with the application, which deals with the issues of noise and vibration, dust control, demolition procedures and site hoarding. In addition, an Outline Construction and Demolition Waste Management Plan has been submitted, which deals with matters of waste management for both demolition and construction stages. As such, these plans are considered to assist in ensuring minimal disruption and appropriate construction practices for the duration of the project. I have no information before me to believe that the proposal will negatively impact on air quality. I refer the Board to the submitted EIAR where this matter has been addressed. Construction related matters can be adequately dealt with by means of condition. However, if the Board is disposed towards a grant of permission, I recommend that a Construction Management Plan be submitted and agreed with the Planning Authority prior to the commencement of any works on site.

11.8.27 The matter of noise from the proposed amenity spaces has been raised as a concern in some of the third party submissions received. Roof terraces are proposed, including in Block C and D. A MUGA is proposed along the south-eastern

boundary of the site. I have no information before me to believe that noise from the proposed amenity spaces would be excessive and I would not anticipate it to be any greater than noise from a back garden of an existing residential dwelling.

Notwithstanding this, I concur with the opinion of the planning authority that if the Board is disposed towards a grant of permission that a solid barrier is introduced to the terraces in order to mitigate against noise spilling from the communal area into the private terraces on the Telford Building.

11.8.28 I note the report of the Air Quality Monitoring and Noise Control Section of the planning authority which does not raise concern in this regard, subject to condition. I am satisfied in this regard.

## **11.9 Quality of Proposed Residential Development**

### Context

11.9.1 It is noted that some of the third party submissions received raise concern with regards the quality of residential amenity being afforded to future occupants of the proposed scheme. The planning authority raise some concerns in relation to daylight levels to some of the units within the lower ground floor and ground floor levels of each of the proposed blocks.

### Floor to Ceiling Heights/Lift and Stair Cores

11.9.2 The proposal meets the requirements of SPPR5 of the aforementioned Apartment Guidelines 2020 in relation to floor to ceiling heights.

11.9.3 The operative City Development Plan requires that there shall be maximum of 8 units per core per floor. It is noted that both Block A and E contain more than 8 units per core per floor at upper levels (10 units per core). The applicants have addressed this matter in the submitted Material Contravention Statement. I do not consider this to be a material contravention of the operative City Development Plan. I have addressed this matter elsewhere within my assessment and in the interests of brevity, I will not reiterate except to say that I consider that limited non-compliance with standards of a Development Plan does not represent a material contravention of any said Plan. SPPR 8(v) of the Apartment Guidelines is noted which states that 'The requirement for a maximum of 12 apartments per floor per core shall not apply to BTR schemes, subject to overall design quality and compliance with building



regulations'. The applicants state in the submitted Planning Report that no block has more than 12 units per single core. I am satisfied in this regard.

#### Floor Areas/Room Widths/Room Sizes/Storage

##### Floor Areas

11.9.4 Section 16.10.1 of the Development Plan sets out minimum overall apartment floor areas as follows:

- Studio-type - 40 sq.m.
- 1-bed - 45 sq.m
- 2-bed - 73 sq.m.

11.9.5 It is noted that the Development Plan only includes a single standard for two-bed apartments which is consistent with the 4 person, two-bed apartment provided for under the Apartment Guidelines (73sqm minimum GFA). However, the Apartment Guidelines also include a reduced size two-bed apartment, 63sqm GFA, which is suitable for 3 persons. In addition, the operative City Development Plan sets the minimum floor area of studio units at 40 sq m. However, the Sustainable Urban Housing Guidelines allow for a minimum floor area of 37 square metres, with flexibility for BTR and historic structures. In addition, it is also a requirement of the operative City Development Plan that 'the majority of all apartments in a proposed scheme of 100 units or more must exceed the minimum floor area standard by at least 10% (studio apartments must be included in the total but are not calculable as units that exceed the minimum).' As stated previously, the Apartment Guidelines distinguishes between build-to-sell and build-to-rent typologies (unlike the operative City Development Plan) and provides express guidance on the Build to Rent (BTR) development typology as proposed in the subject application - in this regard SPPR 7 of the guidance is relevant. SPPR 8 goes on to provide distinct planning criteria applicable to BTR development and in this regard SPPR 8 (iv) removes the requirement that majority of all apartments in a proposed BTR scheme should exceed the minimum floor area standards by a minimum of 10%. See below for assessment.

##### Room Width/Room Sizes

11.9.6 Furthermore, Section 16.10.1 of the Development Plan sets out that the minimum living/dining/bedroom floor widths for apartment units. In the case of studio units, the width of living/dining room should be 5 metres. Appendix 1 of the Apartment Guidelines, 2020 sets out that the width should be 4 metres. Aggregate living/dining/kitchen floor area as per the DCDP standard for 2-bedroom units is 30 square metres. Appendix 1 of the Apartment Guidelines, 2020 sets out that the aggregate floor area should be 28 square metres. See below for assessment.

#### Storage

11.9.7 Storage standards, as per the operative City Development Plan, for studios, 1-bed and 2-bed / 4-person units are consistent with the standards promoted in the Apartment Guidelines. The proposal meets the minimum standards of the operative CDP in this regard. The Apartment Guidelines provides a distinct 5 m<sup>2</sup> storage requirement/standard in respect of 2-bed/3-person units that is lower than the 6 m<sup>2</sup> standard for a 2-bed/4-person unit. See below for assessment.

#### Assessment

11.9.8 The following is noted:

- Given the marginal exceedance of the standard relating to stair cores in two of the five blocks, I do not consider this to be a material contravention of the operative City Development Plan. The planning authority have not stated that this is a material contravention of the Plan. I am satisfied in this regard.
- All studio type units proposed (with the exception of 5 units namely Unit types S.4, S.6 and S.8) are less than 40 m<sup>2</sup>. However, in all instances, the proposed studio units comply with the 37 m<sup>2</sup> requirement of the Apartment Guidelines.
- The proposed development includes 13 no. two beds (Apartment Types 2.6 and 2.12) which are deemed to be 3 person two-bed units consistent with the Apartment Guidelines. These 13 units do not meet the Development Plan standard of 73 square metres for two-bed units (all are 64 square metres) but comply with the apartment Guidelines in this regard.
- The majority of proposed apartment types (with the exception of Apartment Types 1.1, 1.01D; 1.8, 1.9, 1.12, 1.13 and 2.8D) will not exceed the required minimum floor area standard by at least 10%. The aforementioned unit types

comprise 77 no. units in total (19.3%) of the total number of units that will exceed the required minimum floor area standard by at least 10%.

- Studio bedrooms do not meet minimum 5m room width requirement of CDP. However, in all instances the proposed studio units meet the minimum room width requirement of 4m, as per the Apartment Guidelines.
- Proposed 2 bed/3-person unit types do not meet the required 30 sq.m aggregate living/dining/kitchen floor area as per the DCDP standard for 2-bedroom units. However, all 2-bed/3-person units meet the required 28 sq.m aggregate floor area for living/dining/kitchen rooms, as per the Apartment Guidelines.
- Proposed 2 bed/3-person unit types (13 units) do not meet the DCDP storage space standard of 6 sq.m but in all instances the minimum required 5 sq.m storage space, as per the Apartment Guidelines are met. All other units meet the Development Plan standard

11.9.9 The applicant has addressed the above matters of minimum apartment floor areas and minimum internal apartment space standards within the submitted Material Contravention Statement. The applicant states that an abundance of caution approach has been taken in this regard.

11.9.10 On the whole I agree that the standards of the Development Plan with regard to stair cores, studio floor areas, apartment room sizes, apartment widths and storage areas, are not being met in all cases. With respect to standards set out in section 16.10.1 of the Plan, I note that a degree of flexibility can be applied if an alternative, compensatory design solution has been set out. As stated elsewhere within this report, compensatory design solutions have been put forward. I consider the provisions of section 16.10.1 of the operative City Development Plan to be standards, not policy. I note that all of the parameters with regards to the above matters meet or exceed the standards set out by the Apartment Guidelines.

11.9.11 I consider that the proposed development is in accordance with SPPR 3 and SPPR 8 of the Apartment Guidelines. I can see no contravention of the Plan in this respect. The planning authority have assessed the proposal against the Apartment Guidelines (2018 edition, which is assumed to be an error) and do not state that they

consider the proposal to be a material contravention of the operative City Development Plan. I am satisfied in this regard.

11.9.12 However if the Board considers these matters to be a material contravention of the operative City Development Plan, I consider that it is open to them to grant permission in this instance and invoke section 37(2)(b) of the of the Planning and Development Act 2000, as amended, in particular section 37(2)(b)(i) and (iii), due to strategic nature of the application and national policy guidance in this regard.

#### Daylight and Sunlight to Proposed Residential Units

11.9.13 Section 3.2 of the Urban Development and Building Height Guidelines (2018) states that the form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light. The Guidelines state that appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the BRE 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and/or an effective urban design and streetscape solution. The Sustainable Urban Housing Design Standards for New Apartments Guidelines, 2020 also state that planning authorities should have regard to these BRE or BS standards.

11.9.14 As before, I have considered the Daylight and Sunlight Report submitted by the applicant and have had regard to BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting) and BRE 209 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice' (2011). The latter document is referenced in the section 28 Ministerial Guidelines on Urban Development and Building Heights 2018. While I note and acknowledge the publication of the updated

British Standard (BS EN 17037:2018 'Daylight in buildings'), which replaced the 2008 BS in May 2019 (in the UK), I am satisfied that this document/UK updated guidance does not have a material bearing on the outcome of the assessment and that the more relevant guidance documents remain those referenced in the Urban Development and Building Heights Guidelines.

### Daylight

- 11.9.15 In general, Average Daylight Factor (ADF) is the ratio of the light level inside a structure to the light level outside of structure expressed as a percentage. The BRE 2009 guidance, with reference to BS8206 – Part 2, sets out minimum values for Average Daylight Factor (ADF) that should be achieved, these are 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. Section 2.1.14 of the BRE Guidance notes that non-daylight internal kitchens should be avoided wherever possible, especially if the kitchen is used as a dining area too. If the layout means that a small internal galley type kitchen is inevitable, it should be directly linked to a well daylit living room. This guidance does not give any advice on the targets to be achieved within a combined kitchen/living/dining layout. It does however, state that where a room serves a dual purpose the higher ADF value should be applied.
- 11.9.16 The internal daylight analysis was undertaken for all units across the development. In total, 833 rooms were assessed.
- 11.9.17 The proposed units contain combined kitchen/living/dining layouts.
- 11.9.18 The applicant has applied the 2% ADF value for kitchen/living/dining area and 1% for bedrooms. When combined kitchen/living rooms are benchmarked against the 2.0% target and bedrooms benchmarked against 1% target, it is stated that 80% of the rooms tested are stated meet or exceed the relevant BRE 209 standard. I note from Figure 6.1.2 that approximately 72% of k/l/d spaces meet the 2% target. It is stated that 50% of the living spaces achieve an ADF in excess of 3.25%. I note that the kitchen areas were not excluded from the calculations. The results are set out graphically. It would have been helpful to have individual results set out in tabular form.
- 11.9.19 I note that not all units meet this 2% target for k/l/d spaces. It is generally units that are on the lower floors that do not meet the ADF benchmark. On the upper floors, those units that do not meet the benchmark have balconies above them in some

instances or are facing onto other blocks. While I note a shortfall, I acknowledge the open plan nature of the units with combined living/kitchen/dining spaces. In these units, the kitchen area is not the primary function of the room, instead given the layout it is clear that the living/dining areas are considered to be the primary function where future residents would spend more of their time. I note that the kitchen areas are generally located within well-lit living spaces. The kitchen spaces have not been excluded from the calculations. I note the associated requirement within BS.8206-2 for "Kitchens" (ADF>2.0%) was developed for residential housing where the kitchen would be an identifiable separate room with seating and where occupants would be expected to eat and spend time as well as being generally present throughout the day. In general, the apartments assessed do not include a kitchen of this type; they instead include a kitchen area which would be expected to be used solely to prepare food with the residents spending most of their time in the living area. I therefore consider that flexibility as the use of a target value of 1.5% is acceptable in this instance. The applicant has addressed the 1.5% value within Appendix E. Using the 1.5% target value, approximately 95% of living/dining (kitchen) rooms achieve this target. I note that a good quality of residential amenity to future occupiers is provided. All have access to a generous quantum of communal open space provision. I note the floor to ceiling heights and extent of glazing proposed. I consider all of these to be alternative, compensatory design solutions.

11.9.20 I am of the opinion that the higher 2% ADF is more appropriate in a traditional house layout, and that in apartment developments such as this, it is a significant challenge to achieve 2% ADF, and even more so when higher density and balconies are included. Often in urban schemes there are challenges in meeting the 2% ADF in all instances, and to do so would unduly compromise the design/streetscape and that an alternate 1.5% ADF target is generally considered to be more appropriate. As anticipated, the units on the lower floors are those which give the 'worst-case' scenario results with Block B and Block E being the worst affected. One unit within Block B only receives 0.6% (GF) while one unit within Block E only receives 0.4%. This unit within the LG floor of Block E would be ideally placed to provide additional communal facilities as I have concerns regarding the level of daylight that this unit would receive. All units on level 10 and above meet the 2% value, with some units being significantly in excess of this target.

11.9.21 I acknowledge that there are shortfalls in this regard. I also acknowledge the concerns of the third parties in this regard. I again highlight that while the recommended standards set out in the guidelines can assist my conclusion as to its appropriateness or quality, they do not dictate an assumption of acceptability. I note that notwithstanding the BTR nature of the proposed development and the challenges posed in achieving adequate daylight, it is proposed to provide private open space to some units so as to provide a positive residential amenity to future occupiers. Many units are opening onto some level of public/communal open space. I also note the level of dual aspect units (50%). The sizes of window opens is noted. The floor to ceiling heights also aid in achieving greater ADF. I consider all of these to be alternative, compensatory design solutions.

11.9.22 In addition, I note that the applicant has endeavoured to maximise light into the apartments while also ensuring that the streetscape, architecture and private external amenity space are also provided for. I therefore consider that having regard to all of the above, the majority of units tested should receive adequate levels of daylight.

