



An  
Bord  
Pleanála

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

### **Inspector's Report ABP-312430-22**

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**Strategic Housing Development**

Demolish factory/warehouse and construct 144 apartments in four blocks of three to nine storeys and associated development

**Location**

Units 64/65, Cherry Orchard Industrial Estate, Kennelsfort Road Upper, Palmerstown, Dublin 10

**Planning Authority**

South Dublin County Council

**Applicant**

AAI Palmerstown Limited

**Prescribed Bodies**

1. Irish Water
2. Transport Infrastructure Ireland
3. Department of Culture, Heritage and the Gaeltacht

**Observers**

Alan Hayes;

Brendan Losty;

Christopher McCreevey and family;

Dermot Keogh;  
Francis McLoughlin;  
Graham Finnerty;  
Guss O'Connell and others;  
James and Sarah Brennan;  
John Lowndes;  
Palmerstown Court Residents'  
Association;  
Karen Maguire;  
Kathleen Reilly;  
Keith Palmer and Laura Doyle;  
Keith Sargent;  
Lorna Orr and others;  
Lorraine Hannon;  
Madeleine Johansson and Gino Kenny;  
Marian Sargent;  
Michael Campion;  
Mick Kenny;  
Tom and Margaret Zambra;  
Noel Corr;  
Patricia and Michael Valentine;  
Shane Moynihan;  
Stephanie Orr;  
Stephen Orr;  
Susan and Joseph Palmer;  
The Workers' Party;

Thomas and Mona Connolly;  
Thomas Darcy Coyle and Sarah  
Brennan.

**Date of Site Inspection**

23<sup>rd</sup> March 2022

**Inspector**

Colm McLoughlin

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## **1.0 Introduction**

- 1.1. This report provides an assessment of an application for a proposed strategic housing development submitted to An Bord Pleanála under the provisions of section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (hereinafter referred to as 'the Act of 2016').

## **2.0 Site Location and Description**

- 2.1. Situated 8km to the west of Dublin city centre in the Cherry Orchard / Palmerstown area along Kennelsfort Road Upper (L-1013 local road), the application site primarily comprises a factory / warehouse referred to as units 64 and 65 Cherry Orchard industrial estate measuring a stated site area of 0.85 hectares. The most recent use of the property is stated as being for an internal BMX bike track and skateboard park. Access to the development site is from the south off an access road serving Cherry Orchard industrial estate. The site also comprises a narrow section crossing Kennelsfort Road Upper, which is stated to be in the ownership of South Dublin County Council. Palmerstown village centre is situated approximately 200m directly to the north of the application site and the M50 motorway is situated 450m to the west.
- 2.2. The majority of the site boundaries consist of steel-palisade security fencing although there is an open boundary fronting the eastern unit onto the industrial estate access road. A landscaped strip featuring lawn area fronts the palisade fence along Kennelsfort Road Upper. Based on survey datum, the land levels on site generally drop by approximately 1.7m from the southwest boundary to the northeast boundary.
- 2.3. The immediate area to the west of Kennelsfort Road Upper is characterised by two-storey semi-detached and detached housing set amongst green spaces, while the area to the east is characterised by industrial and warehouse units. To the north of the site there are commercial units, including two take-away / restaurants fronting onto Kennelsfort Road Upper and a warehouse positioned to the rear of these. The grounds of Pobalscoil Iosolde (Palmerstown Community School) are situated adjacent to these neighbouring commercial units to the north. There are two post

boxes situated on the southwest corner of the site along the back edge of the footpath.

### **3.0 Proposed Strategic Housing Development**

3.1. The proposed strategic housing development would consist of the following elements:

#### Demolition Works

- demolition and removal of a warehouse / factory building measuring a stated gross floor area (GFA) of 3,628sq.m;

#### Construction Works

- construction of 144 apartments in four blocks of three to nine storeys with residential amenity and support services, and employment uses comprising two incubator units and a remote working space;

#### Ancillary and Supporting Works

- vehicular access off Cherry Orchard industrial estate access road to an undercroft car park, the provision of a pedestrian cycle path and a set-down area along Cherry Orchard industrial estate access road and a signal-controlled pedestrian crossing over Kennelsfort Road Upper;
- provision of 67 car parking spaces, including two car-club spaces, eight motorcycle parking spaces and 310 bicycle parking spaces;
- provision of 1,303sq.m of a central podium-level courtyard serving as landscaped communal open space;
- all associated site and infrastructural works, including sustainable urban drainage systems (SUDS), lighting, landscaping, roof-mounted solar panels, plant areas, electricity substation and all associated site development works.