#### Sunlight

11.9.23 In relation to sunlight to windows, the BRE guidelines refer to a test of Annual Probable Sunlight Hours (APSH) to windows. The APSH criteria involves an assessment of the level of sunlight that reaches the main living room window to determine the number of windows with an APSH level greater than 25% on an annual basis or 5% on a winter basis. The submitted assessment does not provide analysis in this regard; however, I note that the Building Height Guidelines do not explicitly refer to sunlight in proposed accommodation. The Building Height Guidelines state in criteria 3.2 that 'The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light'. Therefore, while daylight and overshadowing are explicitly referenced, there is no specific reference to sunlight, and reference is only to daylight, overshadowing or more generally 'light'.

11.9.24 While there is no analysis provided, I note the orientation of the site with many units in the proposed development facing south east or west, with associated access to

sunlight. In my opinion, it is likely that the inclusion of balcony areas will have a similar effect as set out above in relation to daylight. But given the orientation of blocks and separation distances proposed, I am satisfied that the acceptable levels of sunlight will be achieved to most living rooms in the proposed development, in recognition of BRE criteria.

### Internal Open Spaces

11.9.25 Section 3.3 of the BRE guidelines state that good site layout planning for daylight and sunlight should not limit itself to providing good natural lighting inside buildings. Sunlight in the spaces between buildings has an important impact on the overall appearance and ambience of a development. It is recommended that at least half of the amenity areas should receive at least 2 hours of sunlight on 21st March. It is noted that the proposed amenity spaced located on the lower ground and ground floors were found to be compliant with the above, with a total of 67% of the amenity area compliant. The proposed roof terraces also comfortably exceeded BRE minimum standards.

11.9.26 It is noted that the courtyard amenity space (between Blocks C and D) was initially found to be below the 50% target. The area of assessment in this courtyard was reduced by 94m<sup>2</sup> which was sufficient to achieve the compliance target of 50%. It is acknowledged that the overall amenity space quantum (following the reduction to the assessed courtyard between Blocks C and D) is still 1,573m<sup>2</sup> greater than required under the Sustainable Urban Housing: Design Standards for New Apartments (December, 2020). This is considered acceptable.

### Conclusion

11.9.27 The Building Height Guidelines state that appropriate and reasonable regard should be had to the quantitative approaches as set out in guides like the Building Research Establishment's 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. It is acknowledged in these Guidelines that, where a proposal does not fully meet the requirements of the daylight provisions, this must be clearly identified and a rationale for alternative, compensatory design solutions must be set out. The Board can apply discretion in these instances, having regard to local factors including site constraints,



and in order to secure wider planning objectives, such as urban regeneration and an effective urban design and streetscape solution.

11.9.28 Having regard to the information outlined above, as contained in the submitted Daylight and Sunlight Analysis, I note that for the proposed apartment units, the level of compliance with the ADF target of 2% for kitchen/living rooms is approximately 72% or with the alternative ADF target of 1.5% for living/dining room is 95%, which is considered to be reasonable compliance with the BRE standards. I note that SPPR3 allows compensatory proposals where non-compliance is proposed. A rationale for alternative and compensatory design solutions has been put forward. I note that having regard to the proposed density and urban location, that the identified shortfalls are not significant in number or magnitude. Regard is also had to the need to develop sites, such as this, at an appropriate density, and, therefore, full compliance with BRE targets is rarely achieved, nor is it mandatory for an applicant to achieve full compliance with same. It is my opinion that adequate justification for non-compliance exists, and that the design and associated alternative, compensatory design solutions are appropriate. It may also be noted that the ADF for rooms is only one measure of the residential amenity and in my opinion the design team have maximised access to daylight and sunlight for all apartments. I have considered all of the written submissions made in this regard. The planning authority have not recommended a refusal of permission in relation to this matter.

11.9.29 I am satisfied that there will not be significant impact on nearby properties and am generally satisfied that the design results in sufficient daylight and sunlight for future residents.

## **11.10 Traffic and Transportation**

### Context

11.10.1 I refer the Board to section 11 of the submitted EIAR (Material Assets: Traffic and Transport) and further assessment within that EIAR section below. It is noted that a number of transport related documents have been submitted with the application documentation including Traffic and Transport Assessment, DMURS Statement of Consistency and Residential Travel Plan.

11.10.2 This was not a matter that raised concern within the third party submissions.

11.10.3 It is not proposed that any part of the development will be taken into charge.

#### Access/Proposed Works

11.10.4 The HSQ development has two existing vehicular access points, one from St. John's Road West and another on Military Road. Both of these accesses will serve the proposed development and no additional vehicular access point is proposed. Access to the cycle parking areas is also from these existing access points. There is a segregated pedestrian access via the access on Military Road to the basement levels. There is currently no pedestrian access on St. John's Road West. This arrangement will not change. Pedestrian access to the HSQ site can be gained from multiple points around the eastern and southern perimeters of the site. Access from the north and west are currently restricted. While the Transportation Division have raised some concerns regarding pedestrian connectivity along the northern boundary and St. John's Road West, they state that they are satisfied with pedestrian and cycling access, permeability and linkages throughout the site and wider HSQ site in general.

11.10.5 The Transportation Division of the planning authority states that the applicant has engaged in discussions with them and the NTA prior to the submission of this application with regard changes and improvements required along St. John's Rd West in the vicinity of the vehicular access to the HSQ site. This element of the proposal is considered acceptable in principle to the planning authority.

11.10.6 Works to facilitate the proposed development at basement level are noted. The planning authority have not raised concerns in this regard.

#### Car Parking

11.10.7 The subject site is located within Area 2 of Map J of the operative City Development Plan, immediately adjacent to Area 1. Table 16.1 details the maximum car parking standards permissible for a variety of uses. A maximum car parking provision of 1 no. space per residential unit is permissible. The total overall car parking provision is 80 no. spaces. In addition, 8 no. car club spaces are proposed. The car parking ratio is 0.18 spaces/unit (exclusive of car club spaces). 10% of the car parking spaces will have electric charging points for electric vehicles with all remaining spaces future proofed to allow for charging points to be put in when needed. The NTA suggests that the ratio of EV ready parking spaces be increased. Having regard

to this, an increase from 10% to 20% is recommended by the Transportation Division of the planning authority. This matter could be dealt with by means of condition, if the Board is disposed towards a grant of permission.

11.10.8A Car Parking Management Strategy has been submitted as part of the TTA. This states that the Management Company that will look after the development also manages the current HSQ site. Parking spaces shall not be assigned to individual apartment units and spaces will be allocated and/or leased to residents and staff on the basis of availability and need.

11.10.9 The planning authority considers that given the accessibility of the site and the location in relation to public transport and employment centres that the proposed car parking provision including car share ratio is acceptable in this instance.

11.10.10 I am satisfied that given the nature of the development and the locational context of the site, proximate to good public transport facilities at Heuston station with high capacity, frequent national and commuter rail service, high capacity LUAS service and national and city bus services available. The site is also within walking distance of the city centre, that a parking ratio of 0.18 space/residential unit (excluding car share provision) is acceptable. The planning authority have not expressed concerns in this regard.

#### Cycle Parking

11.10.11 In total, the proposal includes for 710 cycle spaces (1.3 spaces/residential unit), (600 spaces at basement level and 110 at podium level). All spaces at basement level will serve the residential element while those at podium level will serve visitors to the proposed development. This provision is in excess of Development Plan requirements of minimum 1 space per unit and slightly below the standards set out in the Apartment Guidelines. It is noted that the level of cycle parking serving the residents is in line with the Apartment Guidelines, it is only the visitor cycle parking that falls below the level suggested. The proposed visitor cycle parking provision is considered acceptable to the Transportation Division of the planning authority. They continue by stating that they have no objection to the quantum, location and design of cycle parking proposed. Adequate separation distances will exist between the double stack parking design. They recommend

however that cycle parking be in place prior to the occupation of the development. This matter could be adequately dealt with by means of condition.

### Traffic Impacts

11.10.12 A traffic count was carried out on 19th September 2017. Count data has been scaled up to baseline levels for the year 2021 using standard TII growth factors. The Transportation Division of the planning authority state that having regard to Covid-19's impact on traffic levels since March 2020, this approach is considered acceptable in this instance. Three junctions which were assessed were as follows: (i) J1. St John's Road West / Military Road (ii) J2. Military Road / Heuston South Quarter (East Access) (iii) J3. St John's Road West / Heuston South Quarter (North Access). Cumulative scope is noted to include Site B of HSQ and the nearby committed Garda headquarters development.

11.10.13 Overall, the operational traffic impact of the proposed development is deemed acceptable to the planning authority.

### Conclusion

11.10.14 To conclude, I am satisfied that the proposal is acceptable in terms of numbers of spaces for car and bicycle parking, as well as the modifications to public realm and existing basement levels to facilitate the proposed development. I have had regard to the extremely accessible location of the site and its proximity to quality public transport, together with section 28 ministerial guidelines which allow for reduced standards of parking at certain appropriate locations. I do not have undue concerns in relation to traffic or transportation issues. The Transport Division of the planning authority have not raised objections in this regard. While the concerns of the National Transport Authority are noted in relation to the mix of units proposed (dealt with above), they state that they are satisfied with the level of parking proposed, together with the access and permeability proposals and are generally satisfied with interface for BusConnects, subject to conditions.

11.10.15 Having regard to all of the above, I have no information before me to believe that the proposal would lead to the creation of a traffic hazard or obstruction of road users and I consider the proposal to be generally acceptable in this regard.

## 11.11 Other Matters

### Legal Matters

11.11.1I note that one of the submissions received relates to ownership matters. I can only undertake my assessment based on the information before me and I am satisfied that the applicant has demonstrated sufficient legal interest to make this application. All such issues are considered to be legal matters outside the remit of this planning application. As in all such cases, the caveat provided for in Section 10(6) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended, applies which stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development. I also note the provisions of Section 5.13 of the Guidelines for Planning Authorities, Development Management, 2007 in this regard.

### Wording of development in public notices/ABP description

11.11.2One of the submissions received raises concern regarding the development description in the public notices and on the An Bord Pleanála website. The purpose of the public notices is to give an indication to the general public that a planning application has been lodged on the subject lands and a broad outline of the development proposed. The same may be said of An Bord Pleanála description on its website. It is clear that the general public have been made aware of the proposed development, given the volume of submissions received. I am satisfied that the applicants have complied with the requirements of the Planning and Development (Housing) and Residential Tenancies Act 2016 and associated Regulations of 2017 in this regard. I am also satisfied that An Bord Pleanála has satisfied the requirements of the Planning and Development Act 2000, in this regard.

### Cultural provision

11.11.3Some of the third party submissions received raises concerns with the lack of a cultural use within the proposed development. I note that there is no requirement for such a use under the provisions of the operative City Development Plan. I note the proximity of the site to the RHK, in which the Irish Museum of Modern Art is located. I also note the proximity of the site to other cultural sites including Kilmainham gaol

and the Memorial Gardens. The proposed public realm provision, together with the retail offering will also be available to the wider public. I am satisfied in this regard.

11.11.4 It is noted that a Community and Social Infrastructure Audit was submitted, as per Development Plan requirements (Section 16.10.4 of operative CDP). This is contained within section 5 of the submitted EIAR. The information contained therein is noted. The site is located within an established part of the city, in an area undergoing redevelopment. It is in close proximity to established services and facilities including retail, educational, recreational and a wide range of employment generating uses. It is proximate to good public transport facilities, a short distance from Dublin city centre. I have no information before me to believe that the existing social infrastructure in the area does not have capacity to absorb a development of the nature and scale proposed.

#### Part V

11.11.5 The operative City Development Plan requirement that 10% social and affordable housing be provided on such lands is being achieved in this instance with 40 units proposed. The breakdown of units is as follows- 5 x studio; 20 x one-bed; 15 x two-bed units. The planning authority state that the applicant has engaged with them in relation to the matter of Part V and have not raised concerns in this regard. I note the provisions of the recently adopted Affordable Housing Act 2021 and revised provisions to Part V contained therein and the fact that this application was prepared prior to the enactment of that aforementioned legislation. I note that it is unclear from the submitted documentation as to when the subject lands were purchased (namely was it before or after September 1<sup>st</sup> 2015). I recommend that the matter of Part V be dealt with by means of condition. Details of compliance can be dealt with by the planning authority, or ABP, in case of disagreement. In any event, the applicant will be obliged to comply with these new requirements as amended. I have no issue in relation to this matter.

#### Plant/Machinery at Roof Level

11.11.6 If the Board is disposed towards a grant of permission, I recommend that a condition should be attached to any such grant stipulating that that plant/machinery at roof level be the subject of a separate application. This matter could be adequately dealt with by means of condition.

### Inconsistencies/Typographical Errors

11.11.7I note some minor inconsistencies/typographical errors throughout the documentation and this has been raised in some of the third party submissions received. I can comprehensively assess the proposal before me, irrespective of these relatively minor errors.

### Sustainability/Management

11.11.8I note a Building Lifecycle Report has been submitted with the application documentation and the issue of management of the proposed scheme has been dealt with therein, including measures specifically considered to effectively manage and reduce costs for the benefit of residents. The submitted Architectural Design Statement deals also with the matter of sustainability. I am generally satisfied in this regard.

### Public Health

11.11.9Some of the submissions received refer to the presence of Covid-19 and the ability of the proposed development to operate safely in such circumstances or provide adequate levels of residential amenity. The management of the proposed facility in such circumstances, or similar circumstances, will be a matter for the applicants to address, in light of public health advice pertaining at that time.

## **12.0 Appropriate Assessment**

### Introduction

12.1 The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for appropriate assessment
- The Natura Impact Statement and associated documents

- Appropriate assessment of implications of the proposed development on the integrity each European site

#### Compliance with Article 6(3) of the EU Habitats Directive

- 12.2 The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.
- 12.3 The proposed development at Heuston South Quarter, St. John's Road West/Military Road, Kilmainham, Dublin 8, a mixed-use development comprising 399 residential units and one retail unit, is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).
- 12.4 Context
- 12.4.1 The first test of Article 6(3) is to establish if the proposed development could result in likely significant effects to a European site. This is considered Stage 1 of the appropriate assessment process i.e. screening. The screening stage is intended to be a preliminary examination. If the possibility of significant effects cannot be excluded on the basis of objective information, without extensive investigation or the application of mitigation, a plan or project should be considered to have a likely significant effect and Appropriate Assessment carried out.
- 12.4.2 An Appropriate Assessment Screening Report (contained within section 2 of NIS) and Natura Impact Statement were submitted with the application. I am satisfied that adequate information is provided in respect of the baseline conditions, potential impacts are clearly identified and sound scientific information and knowledge was used. The information contained within the submitted reports is considered sufficient to allow me undertake an Appropriate Assessment of the proposed development. The screening is supported by associated reports, including ecological field surveys



involving habitat survey and mapping, bird survey, Site Specific Flood Risk Assessment, Landscape Strategy Report and Site Lighting Report. AN EIAR and associated appendices was submitted with the application documentation.

#### 12.4.3 The AA Screening Report concludes that:

*'In the absence of mitigation, there is potential for contaminated water emanating from the HSQ development site to enter the River Liffey system and ultimately the aquatic and intertidal environment of Dublin Bay, during the construction and (to a lesser extent) operational phases of the proposed development... As the conservation objectives of the four identified Natura 2000 sites could potentially be affected adversely, measures are required to avoid or reduce harmful effects of the proposed project (i.e. mitigation measures). Therefore, as the risk of potential significant effects on these European sites cannot be ruled out, Section 3 of this report provides information to allow the competent authority to carry out a Stage 2 Appropriate Assessment in respect of the proposed development'.*

The four designated sites within Dublin bay are North Dublin Bay SAC (000206); South Dublin Bay SAC (000210); North Bull Island SPA (004006) and South Dublin Bay and River Tolka Estuary SPA (Site Code 004024).

#### 12.4.4 Having reviewed the documents, all submissions, and the report of the Department of Housing, Local Government and Heritage, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

### 12.5 Appropriate Assessment Screening

12.5.1 The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

12.5.2 The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

### 12.6 Brief Description of Proposed Development/Site

12.6.1 The proposal comprises a mixed-use development of 399 residential units and one retail unit (see section 3 above for a detailed description of the proposed development). The application site (1.08ha) forms part of a larger development site known as Heuston South Quarter (HSQ) and is currently landscaped. There are no streams, open drains or natural habitats on site. Natural drainage of the site is towards the River Liffey, which is approximately 250 m to the north (with St John's Road West and the Heuston Station facility occupying the intervening area). I note from the EIAR that the Camac River is culverted for some of its length but is unculverted as it passes within a 100m to the east of the subject site. The Camac is culverted as it passes beneath St. Johns Road West and ultimately discharges into the River Liffey.

## 12.7 Submissions/Observations

12.7.1 The attention of the Board is drawn to the fact that concerns regarding information contained within NIS and impacts of proposal on flight paths have been raised in some of the submissions received.

12.7.2 The planning authority in their Chief Executive Report note the submission of the NIS. They do make comment in this regard.

12.7.3 In relation to this matter, I note the detailed submission from the Department of Housing, Local Government and Heritage in relation to nature conservation. I refer the Board to the summary of this report above in section 9. In summary, the Department accepts the conclusion of the submitted NIS.

12.7.4 I have reviewed all submissions made and issues where relevant are addressed within my assessment hereunder.

## 12.8 Designated Sites

12.8.1 The subject site is not located within any designated European site. It is considered by the applicants that the possibility for impacts on European sites is limited to the series of sites associated with the Dublin Bay complex to which the River Liffey flows. These are as follows:

Table 9:

Site Name and Code Qualifying Interests/SCI Conservation Objectives	Distance from Dev Site	Screening Comment in submitted AA Screening Report
<p><b>South Dublin Bay SAC (Site Code 000210)</b></p> <p><u>Qualifying Interests/SCI</u></p> <p>Mudflats and sandflats not covered by seawater at low tide</p> <p>Annual vegetation of drift lines</p> <p>Salicornia and other annuals colonising mud and sand</p> <p>Embryonic shifting dunes</p> <p><u>Conservation Objective:</u></p> <p>To maintain the favourable conservation condition of the Annex I habitat for which the SAC has been selected.</p>	<p>c.8 km straight line distant</p>	<p>As the HSQ site drains to the River Liffey, a theoretical hydrological linkage exists between the site and the Dublin Bay conservation area.</p>
<p><b>North Dublin Bay SAC (Site Code 000206)</b></p> <p><u>Qualifying Interests/SCI</u></p> <p>Mudflats and sandflats not Covered by seawater at low tide</p> <p>Annual vegetation of drift lines</p> <p>Salicornia and other annuals colonising mud and sand</p> <p>Atlantic salt meadows</p>	<p>c.8km straight line distant</p>	<p>As the HSQ site drains to the River Liffey, a theoretical hydrological linkage exists between the site and the Dublin Bay conservation area.</p>

<p>Mediterranean salt meadows</p> <p>Embryonic shifting dunes</p> <p>Shifting dunes along the shoreline with white dunes</p> <p>Fixed coastal dunes with grey dunes</p> <p>Humid dune slacks</p> <p>Petalwort</p> <p><u>Conservation Objective:</u></p> <p>To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</p>		
<p><b>South Dublin Bay and River Tolka Estuary SPA (Site Code 004024)</b></p> <p><u>Qualifying Interests/SCI</u></p> <p>Light-bellied Brent Goose</p> <p>Oystercatcher</p> <p>Ringed Plover</p> <p>Grey Plover</p> <p>Knot</p> <p>Sanderling</p> <p>Dunlin</p> <p>Bar-tailed Godwit</p> <p>Redshank</p> <p>Black-headed Gull</p> <p>Roseate Tern</p> <p>Common Tern</p> <p>Arctic Tern</p> <p>Wetlands &amp; Waterbirds</p> <p><u>Conservation Objective:</u></p>	<p>c.8km straight line distant</p>	<p>As the HSQ site drains to the River Liffey, a theoretical hydrological linkage exists between the site and the Dublin Bay conservation area.</p>

<p>To maintain the favourable conservation condition of the species and wetland habitat for which the SPA has been selected.</p>		
<p><b>North Bull Island SPA (Site Code 004006)</b></p> <p><u>Qualifying Interests/SCI</u></p> <p>Light-bellied Brent Goose  Shelduck  Teal  Pintail  Shoveler  Oystercatcher  Golden Plover  Grey Plover  Knot  Sanderling  Dunlin  Black-tailed Godwit  Bar-tailed Godwit  Curlew  Redshank  Turnstone  Black-headed Gull  Wetlands &amp; Waterbirds</p> <p><u>Conservation Objective:</u></p> <p>To maintain the favourable conservation condition of the species and wetland habitat for which the SPA has been selected.</p>	<p>c. 8km straight line distant</p>	<p>As the HSQ site drains to the River Liffey, a theoretical hydrological linkage exists between the site and the Dublin Bay conservation area.</p>

I do not consider that any other European Sites fall within the zone of influence of the project, based on a combination of factors including the intervening distances, the lack of suitable habitat for qualifying interests, and the lack of hydrological or other

connections. No reliance on avoidance measures or any form of mitigation is required in reaching this conclusion.

## 12.9 Identification of Likely Significant Effects

12.9.1 In my opinion the screening undertaken by the applicant takes an excessively precautionary approach of the application. Further to the assessment in the submitted Screening Report and given the location, nature and scale of the proposed project, the qualifying interests and SCIs of the four designated sites identified above are stated by the applicants to require further consideration. The reasoning for this is that as the development site drains to the River Liffey (located 250m to the north of the site), a theoretical hydrological linkage exists between the site and the Dublin Bay conservation areas.

## 12.10 Bird Strike

12.10.1 The matter of bird strike has been raised in one of the submissions received. It has also been raised by the Department of Housing, Local Government and Heritage. I highlight to the Board that it is my understanding that the Department raise this matter in the context of EIA as opposed to AA and they state that the risk of bird collisions within the proposed apartment blocks is not considered in the EIAR. I refer the Board to the 'Biodiversity' section of the EIAR below, in which I have comprehensively assessed this matter.

12.10.2 Birds observed on site during the survey were common species (wren and pied wagtail). Gulls, feral pigeons and jackdaws were observed flying over the site- again common species. No SCI species of any designated site were observed on the site or flying over the site. There is no suitable habitat for any SCI species to nest on site. Birds stated by the Department to be nesting on the roof of the nearby Eir building (herring and lesser black-backed gulls) are not SCI species for any designated site within Dublin Bay. I am satisfied that the concerns of the Department in this regard relate to protection of local ecology as opposed to the protection of species associated with designated sites. I am satisfied that based on the information before me, it is unlikely that the proposal will have significant effects on any SCI bird species or flight path associated with any designated sites within Dublin bay.

## 12.11 Screening Determination

12.11.1 The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) significant effects on four European Sites within Dublin Bay in view of the Conservation Objectives of those sites could not be ruled out, and Appropriate Assessment is therefore required for the following:

Table 10:

Site Name	Site Code	Distance
South Dublin Bay SAC	004024	c.8km
North Dublin Bay SAC	000206	c.8km
South Dublin Bay and River Tolka Estuary SPA	004024	c.8km
North Bull Island SPA	004006	c.8km

12.10.2 In a precautionary measure, I have screened in these four sites within Dublin Bay due primarily to (i) the proximity of the development site to the River Liffey (approximately 250m), which provides a hydrological pathway to the above designated sites (ii) natural drainage of the site being towards the River Liffey (iii) the scale of the development and (iv) the site size. Potential impacts are primarily related to the potential transfer of pollution and/or sediments via existing surface water drainage infrastructure and via potential groundwater pathways.

12.10.3 The possibility of significant effects on all other European sites has been excluded on the basis of objective information. I have screened out all other European sites for the need for appropriate assessment, based on a combination of factors including the intervening minimum distances, the marine buffer/dilution factor, the insignificant increase in the loading at Ringsend Wastewater Treatment Plant, the lack of suitable habitat for a number of qualifying interests of SPAs within or within close proximity to the proposed development (as applicable) and the lack of hydrological connections. I am satisfied that there is no potential for likely significant effects on these screened out sites.

12.10.4 Measures intended to reduce or avoid significant effects on European sites have not been considered in the screening process.

12.10.5 I confirm that the sites screened in for appropriate assessment are included in the NIS prepared by the project proponent.

## 12.12 Stage 2- Appropriate Assessment

### Introduction

12.12.1 The application included a NIS for the proposed development at Heuston South Quarter, St. John's Road West/Military Road, Kilmainham, Dublin 8. The NIS provides a description of the project and the existing environment. It also provides a background on the screening process and examines and assesses potential adverse effects of the proposed development on a number of European Sites (identified above). Potential impacts arising from the construction and operational phases are outlined in section 3.1 and 3.2 respectively. Details of mitigation measures are outlined. In combination effects are examined within section 3.3 and it is concluded that significant in combination effects of the proposed project with other projects and plans are not likely.

12.12.2 The NIS concludes that on the best scientific evidence that it can be clearly demonstrated that no elements of the project (subject to appropriate mitigation measures) will result in any effect on the integrity or Qualifying Interests/Special Conservation Interests of any relevant European site, either on their own or in combination with other plans or projects, in light of their conservation objectives.

12.12.3 The report received from the Department of Housing, Local Government and Heritage states that it accepts the conclusion of the NIS.

12.12.4 By applying a precautionary principle and on the basis of objective information, it is my opinion, that the designated sites within Dublin Bay in closest proximity to the development site, require further consideration only due to (i) the proximity of the development site to the River Liffey (approximately 250m), which provides a hydrological pathway to the above designated sites (ii) natural drainage of the site being towards the River Liffey (iii) the scale of the development and (iv) the site size. Based on the above and taking a precautionary approach, I consider that it is not possible to exclude that the proposed development, individually or in combination with other plans or projects, will have a likely significant effect on the following sites:



Table 11:

Site Name	Site Code	Distance
South Dublin Bay SAC	004024	c.8km
North Dublin Bay SAC	000206	c.8km
South Dublin Bay and River Tolka Estuary SPA	004024	c.8km
North Bull Island SPA	004006	c.8m

12.12.5 Having reviewed the documentation available to me, submissions and consultations, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation objectives of the four European sites listed above, alone or in combination with other plans and projects.

12.16 Appropriate Assessment of implications of the proposed development on each European Site

12.16.1 The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the four European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

12.16.2I have relied on the following guidance:

- Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities, DoEHLG (2009);
- Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC, EC (2002);
- Guidelines on the implementation of the Birds and Habitats Directives in Estuaries and coastal zones, EC (2011);
- Managing Natura 2000 sites, The provisions of Article 6 of the Habitats Directive 92/43/EEC, EC (2018).

12.16.3A description of the four designated and their Conservation Objectives and Qualifying Interests, including any relevant attributes and targets, are set out in the NIS and outlined above as part of my assessment. I have also examined the Natura

2000 data forms as relevant and the Conservation Objectives supporting documents for these sites available through the NPWS website (www.npws.ie).

#### 12.17 Potential Impacts on identified European Sites

12.17.2 There is a hydrological pathway (via the River Liffey located 250m to the north of the site) from the proposed development site to the designated European sites associated with Dublin Bay. The following potential impacts have been identified:

##### Impacts during construction

12.17.3 There is hydrological connectivity to Dublin Bay via existing surface and storm water drainage infrastructure.

12.17.4 There is a potential groundwater pathway between the proposed development site and the European sites should indirect discharges (i.e. spillages to ground) occur, or should any contamination on the site enter the ground water.

##### Impacts during operational phase

12.17.5 Potential impacts arising from the operational phase are related to surface water drainage from the built development- there will be general run-off to the local surface drainage system from roofs and hard surfaces, with potential for leakage of petrol/diesel fuel from vehicles.

#### 12.18 Appropriate Assessment of implications of the proposed development on each European Site

##### 12.18.1 Special Areas of Conservation- North Dublin Bay SAC and South Dublin Bay SAC

12.18.2 There will be no direct impacts on any SAC site as a result of the proposed development as the development is located wholly outside of any European Site. There is no watercourse on, or immediately adjacent to the development site. The River Liffey is located approximately 250m from the site development boundary, however there are no watercourses or open channels linking the two locations. There is no direct flow path. I note from the EIAR that the Camac River is culverted for some of its length but is un-cluvered as it passes within a 100m to the east of the subject site. The Camac is culverted as it passes beneath St. Johns Road West and ultimately discharges into the River Liffey.

The habitats within the zone of influence of potential pollution and/or sedimentation impacts are those influenced by tidal waters and these habitats are listed below.

Table 12:

Designated Site	Qualifying Interests (those in <b>BOLD</b> are those which may be susceptible to water quality impacts)	Conservation Objective (favourable status)
North Dublin Bay SAC	<b>Tidal Mudflats and Sandflats</b>	Maintain
	Annual Vegetation of Drift Lines	Restore
	<b>Salicornia Mud</b>	Restore
	<b>Atlantic Salt Meadows</b>	Maintain
	<b>Mediterranean Salt Meadows</b>	Maintain
	Embryonic Shifting Dunes	Restore
	Marram Dunes (White Dunes)	Restore
	Fixed Dunes (Grey Dunes)*	Restore
	Humid Dune Slacks	Restore
Petalwort ( <i>Petalophyllum ralfsii</i> )	Maintain	
South Dublin Bay SAC	<b>Tidal Mudflats and Sandflats</b>	Maintain
	Annual Vegetation of Drift Lines	Restore
	<b>Salicornia Mud</b>	Restore
	Embryonic Shifting Dunes	Restore

12.18.3 Qualifying Interests identified in the NIS could be at risk from potential construction related surface water discharges, in the absence of mitigation, should the discharges be of sufficient quantity and/or duration to affect water quality within the site. The habitats that could be affected by decreased water quality are highlighted above. It is considered unlikely that input of potential pollutants could have any effect on other qualifying interests of these two SACs as all are above the level of high tide. The wetland habitats that comprise the North Bull SPA and South Dublin Bay and Tolka Estuary SPA are contiguous with the SAC and therefore I am of the opinion that it is appropriate to consider any impacts on the quality of the wetland habitats alongside those of the SAC site. The potential for significant effects would be dependent on the magnitude of the pollution and/or sedimentation event, the resilience of the habitat and the in combination effect of that event with other water quality pressures due to other plans and projects.

12.18.4 I am of the opinion that the risk of a pollution/sedimentation event is predicted to be low as any event would be accidental and short lived. Furthermore, the capacity of the surface water drainage network to transfer sediments would limit the amount of sediment that could be transferred in any one event.

12.18.5 Mitigation measures have been outlined in the submitted NIS and the measures outlined in section 5 of the submitted Outline Construction Management Plan have been referenced. This Plan, submitted as a separate document, has been compiled to facilitate the effective application of all mitigation measures for the proposed development and covers all potentially polluting activities and includes mitigation measures. Measures include reducing the risk of sediment transfer and preventing blockage of the surface water drainage network, namely to avoid or reduce any risk of pollution from the construction phase. The proposed development will have a separate, attenuated storm water drainage system designed in accordance with the Greater Dublin Strategic Drainage Study and the Regional Code of Practice for Drainage Works. Mitigation measures for potential groundwater effects are similar in nature. Having regard to the measures outlined as well as the application of best practice construction methods, I am satisfied that there will be no adverse affects on the South Dublin SAC and North Dublin Bay SAC in view of the site's conservation objectives as a result of the proposed development. Similarly, no adverse affects will occur to the 'wetlands and waterbird' SCI of the North Bull SPA or the South Dublin and River Tolka Estuary SPA in view of the conservation objectives for this particular attribute.

12.18.6 In terms of in-combination effects, section 3.3 of the NIS considers the potential for cumulative effects on nearby designated sites arising in combination with other plans or projects and lists permitted/proposed future developments in the area. It is not anticipated that other projects will act in-combination with the proposed development to give rise to cumulative effects on any European sites.

12.18.7 Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of the North Dublin Bay SAC and South Dublin Bay SAC in view of the Conservation Objectives of these sites. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

12.19 Special Protection Areas (SPAs)

12.19.1 The proposed development site is wholly located outside of European sites and as outlined for the SAC sites above, there will be no direct impacts on any SPA sites in terms of the permanent area of wetland habitat as defined in conservation objectives of those sites. Both designated SPA sites are located approximately 8km from the development site.

12.19.2 There is a risk of pollution and/or sediment transfer as a result of the construction phase being transferred to Dublin Bay via existing and proposed surface water drainage infrastructure and/or via ground water. Pollution could arise from cementitious residues or hydrocarbons from the construction site. Any significant degradation of habitats (tidal mudflats, saltmarsh habitats) caused by pollution or decline in water quality as a result of this project alone or in combination with other plans and projects could undermine the conservation targets of the SPAs. Pollution could also arise from the operational phase as there will be general run-off to the local surface water drainage system from the built development should for example leakage of fuel from vehicles.

Table 13:

Designated Site	Qualifying Interests	Conservation Objective (favourable status)
North Bull Island SPA (004006)	[A046] Light-bellied Brent Goose (Branta berniclahrota) [A048] Shelduck (Tadorna tadorna) [A052] Teal (Anas crecca) [A054] Pintail (Anas acuta) [A056] Shoveler (Anas clypeata) [A130] Oystercatcher (Haematopus ostralegus) [A1 0] Golden Plover (Pluvialis apricaria)	To maintain the favourable conservation status of all species listed

	<p>[A141] Grey Plover (<i>Pluvialis squatarola</i>)</p> <p>[A143] Knot (<i>Calidris canutus</i>)</p> <p>[A144] Sanderling (<i>Calidris alba</i>)</p> <p>[A149] Dunlin (<i>Calidris alpina</i>)</p> <p>[A156] Black-tailed Godwit (<i>Limosa limosa</i>)</p> <p>[A157] Bar-tailed Godwit (<i>Limosa lapponica</i>)</p> <p>[A160] Curlew (<i>Numenius arquata</i>)</p> <p>[A162] Redshank (<i>Tringa totanus</i>)</p> <p>[A169] Turnstone (<i>Arenaria interpres</i>)</p> <p>[A179] Black-headed Gull (<i>Chroicocephalus ridibundus</i>)</p> <p>[A999] Wetland and Waterbirds</p>	
<p>South Dublin Bay and River Tolka Estuary SPA (004024)</p>	<p>[A046] Light-bellied Brent Goose (<i>Branta bernicla hrota</i>)</p> <p>[A130] Oystercatcher (<i>Haematopus ostralegus</i>)</p> <p>[A137] Ringed Plover (<i>Charadrius hiaticula</i>)</p> <p>[A141] Grey Plover (<i>Pluvialis squatarola</i>)</p> <p>[A143] Knot (<i>Calidris canutus</i>)</p> <p>[A144] Sanderling (<i>Calidris alba</i>)</p> <p>[A149] Dunlin (<i>Calidris alpina</i>)</p>	<p>To maintain the favourable conservation status of all species.</p> <p>Grey Plover to be removed.</p>

	<p>A157] Bar-tailed Godwit (<i>Limosa lapponica</i>)</p> <p>[A162] Redshank (<i>Tringa totanus</i>)</p> <p>[A179] Black-headed Gull (<i>Chroicocephalus ridibundus</i>)</p> <p>[A192] Roseate Tern (<i>Sterna dougallii</i>)</p> <p>[A193] Common Tern (<i>Sterna hirundo</i>)</p> <p>[A194] Arctic Tern (<i>Sterna paradisaea</i>)</p> <p>[A999] Wetland and Waterbirds</p>	
--	--	--

12.19.3 In terms of the factors that could affect the conservation objectives, there will be no loss or modification of habitats within the SPAs that result in the displacement of these species from areas within the SPA.

12.19.4 Mitigation measures are required to avoid or minimise the risk of pollution or sediment transfer to Dublin Bay. Mitigation measures have been outlined in section 3.3 of the submitted NIS, which state that an Outline Construction Management Plan has been prepared for the proposed development and includes measures for ground and surface water management. Mitigation measures include:

- No direct pumping of silt-laden water from the works to any watercourse or drain
- Construction vehicles will not be permitted to refuel on site
- Accidental oil or fuel spills shall be cleaned with appropriate absorbent materials
- Harmful materials to be stored within bunded area
- Pollution kits maintained on site

12.19.5 In my opinion, these are considered to be essentially best practice construction measures. I consider that the proposed measures are clearly described, are reasonable, practical and enforceable. I also consider that they fully address the potential impacts arising from the proposed development such that it will not give rise to adverse effects, either alone or in combination with other potential impact sources.

#### 12.20 Appropriate Assessment Conclusion

12.20.1 The proposed residential development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.

12.20.2 Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on four European Sites.

12.20.3 Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.

12.20.4 Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of these European Sites (North Dublin Bay SAC, South Dublin Bay SAC, North Bull Island SPA and South Dublin Bay and River Tolka Estuary SPA) or any other European site, in view of the site's Conservation Objectives.

This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures and ecological monitoring in relation to the Conservation Objectives of the aforementioned designated sites.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of these designated sites.



## **13 Environmental Impact Assessment**

### **13.1 Statutory Provisions**

- 13.1.1 This application was submitted to the Board after 1<sup>st</sup> September 2018 and therefore after the commencement of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 which transpose the requirements of Directive 2014/52/EU into Irish planning law.
- 13.1.2 The application was accompanied by an Environmental Impact Assessment Report (EIAR).
- 13.1.3 As stated previously, there is an inevitable overlap between the planning assessment, AA assessment and EIA assessment with matters raised sometimes falling within more than one of the assessments. In the interest of brevity, matters are not repeated but such overlaps are indicated in subsequent sections of the report.
- 13.1.4 The proposed development represents an extension of a development that comes within the following classes of development specified in Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (the 2001 Regulations):
- 13.1.5 Item 10(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 and section 172(1)(a) of the Planning and Development Act 2000 (as amended) provides that an EIA is required for infrastructure developments comprising of urban development which would exceed:
- 500 dwellings
  - an area of 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.
- 13.1.6 The proposed number of units and site area do not exceed the Class 10 thresholds. However, the quantum of development constructed under parent planning permission (as amended), in addition to the proposed development of 399 no. units exceeds the 500 unit threshold under Class 10 (b)(i) threshold of 500 dwelling units. In addition, the area of the site combined with the completed development also

exceed the Class 10(b)(iv) area threshold for an 'urban development which would involve an area greater than 2 hectares in the case of a business district.

13.1.7 The proposed development also comes within the scope of Class 13:

“Changes, extensions, development and testing

(a) 'Any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:-

(i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule,

and

(ii) result in an increase in size greater than – - 25 per cent, or - an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.’

13.1.7 The proposed development of 399 units exceeds the 50% threshold (i.e., 250 units), being the greater of the thresholds under Class 13(a)(ii). The proposed development site of 1.08 ha also exceeds the 50% threshold (i.e., 1 ha), being the greater of the thresholds under Class 13(a)(ii). Accordingly, this application is accompanied by an EIAR.

13.1.8 The EIAR is laid out as follows:

- Volume 1 includes the Written Statement of the EIAR (Chapters 1-17)
- Volume 2 includes the Technical Appendices including, *inter alia*, BTR Site Specific Apartment Management Plan, Excavation Report, Photomontages, TRICS Data and Noise Monitoring Survey Reports
- Volume 3 of the EIAR provides a Non-Technical Summary of its content
- Table 1.5.1 describes the methodology used for identification of impacts and Table 1.7.1 describes the expertise of those involved in the preparation of the report.
- Mitigation measures and monitoring described throughout the report are summarised in Chapter 17

13.1.9 The strategic need for the development is outlined in the context of the SDRA designation of the site and local planning policy, set out in section 4.1.2.

13.1.10 The likely significant direct and indirect effects of the proposed development are considered in the remaining chapters which collectively address the following headings, as set out in Article 3 of the EIA Directive 2014/52/EU:

- Population and Human Health
- Biodiversity (Flora and Fauna)
- Land, Soils and Geology
- Water
- Air, Dust and Climatic Factors
- Noise and Vibration
- Material Assets: Traffic and Transportation
- Material Assets: Water Supply, Drainage and Utilities
- Cultural Heritage-Archaeology
- Cultural Heritage- Architectural Heritage
- Landscape and Visual Impact Assessment
- Interactions of the Foregoing
- Mitigation Measures

13.1.11 I am satisfied that the EIAR has been prepared by competent experts to ensure its completeness and quality, and that the information contained in the EIAR and supplementary information provided by the developer, adequately identifies and describes the direct and indirect effects of the proposed development on the environment, and complies with article 94 of the Planning and Development Regulations 2000, as amended.

13.1.12 I have carried out an examination of the information presented by the applicant, including the EIAR, and the submissions made during the course of the application. A summary of the submissions made by the planning authority, Prescribed Bodies and observers has been set out above.

13.1.13 This EIA has had regard to the application documentation, including the EIAR, the observations received and the planning assessment completed above.

## **13.2 Alternatives**

**13.2.8** Article 5(1)(d) of the 2014 EIA Directive requires the following:

*“a description of the reasonable alternatives studied by the developer, which are relevant to the development and its specific characteristics, and an indication of the main reasons for selecting the chosen option, taking into account the effects of the development on the environment.”*

13.2.9 Section 4 of the submitted EIAR deals with alternatives and sets out alternative layouts and designs considered. It is considered that the issue of alternatives has been adequately addressed in the application documentation.

## **13.3 Consultations**

**13.3.8** Details of the consultations carried out by the applicant as part of the preparation of the application and EIAR are set out in the documentation submitted and are considered adequate. I am satisfied that the participation of the public has been effective, and the application has been made accessible to the public by electronic and hard copy means with adequate timelines afforded for submissions.

## **13.4 Assessment of Likely Significant Direct and Indirect Effects**

My assessment is based on the information provided by the applicant, including the EIAR, in addition to the submissions made in the course of the application, together with my site visit.

### **13.4.1 Population and Human Health**

Section 5 of the submitted EIAR is entitled population and human health. The study methodology is detailed identifying the sources of desk-based studies. The characteristics of the development are described as well as the existing receiving environment. The development site is situated approximately 2.5km from the Dublin city centre, and forms part of the larger Heuston South Quarter (HSQ) development. Demographic information is provided, together with socio-economic information for the area. Social infrastructure and amenities are also detailed.

Potential impacts are described. Mitigation measures have been outlined that will ensure that significant negative residual impacts/effects on human health or

population will be largely avoided. Some exceptions have been outlined for example short-term, negative, slight impacts during construction stage. Overall, it is stated that the proposed development will contribute to further growth and expansion of the neighbourhood. The predicted impacts of the operational phase are considered to be long term and positive to population and human health.

### **Assessment**

I have considered all of the written submissions made in relation to population and human health. Based on the data presented and as noted above, I consider that the proposed development will provide much needed accommodation within this area. Existing services and facilities are noted in the wider area and the proposed retail unit is also acknowledged.

There will be some nuisance issues for the existing residents during construction, but with the mitigation measures proposed in the Outline Construction Management Plan (CEMP), these will be reduced and will not result in a seriously negative impact. Furthermore, they are temporary in duration. Cumulative impacts have been addressed.

I note that the proposal does not include for the provision of a childcare facility. When omitting the studio and one-bed units, as per national guidance, the requirement for the proposed development would be 11 childcare spaces. I note that it is stated by the applicants that there are nine crèches within the wider area (see Table 5.4.3.1.2 of EIAR) with one facility already existing within the wider HSQ development. The applicants state that it is expected that the demand for private childcare arising out of the development can be met by the various childcare facilities that currently exist within the study area and within 1km-2km of the proposed development. I question if it would be commercially viable to provide a childcare facility of this scale. The planning authority have not raised concerns in this regard. Having regard to the above, I consider the non-provision of a childcare facility to be acceptable in this instance. There are many schools in the wider area (including three primary schools), and I note the Department of Education have not objected to the proposal. The planning authority have not raised concerns in relation to this chapter of the submitted EIAR.

I am satisfied that this matter has been appropriately addressed in terms of the application and the information submitted by the applicant. Having regard to the development of residential accommodation on zoned and serviced lands, and having regard to the need for residential development for the increasing population, I am satisfied that potential effects would be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable adverse direct, indirect or cumulative effects on population and human health.

#### 13.4.2 Biodiversity (Flora and Fauna)

Section 6 of the EIAR refers to biodiversity. I refer the Board to the Appropriate Assessment Screening section above.

The site is currently landscaped as open space, as an interim measure to improve the aesthetics of the site pending its complete development. The application site adjoins a previously excavated and partly built concrete structure, which is part of the overall HSQ site.

An ecological assessment for the proposed development, which assessed the potential impact to the ecological receptors during the construction and the operational phase of the development was undertaken. Methodology utilised is described. A site survey was carried out on 3rd September 2020. There is no natural or semi-natural vegetation cover to obscure signs of mammal species so it is contended by the applicant that the carrying out of a single survey in September is adequate.

#### *Watercourses*

There are no streams, open drains or natural habitats on site. Natural drainage of the site is towards the River Liffey, which is located 250m from the development site.

#### *Designated Sites*

The nearest European sites are the Special Areas of Conservation (SAC) and Special Protection Areas (SPA) associated with Dublin Bay, with the four nearest

sites being the North Dublin Bay SAC, South Dublin bay SAC, North Bull Island SPA and South Dublin Bay and River Tolka Estuary SPA, all of which are approximately 8km from the development site.

The nearest sites designated for nature conservation, not otherwise designated as a European site, are the Royal Canal pNHA (Site Code 002103), located approximately 1km from the proposed project site at its nearest point while the Grand Canal pNHA (Site Code 002104), located approximately 3km from the development site. The subject site does not have any linkages with these pNHA and hence the proposed project could not have any impacts on these areas.

#### *Rare/Protected Plants*

There are planted ornamental specimen trees throughout the grassland. The boundary with the adjoining Royal Hospital gardens is formed by a large retaining wall which has a covering in parts of Virginia creeper. There are no known records of rare or scarce plant species within the proposed site and the existing habitats would not be expected to support any such species.

#### *Wintering Birds*

No wintering birds were recorded on site. Due to the absence of suitable habitats, no bird species of conservation importance would be expected within the site at any other times of year.

#### *Other Birds*

All of the bird species recorded within the proposed site are very common in Ireland. The only bird species recorded actually using the site was pied wagtail and wren. Gulls, feral pigeons and jackdaws were recorded flying over the site.

#### *Bats*

No bat surveys were undertaken. However, the site offers no potential for roosting bats as there are no mature trees or suitable buildings. The retaining boundary wall with the Royal Hospital gardens does not have suitable crevices for roosting as there is a smooth finish. Foraging bats could pass through the site (as bats are widespread in this part of Dublin city and would be expected in the Royal Hospital complex) though the absence of any mature trees or hedging offers low potential for foraging.

#### *Mammals*

The site survey did not record any terrestrial mammal species on site. It is noted that the site does not have habitats to support large mammals such as badger.

Red fox may at times pass through the site as it is a widespread species in Dublin city. Brown rat was recorded in the adjoining HSQ site to the north and would be expected on site, while other small mammals such as pygmy shrew, house mouse, and possibly hedgehog may occur at times.

#### *Other Species*

The site does not have any habitat suitable for amphibian or reptile species.

#### *Invasive Species*

The survey undertaken did not record any invasive species.

Predicated impacts of the proposed project are outlined in section 6.5 of the submitted EIA for both the construction and operational phases. It is noted that the AA Screening document concluded that in the absence of mitigation, there is potential for contaminated water emanating from the HSQ development site to enter the River Liffey system and ultimately the aquatic and intertidal environment of Dublin Bay, during the construction and (to a lesser extent) operational phases of the proposed development. The significance of any subsequent effect on the qualifying interests/special conservation interests of the Natura 2000 sites would vary depending on the type of pollutant, as well as the magnitude and duration of the event. A Stage 2 appropriate assessment has been undertaken and an NIS has been prepared.

Mitigation measures are proposed for both the construction and operational phases.

Cumulative impacts were examined in section 6.5.5 and states that the principal potential in-combination effect to be considered is in the context of the overall HSQ development site of which approximately 60% has already been developed and is operational. Cumulative impacts during the construction and operational phases are considered to be not significant.

#### **Assessment**

I have considered all of the written submissions made in relation to biodiversity including the third party submissions; the Chief Executive report from the planning authority and the submission received from the Department of Housing, Local Government and Heritage.



The Department acknowledges that there is no habitat of nature conservation significance present on the site, nor have any plant or animal species of conservation importance been identified as occurring there. In relation to bats, the report states that there are no structures suitable as bat roosts on the site. They acknowledge the contents of the submitted EIAR which states that, although no bat surveys were carried out, it is considered likely that bats might forage over this area to some extent, and that these mammals would be expected to use the adjacent grounds of the Royal Hospital for the same purpose. The Department states that observations by a member of their staff confirm such usage of the Royal Hospital's grounds by bats for foraging. The Department highlights that the EIAR contains no assessment of the impact of the proposed development on bats, and sets out no measures to mitigate any effects of the development on them. In view of the height of the apartment buildings proposed, they consider that there is a definite possibility that both the external and internal lighting of the proposed scheme might detrimentally impact on bats utilising the grounds and buildings of neighbouring the Royal Hospital. They are of the opinion that a review of the design of the external and internal lighting of the scheme is required to minimise any such impacts on bats.

I note the report of the Department in this regard. I also note that the site offers no potential for roosting bats as there are no mature trees or suitable buildings. The retaining boundary wall with the Royal Hospital gardens does not have suitable crevices for roosting as there is a smooth finish. Foraging bats could pass through the site (as bats are widespread in this part of Dublin city and would be expected in the Royal Hospital complex) though the absence of any mature trees or hedging offers low potential for foraging. This is an urban site, zoned for development. Given the site characteristics and locational context, I am satisfied that impacts on bats would not be so great as to warrant a refusal of permission. The height of the proposed buildings are generally comparable to those existing in the wider area. I am satisfied that the matter of bat sensitive lighting could be adequately dealt with by means of condition. Bat boxes could also be erected on site, if the Board were so minded.

Only two bird species were recorded utilising the site, pied wagtail and wren, while gulls, feral pigeons and jackdaws were observed in flight over it. The Department state however that they are aware that herring and lesser black-backed gulls nest on the neighbouring EIR building. The submission from the DAU has raised the potential of bird collision, having regard to the height of the building. They note the EIAR does not address this issue. They acknowledge that the extent of bird collisions with buildings in Dublin is unknown, tall buildings, and particularly those with windows positioned so as to provide apparent 'fly-through' opportunities, appear to constitute a definite potential collision risk for birds. This risk is probably heightened when buildings are located in or close to areas used by bird as flight corridors such as in the present case the River Liffey. The Department states that recognition in North America of the problem of high bird mortality from collisions with buildings has resulted in the adoption of regulations and guidelines concerning the design of buildings to limit such collisions. An example is Toronto's Green Standard (Version 3), which came into force in 2020 and includes measures for 'Bird Collision Deterrence for Mid to High-Residential and all Non-Residential Developments'. The Department considers that the measures to deter bird collisions set out in this document constitute a reasonable model for similar measures to be employed in the case of present development, and accordingly recommends that the applicant, as a condition of the granting of planning permission, should be requested to re-assess the design of the glazing to be installed in the apartment blocks based on a methodology derived from Toronto's Green Standard.

I note the recommendation of the Department in this regard. I note also that the matter was raised as a concern by some of the third parties. I highlight to the Board that neither the herring gull nor lesser black-backed gulls are qualifying interests for any designated sites with Dublin Bay. The Department have not expanded as to the likely flight paths of these species. I note that only two bird species were recorded utilising the site, pied wagtail and wren, while gulls, feral pigeons and jackdaws were observed in flight over it. These are all common species. I have no information before me to believe that the proposed development would lead to the possibility of interruption of flight lines of SCI bird species commuting to other ex situ feeding habitats within the area or on migration. The height of the tallest building within the

proposed development site is noted (and is recommended for reduction in height by five storeys). This recommended reduction in height relates to planning matters as opposed to environmental concerns or concerns regarding bird strike. I highlight to the Board that the concerns of the Department do not relate to appropriate assessment matters. Their concerns relate to local ecology only. There is no evidence on file to show that the proposed development would have any significant effects on any SCI species associated with designated sites within Dublin Bay or any designated site.

The report from the DAU acknowledges that the impact of bird collision from taller buildings is relatively unknown in Dublin. In terms of their recommended condition, I have no objection to its inclusion so as to prevent the potential of bird collision. I highlight to the Board however that there are aspects of this proposed condition which do not relate to the proposed development. In this regard, the proposed development does not contain any fly-through areas or green walls. As stated above, I am recommending the omission of the arch between Blocks A and C. The design of the building is such that the majority of glazing is divided up by solid elements. The proposed building heights are generally comparable to other existing/permitted structures in the wider area. I am therefore of the opinion that it is reasonable that the applicant provides further details relating to compliance with the recommended conditions such as the use of additional opaque materials and visual markers whilst I consider that elements relating to fly-through areas and green walls are not applicable in this instance.

I am of the opinion that impacts on biodiversity would not be so great as to warrant a refusal of permission. The landscaping proposed is of a high quality. The mitigation measures summarised in section 17 and monitoring measures summarised in section 17.12 of the submitted EIAR are noted. The clearance of vegetation that may be suitable for use by nesting birds will be undertaken outside the bird nesting season. Mitigation measures are also set out in other documents, including inter alia the Outline Construction Management Plan (CMP). I have examined all of the documentation before me in relation to this matter including the mitigation measures proposed in Chapter 8 (Water) and Chapter 12 (Material Assets: Water Supply, Drainage and Utilities).

I note the Department have recommended that permission be granted, subject to conditions. The planning authority have not raised concerns in relation to this matter.

I am satisfied that biodiversity matters have been appropriately addressed in terms of the application and the information submitted by the applicant and that no significant adverse direct, indirect or cumulative effects on biodiversity (flora and fauna) are likely to arise.

#### 13.4.3 Lands, Soils and Geology

Section 7 of the EIAR deals with land, soils and geology. This chapter provides an overview of the approach taken to address these topics. Desk studies and surveys carried out are described.

The site and surrounding area is underlain by 'Calp' formation comprising of dark grey to black limestone and shale. The bedrock aquifer is classified as a Locally Important Aquifer (Li). The GSI, vulnerability rating for pollution from the ground surface is Low. The groundwater flows in a northerly direction towards the River Liffey.

When works were being constructed on the overall HSQ site, with the exception of the lower levels to the buildings along St Johns Road West, no construction works commenced on the subject site. The site remained excavated to formation level, until site remediation works were undertaken in 2012. The site remediation works involved landscaping treatment, which currently remains in place.

Given that a secant pile wall has been constructed and remained in place on the site acting as a retaining wall to the Royal Kilmainham Gardens since 2003 and the proposed development is to be built from the existing site levels, the risks relating to the proposed development are low with regard to impact on neighbouring structures, ground water and ground movements.

There will be no need for additional temporary works during the development of basement level -1 outside of the normal concrete shutters to facilitate the pouring of

RC perimeter walls, columns and podium slabs.

Any contaminated material from historic site uses has been previously been excavated off site.

Potential impacts during the construction and operational phases are presented in section 7.5. Mitigation measures to address these potential impacts are outlined. Following construction there will be no long-term significant impacts with respect to soils and geology of the site. No operational impacts have been identified in this regard. Residual impacts will be temporary and not significant, during the construction phase and imperceptible and neutral at operational phase. Cumulative impacts are addressed, as are interactions arising.

### **Assessment**

I have considered all of the written submissions made in relation to lands, soils and geology. The planning authority have not raised matters with this chapter of the EIAR. I am satisfied that the identified impacts would be avoided, managed and mitigated by the measures which form part of proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of lands, soils and geology.

#### **13.4.4 Water**

Section 8 of the submitted EIAR deals with water and considers the potential impacts on the surface water environments during the proposed construction and operational phases. This chapter includes reference to the Site Specific Flood Risk Assessment Report, which accompanies this application.

The existing environment and the characteristics of the proposed development are detailed. The main water body relevant to the proposed development is the River Liffey, which is located approximately 250m to the north of the site. The River Liffey flows in an easterly direction and discharges into the Irish Sea, approximately 7km east of the site. The historical Camac River is culverted for some of its length but is un-cluverted as it passes within a 100m to the east of the subject site. The Camac is culverted as it passes beneath St. Johns Road West and ultimately discharges into

the River Liffey. The proposed project is located within the Eastern River Basin District (ERBD). As far as I am aware this is now referred to as the Ireland River Basin District.

The subject site is located within Flood Zone C. The Site-Specific Flood Risk Assessment concludes that the risk of on-site flooding or the potential to cause off-site flooding from all possible mechanisms is deemed to be low. As such the proposed development is in accordance with statutory guidelines.

A 375mm diameter dedicated stormwater sewer along St. Johns Road West, north of the site, which flows west to east.

Predicted impacts of the proposed project are set out in section 8.5, which includes for potential impacts of climate change. Predicted impacts are stated to be long-term and slight.

Mitigation measures for both construction and operational phases are outlined in section 8.7, which includes for the preparation of an Environmental Management Plan for the construction phase and proposed SuDS measures including green roofs for the operational phase. Residual impacts are stated to be neutral, slight and long-term. Cumulative impacts have been addressed. No additional significant effects are predicted following implementation of mitigation measures.

### **Assessment**

I have considered all of the written submissions made in relation to water. The application has been reviewed by the Drainage Division of planning authority, which does not raise any objections, subject to conditions being imposed.

It is noted that during the operation phase, the design incorporates measures in accordance with the Greater Dublin Strategic Drainage Study (GDSDS), the SSFRA, together with SuDS measures.

The site is located in Flood Zone C and having regard to the mitigation measures proposed, I am satisfied that there will not be a negative impact on flooding as a result of the proposed development.

I am satisfied that the identified impacts would be avoided, managed and mitigated by the measures which form part of proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of water.

#### 13.4.5 Air, Dust and Climatic Factors

Section 9 of the submitted EIAR deals with air, dust and climatic factors and considers the potential air quality and climate impacts associated with the proposed development. The site is located in an urban area adjoining a major transport corridor. The dominant influences on air quality in the area are emissions from road traffic and to a much lesser extent from rail transport, together with heating.

Baseline data for the existing air quality environment, together with data available from similar environments indicates that levels of nitrogen dioxide, carbon monoxide, particulate matter less than 10 microns and less than 2.5 microns and benzene are generally well below the national and European Union ambient air quality standards. It is noted that there was an exceedance of the EU Air Quality limit value for nitrogen dioxide at the St. John's Road West station in 2019. The EPA have determined that this exceedance was as a result of the heavy traffic passing this monitoring station. The exceedance has been reported to the European Commission and an Air Quality Action Plan is being prepared by Dublin Local Authorities in conjunction with the EPA, to identify ways of improving air quality in the area.

Identification of likely significant impacts is undertaken in section 9.6. The greatest potential impact on air quality during the construction phase is from construction dust emissions. In order to minimise dust emissions during construction, a series of mitigation measures have been prepared, which include a Dust Management Plan. When the dust minimisation measures set out in the Plan are implemented, fugitive emissions of dust from the site are considered to be short-term and imperceptible.

Potential impacts to air quality and climate during the operational phase of the proposed project are as a result of emissions to atmosphere from heating sources and traffic associated with the development. The potential impact on air quality associated with a traffic volume change of this magnitude is considered not significant in a local context and imperceptible in an overall context particularly

considering the advanced developments made in cleaner and more efficient vehicle engines. It is predicted that combustion gas emissions will be not significant and will not have an adverse significant impact on the existing ambient air quality in the vicinity of the proposed development site. The operational phase of the proposed project will have a long-term, not significant impact on air quality and climate. Cumulative impacts have been addressed.

Impacts to climate at this stage are predicted to be short-term and imperceptible. This has been raised as a concerns in one of the third party submissions received. The proposed project has been designed to minimise the impact to climate, where possible, during operation for example by the use of thermally efficient buildings which will reduce the consumption of fossil fuels. Microclimate impacts have also been examined and it is recognised that adverse wind effects can reduce the quality and usability of outdoor areas, and could lead to safety concerns in extreme cases. A Wind Microclimate Analysis was undertaken and this is included in Appendix 9B.

Both cumulative impacts and residual impacts have been examined. No significant impacts on either air quality or climate are predicted during the construction or operational phases of the proposed project.

### **Assessment**

I have considered all of the written submissions made in relation to air quality and climate. The planning authority have not raised concerns in this regard. The report from the Air Quality Monitoring & Noise Control Unit, as contained in the Chief Executive Report, does not raise concerns in this regard and they have recommended conditions in the event of permission being granted for the proposed development.

Some of the third parties have raised concerns in relation to wind tunnelling. I note that the matter has been addressed by the applicants and as stated above, a Microclimate Wind Analysis was undertaken. Its results indicate no unacceptable wind effects. Overall, the proposed development contains many high-quality spaces that pedestrians and occupants undertaking a wide variety of activities will find comfortable and attractive.



I am satisfied that the identified impacts would be avoided, managed and mitigated by the measures which form part of proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of air quality and climate.

#### 13.4.6 Noise and Vibration

Section 10 of the submitted EIAR deals with noise and vibration. Details of surveys undertaken have been detailed. Prevailing noise levels in the locality are primarily due to local road traffic. There are no significant sources of vibration in the vicinity of the subject site. A noise impact assessment was undertaken which focused on the potential outward impacts associated with the construction and operational phases of the proposed development on its surrounding environment.

During the construction phase the main site activities will include demolition and site clearance, building construction, and landscaping. This phase has the greatest potential for noise and vibration impacts on the surrounding environment but this phase will be of short-term impact. There will be no blasting techniques used during construction and it is not envisaged that rock-breaking will be required. During the operational phase of the proposed development, no significant sources of noise or vibration are expected from within the development. The primary source of noise in the operational context relates to any changes in traffic flows along the local road network and any operational plant noise.

Mitigation measures have been outlined, to ensure any noise and vibration impacts are minimised, which includes for a Noise and Vibration Management Plan. A Community Relations Officer shall also be appointed to deal with local stakeholders.

Residual impacts are detailed. The predicted increase in traffic flows associated with the project is not significant in an overall context. The predicted effect is considered to be not significant and long-term.

## **Assessment**

Many of the third party submissions raise concerns regarding noise during the construction and operational phases of the proposed development. I refer the Board to my assessment of this matter above in the section entitled 'Impacts on Existing Residential Amenity'. In terms of noise and vibration, I consider that there may be nuisance with noise during the construction phase. Vibration monitoring will be undertaken during the construction phase to ensure that there is no vibration impact on the garden wall of the RHK. Mitigation measures have been detailed as part of the Construction Management Plan. These impacts would be temporary in nature. Given the nature of the development proposed, I do not anticipate noise levels during the operational phase to be excessive.

I have considered all of the written submissions made in relation to noise and vibration. The planning authority have not raised concerns in this regard. I am satisfied that the identified impacts would be avoided, managed and mitigated by the measures which form part of proposed scheme, the proposed mitigation measures and through suitable conditions for example noise sensors. I note the report of the Environmental Health Officer's Division of the planning authority which does not raise concern, subject to condition. I am therefore satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of noise or vibration.

### **13.4.7 Material Assets: Traffic and Transport**

Section 11 of the submitted EIAR deals with Material Assets: Traffic and Transport. The issue of traffic and transport has also been dealt with in my assessment above and I refer the Board to same. This section should be read in conjunction with the above assessment. It is noted that a number of transport related documents have been submitted with the application documentation including Traffic and Transport Assessment, DMURS Statement of Consistency and Residential Travel Plan. The methodology used is described including the surveys undertaken. The methodology included the application of growth factors to scale flows up to future year levels. The TRICS database was utilised. The potential trip generation of associated intended future development on an adjacent site has also been established, as has that of a nearby committed development on Military Road.

The development site benefits from proximity to good quality public transport services- it is situated within a 5-minute walk of Heuston Station and within a 10-minute walk of the Heuston and James's stops on the Luas Red Line. The nearest bus stop on St. John's Road West is within a 5 minute walk of the site. An advisory cycle lane is in place on St. John's Road West on the northern boundary of the development site. There are no existing cycle facilities on Military Road. Three junctions were assessed- J1. St. John's Road West (R148) / Military Road J2. Military Road / Heuston South Quarter (east access) and J3. St. John's Road West (R148) / Heuston South Quarter (north access). An assessment of these three no. junctions indicates that the junctions currently operate within effective capacity on all approaches during both the AM peak hour and the PM peak hour.

Due to its small size and the fact that it is expected to serve exclusively the proposed development (or those already passing through it), the development's retail unit is not considered to have any potential to generate external vehicular trips to/from the development and has therefore been excluded from the trip generation calculations.

The demolition and construction works will be short-term in nature. As a 'worst-case' scenario, it is assumed that a maximum of 4 no. HGV trips may be made to the site each hour (one HGV arrival and one HGV departure every 15 minutes). Limited car parking for construction personnel is likely to be provided on site during construction works and some additional vehicular trips shall therefore be made to/from the site each day by construction personnel commuting to and from work. The anticipated worst-case scenario vehicular trip generation of the subject site during construction is stated to be 55 trips during each peak period. It is proposed to use the existing northern HSQ access on St. John's Road West (R148) as the sole vehicular access to the subject site during construction works.

During its operational phase, the proposed development is predicted to result overall in a long-term slight adverse impact on the operation of junctions on the surrounding road network.

Potential significant impacts in both the construction and operational phases have been identified in section 11.6. Mitigation measures are proposed, including the preparation of site-specific Construction Management Plan. The main mitigation

measures during the operational phase will be to reduce car parking provision, high provision of secure bicycle parking and internal car share club.

Predicted residual effects are set out in section 11.8. The residual impact of the construction phase of the proposed project in terms of traffic and transport will be slight and short-term. At operational stage, with the proposed mitigation measures in place, the residual impacts of the proposed project on traffic will be adverse in nature, long-term in duration, but slight in significance.

### **Assessment**

I note that in line with DCC Development Plan and Smarter Travel policies, there are a reduced number of car parking spaces provided- 80 no. car parking spaces (including 4 no. disabled spaces and 8 car club spaces). The site is well served by public transport, including several buses and the proximity of the site to Heuston station is noted. The layout and the proposed pedestrian accesses will further encourage use of alternative modes of travel to the private car. Secure and safe bicycle parking spaces are provided, and the site is immediately proximate to public transport. The site is within walking distance of the city centre.

I have considered all of the written submissions made in relation to traffic and transportation. The planning authority states that a report has been received from their Transportation Planning Division and conditions are recommended.

I am satisfied that the identified impacts would be avoided, managed and mitigated by the measures which form part of proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of Material Assets: Traffic and Transport.

#### **13.4.8 Material Assets: Water Supply, Drainage and Utilities**

Section 12 of the submitted EIAR deals with Material Assets: Water Supply, Drainage and Utilities and assesses the potential impacts of the proposed project on foul drainage, potable water and existing utilities. Methodology used is detailed. Legislative background is set out. Details of consultations undertaken are set out in section 12.2.3.

There is a 300mm diameter dedicated foul public sewer along St. John's Road, flowing west to east. There is an existing connection from the subject lands to this sewer. There is a 450mm diameter HPPE public watermain, along the eastern boundary of the larger HSQ site, adjacent to Military Road. This watermain has an existing connection into the subject lands.

The proposed development will require a new separate drainage network to collect and convey the effluent generated by the proposed development. All foul effluent generated from the proposed development shall be collected in separate foul pipes and flow under gravity, to the existing 300mm diameter sewer on top of the site's existing ramp adjacent to St. Johns Road West. This existing foul sewer drains to the east and ultimately outfalls into the Wastewater Treatment Plant and Ringsend. The proposed development will require a new separate drainage network to collect and convey the effluent generated by the proposed development. The proposed development will connect into the existing local potable water system, which is connected into the public network. Irish Water have issued a Confirmation of Feasibility response for the proposed development. They have also issued a letter of Design Acceptance for the development.

Existing utility services are described, together with proposed works and mitigation measures. Identification of likely significant impacts is set out in section 12.7. During the construction phase, impacts has been assessed to be short-term and slight/imperceptible. During the operational phase, impacts has been assessed to be long-term and slight. In addition, no significant impacts on services or the infrastructure itself are predicted to occur as a result of the operational phase. Mitigation measures are outlined for both construction and operational phases.

No significant residual impacts in relation to services are anticipated to occur as a result of the proposed project.

### **Assessment**

I have considered all of the written submissions made in relation to Material Assets: Water Supply, Drainage and Utilities. The proposed foul drainage and water supply will connect to mains infrastructure. I have no information before me to believe

would be prejudicial to public health. The planning authority have not raised concerns with this chapter of the submitted EIAR. The Drainage Division of the planning authority state that they have no objections to the proposal, subject to conditions. A report received from Irish Water does not object to the proposal, subject to conditions. A Design Acceptance has issued from Irish Water.

I am satisfied that the identified impacts would be avoided, managed and mitigated by the measures which form part of proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of Material Assets: Water Supply, Drainage and Utilities.

#### 13.4.9 Cultural Heritage and Archaeology

Section 13 of the submitted EIAR deals with Cultural Heritage and Archaeology and assesses the impact, if any, on the archaeological and cultural heritage resource of the proposed project. The methodology used was detailed. Included with the documentation is the report of archaeological excavation undertaken on site in 2002-2004 (Licence 02E0067). As the site has been fully excavated, there will be no impact on its archaeological heritage.

In the course of this full archaeological work in 2000s, a truncated cremation cemetery of the early Bronze Age was uncovered and fully excavated. All soils, features and other associated with this site have been fully archaeologically excavated. This excavated site will be included on the next edition of the Record of Monuments and Places (DU018-112). No archaeological soils therefore remain on any part of the subject site, nor indeed on the larger site of which it forms part.

There are no likely significant impact on the archaeological heritage of the site as a result of the proposed development. There is no requirement for mitigation or monitoring of works as the site has been fully excavated. Mitigation and monitoring was undertaken in the 2000s as part of the development of the larger site.

## **Assessment**

I note all submissions made in relation to archaeology. The report of the Department is noted in terms of archaeology. They note that previous archaeological mitigation has been carried out in connection with the construction of the basement area at the development site. On the basis of the archaeological report and the contents of EIAR, no further archaeological mitigation measures are required for the construction phase of the proposed development. The planning authority note in the Chief Executive Opinion that the City Archaeologist advises that the site has been previously archaeologically resolved. No report from the City Archaeologist appears to be on file.

The Heritage Council states that the Bullies Acre (Burial grounds) to the west of the site is protected under the National Monuments Act 1930-2013 as this is the site of a medieval priory. There is a strong likelihood of sub-surface remains in the immediate area. I note that no development is taking place within the Bullies Acre and I am satisfied with the investigations previously undertaken on the site as outlined in red.

I have considered all of the written submissions made in relation to Cultural Heritage and Archaeology. I am satisfied that there is sufficient information on file to assess this matter and that mitigation by condition would be appropriate if any material is found during construction works. I am satisfied that they have been appropriately addressed in terms of the application and the information submitted by the applicant and that no significant adverse direct, indirect or cumulative effects on Cultural Heritage and Archaeology are likely to arise.

### **13.4.10 Cultural Heritage: Architectural Heritage**

Section 14 of the submitted EIAR deals with Cultural Heritage: Architectural Heritage and assesses the likely effects of the proposed project on architectural heritage of the site and within its wider context. Methodology used is detailed. A description of views assessed is set out in Table 14.3.3.1. Structures of groups of structures potentially impacted by the proposed development is set out in Table 14.4.2.7.1.

The submitted Architectural Heritage and Visual Impact Assessment (AHVIA) is also referenced, as are the verified photomontages prepared in respect of the proposed project. I have undertaken a detailed assessment in relation to this matter under the planning assessment above and I refer the Board to same. In order to avoid repetition and in the interests of brevity, I will not reiterate and refer the Board to same.

Identification of likely significant impacts has been undertaken in section 14.5. The cumulative visual impact of the proposed project, together with existing and proposed development of adjoining sites on the architectural heritage character of the wider context has been assessed. Mitigation by design has been utilised, in order to minimise potential visual impacts on the Protected Structures on site, the character of their setting and the built heritage of the surrounding area.

Residual and cumulative impacts have been identified. Mitigation measures are proposed.

### **Assessment**

Many of the third party submissions received have raised concerns with regards the impacts of the proposal in the architectural heritage of the area, in particular the impacts on the character and setting of the Royal Hospital Kilmainham complex and its gardens. The planning authority, raises concerns in this regard as have Prescribed Bodies including the Department of Housing, Local Government and Heritage, An Taisce and the OPW. The Heritage Council raise concerns in relation to the impacts of the proposal on the architectural heritage of the RHK and state that the setting of the space of a garden can be drastically and negatively impacted on by overbearing and unrelated elements beyond its perimeter.

I have undertaken a comprehensive assessment of Visual Amenity and Impacts on Architectural Heritage within section 11.7. In the interests of brevity, I will not reiterate but refer the Board to same. This section should be read in conjunction with the above assessment, in terms of addressing third party concerns.



The international significance of the RHK complex, including its gardens is acknowledged by all parties. The proposal as submitted has the potential to negatively impact upon this complex, in particular Blocks D and E and I have concerns in this regard. For this reason, I have recommended reduction in their height, to the top of the existing boundary wall with the RHK, together with their relocation further east by approximately 5 metres. This would achieve a balance between permitting development whilst ensuring that the proposal does not negatively impact upon the architectural heritage of the adjoining site or any other historical structures in the vicinity. These concerns relate to planning matters as opposed to environmental concerns.

I note that a pedestrian gate from the subject site into the RHK gardens has been referenced in this section, which includes for the preparation of a method statement for the removal of the wall fabric. I again note that the provision of this gate is not included for within this current application. It is referenced for information purposes only. Given that the OPW state that they are opposed to the provision of such a gate, it appears unlikely at this time that it will come to fruition.

I have considered all of the written submissions made in relation to Cultural Heritage: Architectural Heritage. I am satisfied that there is sufficient information on file to assess this matter and that mitigation by condition would be appropriate. Subject to revisions detailed within section 11.7 above, I am satisfied that the proposal has been appropriately addressed in terms of the application and the information submitted by the applicant and that no significant adverse direct, indirect or cumulative effects on Cultural Heritage: Architectural Heritage are likely to arise.

#### 13.4.11 Landscaping and Visual Impact Assessment

Section 15 of the submitted EIAR deals with Landscaping and Visual Impact Assessment and presents an assessment of the likely effects on the landscape and visual environment arising from the construction and operation of the proposed project. Methodology used has been detailed. The assessment addresses the visual impacts and impacts on the character of the landscape. A description of the site and surrounding environment has been set out.

A series of photomontages have been prepared- 24 viewpoints which seeks to show the proposed residential scheme within both its immediate setting and in more distant views (see Appendix 14A of submitted EIAR for locations). I refer the Board to the planning assessment above, in particular the section entitled 'Visual Amenity and Impacts on Architectural Heritage' (section 11.7) where this matter has been comprehensively assessed and to avoid repetition, I will not reiterate points made above. This section should be read in conjunction with the above assessment, in terms of addressing third party concerns.

The construction phase will, depending on location, result in imperceptible to moderate negative impacts. I note that any construction impacts are short-term in nature.

The impacts of the proposed project at the operational phase is stated as being imperceptible to slight negative.

Cumulative and residual impacts have been identified. Mitigation measures are proposed.

### **Assessment**

I have considered all of the written submissions made in relation to landscaping and visual impact. I have considered the concerns raised by third parties in relation to the opinions that the proposal is incongruent/out of character with existing development in the area and to avoid repetition, I refer the Board to those sections above. The concerns expressed by the planning authority, as raised throughout the assessment, relate to planning matters as opposed to environmental matters. It is clear that the scale of development will be visible in both near and distance views. I note the concerns raised in submissions in relation to impacts on the Cone of Vision (CoV) and this has been addressed in section 11.7 above.

As stated above, the applicants contend that the impacts of the proposed project at the operational phase is stated as being imperceptible to slight negative. I would not concur with this assessment in terms of the impacts of proposed Blocks D and E on the visual amenity of the area, together with the proposed arch between the upper

levels of Block A and C. I consider that these have the potential to create significant negative impacts and for this reason, I have recommended alterations/revisions to their design and layout. It is my opinion, that the applicant's assessment is more accurate once these revisions have been undertaken. I highlight to the Board that my concerns in this regard relate to planning matters as opposed to environmental concerns.

I would concur with the planning authority that the visual impact of Blocks D and E are of concern. I would also concur with their opinion in relation to removal of the proposed arch between the upper levels of Blocks A and C. As proposed this arch is considered unnecessary, inappropriate and excessively dominant and would detract from views in the vicinity. In general, I consider the proposed heights in principle to be appropriate for this area, however I refer the Board to my assessment above in relation to the reduction in height of proposed Block A at this current time (the Board is referred to the cumulative visual impacts of the proposed 3<sup>rd</sup> phase commercial development to the north of this site in section 5.5.1.3 of the submitted EIAR).

I am of the opinion that subject to the revisions recommended, that once completed and occupied, the proposal will represent a comprehensive transformation of these lands to a high density, urban development, a continuum to the existing HSQ quarter. Landscape and visual impacts are likely to be perceived initially as negative by virtue of the landscape change and the scale of the development proposed, however these impacts will become more acceptable over time as the buildings are occupied and the development offers new facilities to the wider area, for example public open space provision and the retail unit.

Subject to recommended revisions, I am generally satisfied that the matter of Landscaping and Visual Impact Assessment has been appropriately addressed in terms of the application and the information submitted by the applicant and that no significant adverse direct, indirect or cumulative effects on landscaping and visual impact assessment are likely to arise.

#### 13.4.12 Interactions with the Foregoing

Section 16 of the submitted EIAR provides an assessment of the interactions and interrelationships of the different environmental factors / impacts that will occur as a result of the proposed development, which have been discussed in the preceding chapters. Table 16.1 provides a matrix of potential interaction and the subsequent text details the interactions between topics. I consider this approach to be satisfactory and that adequate consideration has been given to the interactions.

I have considered the interrelationships between factors and whether these might as a whole affect the environment, even though the effects may be acceptable on an individual basis. In my assessment of each environmental topic, I have considered the likelihood of significant effects arising as a consequence of interrelationships between factors. Most interactions, for example the impact of noise and air quality on the population and human health are addressed under individual topic headings. Given the generally modest impacts which are predicted to occur having regard to the nature of the proposed development, mitigation measures, or as a consequence of proposed conditions, I do not foresee any likelihood of any of these interrelationships giving rise to significant effects on the environment.

In conclusion, I am satisfied that there are no such effects and, therefore, nothing to prevent the granting of permission on the grounds of interaction between factors.

#### 13.4.13 Mitigation Measures

Section 17 of the submitted EIAR compiles and lists the mitigation measures and monitoring requirements described in the previous chapters of the EIAR.

#### 13.4.14 Reasoned Conclusion on Significant Effects

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment.

The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

Having regard to the examination of environmental information contained above, and in particular to the EIAR and supplementary information provided by the developer, and the submissions from the planning authority, Prescribed Bodies and observers in the course of the application, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- **Biodiversity:** Impacts mitigated by proposed landscaping strategy; will ensure no invasive species are introduced; the significant provision of active and passive open space and measures to avoid disturbance to nesting birds.
- **Land, soils and geology** impacts to be mitigated by construction management measures including reuse of excess material within the site; proposals for identification and removal of any possible contamination; management and maintenance of plant and machinery.
- **Water** impacts to be mitigated by management of surface water run-off during construction; adherence to Construction Management Plan; to attenuate surface water flow and avoid uncontrolled discharge of sediment. Operational impacts are to be mitigated by surface water attenuation to prevent flooding.
- **Air, Dust and Climatic Factor** impacts to be mitigated by the appointment of a designated site agent; implementation of Construction Management Plan which includes for dust minimisation and control measures; construction of thermally efficient buildings and Mechanical Ventilation and Heat Recovery (MVHR) systems
- **Landscape and Visual impacts** mitigated by the use of screening/webbing to prevent materials falling from a height; directing site lighting away from existing structures; design and landscape strategy; maintenance regime.
- **Architectural Heritage** impacts mitigated by use of a qualified conservation architect to oversee works; implementation of agreed CEMP to minimise visual impact during construction.

- **Archaeological** impacts which will be mitigated by archaeological monitoring of ground disturbance works; notification of Department of Housing, Local Government and Heritage prior to commencement of works.
- **Traffic and Transport** impacts to be mitigated by implementation of Construction Management procedures; limited car parking provision; car share club provision; implementation of Residential Travel Plan.
- **Noise and vibration** impacts which will be mitigated by adherence to requirements of relevant code of practice; noise control techniques; quality site hoarding to act as noise barrier
- **Material Assets: Water Supply, Drainage and Utilities** impacts which will be mitigated by consultation with relevant service providers; adherence to relevant codes of practice and guidelines; service disruptions kept to a minimum

The submitted EIAR has been considered with regard to the guidance provided in the EPA documents 'Guidelines for Planning Authorities and An Bord Pleanála on Carrying our Environmental Impact Assessment' (2018); 'Guidelines on the Information to be Contained in Environmental Impact Assessment Reports' (draft August 2017) and 'Advice Notes for Preparing Environmental Impact Statements' (draft September 2015). The assessments provided in the individual EIAR chapters are considered satisfactory. The likely significant environmental effects arising as a consequence of the proposed development have therefore been satisfactorily identified, described and assessed. In the main, they would not require or justify refusing permission for the proposed development or requiring substantial amendments to it.

## 14 Recommendation

- 14.1 Having regard to the above assessment, I recommend that permission be GRANTED, for the development, as proposed, in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

## **Recommended Draft Board Order**

### **Planning and Development Acts 2000 to 2019**

#### **Planning Authority: Dublin City Council**

**Application** for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, in accordance with plans and particulars, lodged with An Bord Pleanála on the 08<sup>th</sup> day of October 2021 by HPREF HSQ Investments Ltd. care of Declan Brassil, Dublin 7.

#### **Proposed Development:**

Permission for development at this site (approximately 1.08 ha in area) at Heuston South Quarter St. John's Road West (to the north), Military Road (to the east), Royal Hospital Kilmainham (Protected Structure) (to the south and west), Kilmainham, Dublin 8.

The proposed development will consist of a residential development of 399 no. 'Build To Rent' residential units and all ancillary and associated uses, development and works, and a retail unit of 120 sq m, on a site of 1.08 ha.

The proposed development consists of:

- Site clearance and localised demolitions to remove part of the podium and Basement Level -1 reinforced concrete slabs at the interface of the proposed Blocks A and B, together with the incorporation of part of the existing double basement level structure extending to approximately 7,613 sq.m over two levels (excluding an area of 3,318 sq.m that will be backfilled at Basement Level -1) within the proposed development.
- The construction of 5 no. buildings (Blocks A to E) ranging in height between 3- to 18-storeys over double basement level/podium level to provide a residential/mixed use development to provide 399 Specific BTR (Build to Rent) units with a total gross floor area of 29,391 sq.m, comprising 46 no.

studios, 250 no. one bedroom units, 90 no. 2 bedroom/4 person units and 13 no. 2 bedroom / 3 person units; internal communal ancillary residential services/amenities to include a shared co-working area/lounge (178 sq.m) and gym (102 sq.m) at lower ground floor level, and lounges on either side of a residential foyer at ground floor/podium level within Block A (196 sq.m), and a TV Room / lounge (57 sq.m) at ground floor/podium level within Block C.

- An independent retail unit (120 sq.m) is proposed at ground floor/podium level within Block B.
- A double basement is provided that will be integrated within the existing basement levels serving the wider HSQ development and will be accessed from the existing vehicular ramped accesses/egresses onto/off St. John's Road West and Military Road to the north and east, respectively. Basement level -1 provides: a refuse store; 80 no. car parking spaces (including 4 no. disabled spaces and 8 car club spaces); 4 no. motorcycle parking spaces; and, secure bicycle parking/storage in the form of 251 no. double stacked cycle parking spaces providing capacity for 502 no. secure bicycle storage spaces for residents at basement -1 level. An additional 49 no. Sheffield type bicycle stands are provided at basement level -1 to provide 98 no. visitor cycle spaces (inclusive of 8 no. designated cargo bike spaces that will also be available for the shared use with residents of the scheme) and a further 55 no. Sheffield type bicycle stands are provided at podium level to provide 110 no. cycle parking spaces (108 no. visitor cycle parking spaces (inclusive of 6 no. designated cargo bike spaces) and 2 no. cycle parking spaces in connection with the retail unit). All bicycle parking at basement level is accessed via a dedicated cycle lift from podium to basement level -1 that is situated to the south of Block B.
- Works proposed along the St John's Road West frontage include the omission of the existing left-turn filter lane to the vehicular ramped access to the HSQ development and re-configuration of the pedestrian crossings at the existing junction together with the re-configuration of the existing pedestrian crossing over the westbound lanes of St. John's Road West leading to an existing pedestrian refuge island. Re-alignment of the existing footpath along the site frontage onto St John's Road West to tie into the reconfigured junction



arrangement and provision of a link to a new lift to provide wheelchair access from St John's Road West to the HSQ podium.

- Communal Outdoor Amenity space is provided for residents in the form of rooftop terraces (totalling 1,179sqm), and lower-level communal courtyards between blocks (totalling 960sqm).
- Hard and soft landscaping works are proposed at podium level which includes the extension and completion of the public plaza to the east of Block A; the provision of footpaths; a MUGA (Multi Use Games Area) and informal play areas for children (totalling 1,670sqm).
- A double ESB substation/switch room at ground / podium level within Block A, and a single substation/switch room at ground / podium level within Block B together with associated site development works, which includes the realignment / reprofiling of an existing vehicular access ramp at the southern end of the site between basement levels -1 and -2 and the closure / removal of a second vehicular access ramp between the subject site at basement level - 1 and the raised basement level -1 under the Telford building.

The application is accompanied by an Environmental Impact Assessment Report (EIAR).

A Natura Impact Statement (NIS) has been prepared in respect of the proposed development.

The application contains a statement setting out how the proposal will be consistent with the objectives of the relevant development plan. The application also contains a statement (Material Contravention Statement) indicating why permission should be granted for the proposed development, having regard to a consideration specified in section 37(2)(b) of the Planning and Development Act 2000, notwithstanding that the proposed development materially contravenes the Dublin City Development Plan 2016-2022, other than in relation to the zoning of the land.

**GRANT permission for the proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## **Reasons and Considerations**

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

- (a) the site's location close to Dublin city centre, within an established built-up area and in the Heuston and Environs Strategic Development Regeneration Area and proximate to Heuston Station (mainline rail, LUAS and Dublin Bus services) and Dublin Bus Services on adjoining streets;
- (b) the policies set out in the Dublin City Development Plan 2016-2022,
- (c) the provisions of the Architectural Heritage Protection, Guidelines for Planning Authorities, issued by the Department of Arts, Heritage and the Gaeltacht in October 2011;
- (d) the provisions of Rebuilding Ireland Action Plan for Housing and Homelessness, (Government of Ireland, 2016),
- (e) the provisions of Housing for All- a New Housing Plan for Ireland, issued by the Department of Housing, Local Government and Heritage in September 2021
- (f) the provisions of the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March, 2019, as amended

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

It is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this urban location, would not seriously injure the residential or visual amenities or architectural heritage of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian

and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **Appropriate Assessment Screening**

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

The Board accepted and adopted the screening assessment carried out by the Inspector and the conclusion in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' conservation objectives.

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

## **Appropriate Assessment**

The Board completed an Appropriate Assessment in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development on serviced lands, the Natura Impact Statement submitted with the application, and the Inspector's report and submissions on file. In completing the Appropriate Assessment, the Board adopted the report of the Inspector and concluded that, subject to the implementation of the proposed mitigation measures contained in the Natura Impact

Statement, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the relevant European sites: • North Bull Island Special Protection Area (Site Code 004006); • South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code 004024); • South Dublin Bay Special Area of Conservation (Site Code 000210) and • North Dublin Bay Special Area of Conservation (Site Code 000206), or any other European site, in view of the site's conservation objective.

## **Environmental Impact Assessment**

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

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

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

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

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

- **Biodiversity:** Impacts mitigated by proposed landscaping strategy; will ensure no invasive species introduced; the significant provision of active and passive open space and measures to avoid disturbance to nesting birds.
- **Land, soils and geology** impacts to be mitigated by construction management measures including reuse of excess material within the site; proposals for identification and removal of any possible contamination; management and maintenance of plant and machinery.
- **Water** impacts to be mitigated by management of surface water run-off during construction; adherence to Construction Management Plan; to attenuate surface water flow and avoid uncontrolled discharge of sediment. Operational impacts are to be mitigated by surface water attenuation to prevent flooding.
- **Air, Dust and Climatic Factor** impacts to be mitigated by the appointment of a designated site agent; implementation of Construction Management Plan which includes for dust minimisation and control measures; construction of thermally efficient buildings and Mechanical Ventilation and Heat Recovery (MVHR) systems
- **Landscape and Visual impacts** mitigated by the use of screening/webbing to prevent materials falling from a height; directing site lighting away from existing structures; design and landscape strategy; maintenance regime.
- **Architectural Heritage** impacts mitigated by use of a qualified conservation architect to oversee works; implementation of agreed CEMP to minimise visual impact during construction.
- **Archaeological** impacts which will be mitigated by archaeological monitoring of ground disturbance works; notification of Department of Housing, Local Government and Heritage prior to commencement of works.
- **Traffic and Transport** impacts to be mitigated by implementation of Construction Management procedures; limited car parking provision; car share club provision; implementation of Residential Travel Plan.
- **Noise and vibration** impacts which will be mitigated by adherence to requirements of relevant code of practice; noise control techniques; quality site hoarding to act as noise barrier
- **Material Assets: Water Supply, Drainage and Utilities** impacts which will be mitigated by consultation with relevant service providers; adherence to

relevant codes of practice and guidelines; service disruptions kept to a minimum

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

### **Conclusions on Proper Planning and Sustainable Development**

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

## Conditions

<p>1.</p>	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> In the interest of clarity</p>
<p>2.</p>	<p>The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and other plans and particulars submitted with the application shall be carried out in full except as may otherwise be required in order to comply with other conditions.</p> <p>Prior to the commencement of development, the developer shall submit a schedule of mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and details of a time schedule for implementation of the mitigation measures and associated monitoring, to the planning authority for written agreement</p> <p><b>Reason:</b> In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.</p>
<p>3.</p>	<p>The period during which the development hereby permitted may be carried out shall be 5 years from the date of this Order.</p> <p><b>Reason:</b> In the interests of proper planning and sustainable development.</p>



4.	<p>Prior to commencement of any works on site, revised details shall be submitted to and agreed in writing with the planning authority with regard to the following:</p> <ul style="list-style-type: none"> <li>a) The height of Blocks D and E shall be reduced by two floors (L03 and L04 omitted) to a maximum of three storeys over lower ground level. The heights of proposed Blocks D and E shall not exceed the maximum height of the adjoining RHK boundary wall</li> <li>b) The height of Block A shall be reduced by five storeys to a maximum height of 13 storeys</li> <li>c) Omission of proposed arch between Blocks A and C</li> <li>d) Further details of proposed residential tenant amenity facilities to include the provision of increased work stations, working from home hubs and laundry facilities. In this regard, the proposed Unit E-1-01 (Lower Ground Floor of Block E) shall be not be utilised as a residential unit. It shall instead be utilised as additional residential tenant amenity facilities</li> <li>e) Additional details in relation to the layout of Unit D-1-02 (Lower Ground level of Block D)</li> <li>f) A site layout plan clearly delineating all areas of public open space provision</li> <li>g)Details relating to the provision of a public artwork of good quality, to be commissioned and installed by the applicant, within the public open space prior to the completion of the development</li> <li>h) details of bat friendly lighting.</li> </ul> <p><b>Reason:</b> In the interests of the protection of the architectural heritage of adjacent Royal Hospital Kilmainham; in the interests of the protection of visual and residential amenities; to safeguard the amenities of future occupants; in interests of protecting ecology and in the interest of proper planning and sustainable development of the area</p>
5.	<p>The total number of residential units permitted in this development is 339 no. units</p> <p><b>Reason:</b> In the interests of clarity</p>

6.	<p>The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020) and be used for long term rentals only. No portion of this development shall be used for short term lettings.</p> <p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area and in the interest of clarity.</p>
7.	<p>Prior to the commencement of development, the owner shall submit, for the written consent of the planning authority, details of a proposed Covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period. The period of 15 years shall be from the date of occupation of the first residential unit within the scheme.</p> <p><b>Reason:</b> In the interests of proper planning and sustainable development of the area.</p>
8.	<p>Prior to expiration of the 15-year period referred to in the Covenant, the owner shall submit for the written agreement of the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.</p> <p><b>Reason:</b> In the interests of orderly development and clarity.</p>

<p>9.</p>	<p>(a) Pedestrian access to the public open space areas shall be permanent, open 24 hours a day, with no gates, security barrier or security hut at the entrance to the development or within the development in a manner which would prevent pedestrian access between the areas identified above.</p> <p>(b) Prior to the occupation of any residential unit, the developer shall ensure that the public realm areas and new routes, as outlined in the site layout plan and landscape drawings shall be fully completed and open to the public.</p> <p><b>Reason:</b> In the interest of social inclusion and to secure the integrity of the proposed development including open spaces.</p>
<p>10.</p>	<p>Prior to the commencement of development, the applicant shall submit a design for bird friendly glazing installed in accordance with the methodology set out hereafter:</p> <p>That a combination of the following strategies is used to treat a minimum of 85 per cent of all exterior glazing within the first 16 m of the buildings above grade including clear glass corners, parallel glass and glazing surrounding interior courtyards and other glass surfaces:</p> <ul style="list-style-type: none"> <li>(a) Low reflectance opaque materials.</li> <li>(b) Visual markers applied to glass with a maximum spacing of 50 mm x 50 mm.</li> <li>(c) Building integrated structures to mute reflections on glass structures.</li> </ul> <p>The glazing design for the development shall be in accordance with these strategies and shall be submitted to the planning for its written agreement, prior to the commencement of any development works on site</p> <p><b>Reason:</b> To minimise the mortality of the local ecology bird species</p>

11.	<p>Prior to the occupation of the development, a schedule of proposed uses for the proposed ground floor retail unit shall be submitted for written agreement of the planning authority. In addition, prior to the occupation of this unit, details of openings, signage, shopfronts and layout/window treatment of the subject unit shall be agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interests of the proper planning and sustainable development of the area.</p>
12.	<p>The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs and the underground car park shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. In particular:</p> <ul style="list-style-type: none"> <li>a) The roads and traffic arrangements serving the site (including signage) shall be in accordance with the detailed requirements of the Planning Authority for such works and shall be carried out at the developer's expense.</li> <li>b) The roads layout shall comply with the requirements of the Design Manual for Urban Roads and Streets, in particular carriageway widths and corner radii;</li> <li>c) Pedestrian crossing facilities shall be provided at all junctions;</li> <li>d) The materials used in any roads / footpaths provided by the developer shall comply with the detailed standards of the Planning Authority for such road works, and</li> <li>e) A detailed construction traffic management plan, including a mobility management plan, shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking</li> </ul>

	<p>during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.</p> <p><b>Reason:</b> In the interests of traffic, cyclist and pedestrian safety and to protect residential amenity</p>
13.	<p>Public lighting shall be provided in accordance with a scheme and having regard to Condition 4(h) above, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any dwelling.</p> <p><b>Reason:</b> In the interests of amenity and public safety.</p>
14.	<p>The proposed development shall make provision for the charging of electrical vehicles. All car parking spaces serving the development shall be provided with electrical connections, to allow for the provision of future charging points and in the case of 10% of each of these spaces, shall be provided with electrical charging points by the developer. Details of how it is proposed to comply with these requirements, including details of design of, and signage for, the electrical charging points and the provision for the operation and maintenance of the charging points shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> in the interests of sustainable transportation</p>
15.	<p>Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health and surface water management.</p>

16.	<p>The applicant or developer shall enter into water and waste water connection agreement(s) with Irish Water, prior to commencement of development.</p> <p><b>Reason:</b> In the interest of public health.</p>
17.	<p>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.</p> <p><b>Reason:</b> To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
18.	<p>Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority/An Bord Pleanála prior to commencement of development. In addition, details of a maintenance strategy for materials within the proposal shall also be submitted for the written agreement of the planning authority, prior to the commencement of any works on site. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. Render shall not be used as an external finish.</p> <p><b>Reason:</b> In the interest of visual amenity and durability.</p>
19.	<p>Each apartment shall be used as a single dwelling unit only and shall not be sub-divided in any manner or used as two or more separate habitable units.</p> <p><b>Reason:</b> In the interests of sustainable development and proper planning</p>
20.	<p>Proposals for a development name, commercial unit identification and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of</p>

	<p>development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.</p> <p><b>Reason:</b> In the interest of urban legibility</p>
21.	<p>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.</p> <p><b>Reason:</b> In the interests of visual and residential amenity</p>
22.	<p>All plant including extract ventilation systems and refrigerator condenser units shall be sited in a manner so as not to cause nuisance at sensitive locations due to odour or noise. All mechanical plant and ventilation inlets and outlets shall be sound insulated and/or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
23.	<p>(a) Commercial unit shall not be subdivided, unless authorised by a further grant of planning permission.</p> <p>(b) No external security shutters shall be erected for the commercial premises (other than at services access points) unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.</p> <p><b>Reason:</b> In the interests of clarity.</p>
24.	<p>Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from</p>

	<p>these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the amenities of property in the vicinity.</p>
25.	<p>The site shall be landscaped in accordance with a landscape scheme, details of which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within 3 years of planting shall be replaced in the first planting season thereafter.</p> <p><b>Reason:</b> In the interest of residential and visual amenity.</p>
26.	<p>The construction of the development shall be managed in accordance with a Final Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide inter alia: details and location of proposed construction compounds, details of intended construction practice for the development, including hours of working, noise management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste and/or by-products.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
27.	<p>Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste</p>



	<p>Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.</p> <p><b>Reason:</b> In the interest of sustainable waste management.</p>
28.	<p>The site development and construction works shall be carried out in such a manner as to ensure that the adjoining roads are kept clear of debris, soil and other material, and cleaning works shall be carried on the adjoining public roads by the developer and at the developer’s expense on a daily basis.</p> <p><b>Reason:</b> To protect the residential amenities of property in the vicinity.</p>
29.	<p>A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p><b>Reason:</b> To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.</p>
30.	<p>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</p>

	<p>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.</p> <p><b>Reason:</b> 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.</p>
31.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> To ensure the satisfactory completion of the development.</p>
32.	<p>The developer shall pay to the planning authority a financial contribution in lieu of public open space provision in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer</p>

	<p>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.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.</p>
33.	<p>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.</p> <p><b>Reason:</b> 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.</p>

---

Lorraine Dockery

Senior Planning Inspector

January 28<sup>th</sup>, 2022