3.2. The following tables set out the key features of the proposed strategic housing development:

**Table 1. Development Standards**

Site Area (gross)	0.85ha
No. of apartments	144
Part V units (%)	10 (10%)
Residential Gross Floor Area (GFA)	17,485sq.m
Ancillary Residential GFA	547sq.m
Non-residential GFA (% total GFA)	133sq.m (0.7%)
Total GFA	18,166sq.m
Undercroft Car Park	2,035sq.m
Residential Density (gross)	169 units per ha
Communal Open Space (% of site area)	1,303sq.m (15%)
Public Open Space (% of site area)	1,385sq.m (16%)
Plot Ratio	2.13
Site Coverage	58%

**Table 2. Unit Mix**

	One-bedroom	Two-bedroom (four-person)	Total
Apartments	72	72	144
% of units	50%	50%	100%
Bed spaces	72	144	216

**Table 3. Maximum Building Heights**

Storeys	Height
9	31.3m

**Table 4. Parking Spaces**

Car parking - Standard	46
Car parking – Electric vehicles	12
Car parking - Universal	6
Car parking – Car share	1
Total car parking	65
Motorcycle parking	8
Cycle parking	310

3.3. In addition to the standard contents, the application was accompanied by various technical reports with appendices and drawings, including the following:

- Letter of Consent from South Dublin County Council;

- Statement of Consistency;
- Planning Report, including Response to Board's Opinion;
- Statement of Material Contravention;
- Statement of Rationale on Childcare Provision;
- Statement in accordance with Article 299B(1)(b)(ii)(II)(C) of the Planning and Development Regulations 2001-2021;
- Part V Proposal;
- Architectural Design Statement, including Key Development Areas, Building Lifecycle Report and Housing Quality Assessment;
- Tri-Party Alterations Report;
- Waste Management Plan;
- Civil Engineering Services Report, including Site Investigation Report;
- Traffic Impact Assessment, including Mobility Management Plan and DMURS Compliance Statement;
- Landscape Design Strategy and Masterplan;
- Energy / Part L Compliance Statement;
- External (Public) Lighting Analysis;
- Outdoor Lighting Report;
- Landscape / Townscape and Visual Impact Assessment;
- Photomontages;
- Report in Support of Appropriate Assessment Screening;
- Outline Waste and Construction Management Plan;
- External Noise Impact Analysis;
- Air Quality Impact Assessment;
- Daylight Reception Report;
- Effect on Daylight Reception Report;



- Sunlight Reception and Shadow Report;
- Telecommunications Signal Interference Assessment;
- Microclimate Impact Assessment;
- Ecological Impact Assessment Report;
- Arboricultural Report.

## **4.0 Planning History**

### **4.1. Application Site**

4.1.1. The only other planning application that I am only aware of relating to this site is, as follows:

- South Dublin County Council (SDCC) reference (ref.) SD00A/0499 – retention permission refused by the Planning Authority in September 2000 for two advertising billboards, due to their obtrusive appearance, the endangerment of traffic hazard, their impact on local amenities and contravention of Development Plan policy.

4.1.2. The Planning Authority refer to the following enforcement case as referring to the application site:

- SDCC enforcement ref. S7442 – change of use of the industrial unit to use as a skate park / BMX club.

### **4.2. Surrounding Area**

4.2.1. In September 2020 the Board granted a strategic housing development under An Bord Pleanála (ABP) ref. 307092-20 for 250 build-to-rent apartments in 5 no. four to eight-storey blocks at the junction of Kennelsfort Road Lower and the R148 regional road located approximately 0.9km to the north of the application site. In May 2021, the Board subsequently accepted amendments to the unit mix, the elevations and the basement layout as not comprising material alterations to the terms of the development (ABP ref. 309899-21).

- 4.2.2. In April 2022 the Board granted permission for a strategic housing development, amending a previous permission, to allow for 313 apartments in four blocks up to nine storeys in height on St. Loman's Road, located approximately 1.8km to the northwest of the application site (ABP ref. 312275-21).
- 4.2.3. In May 2022 the Planning Authority granted permission for development comprising the demolition of The Silver Granite Pub, located approximately 220m to the north of the application site, providing for the construction of a five-storey mixed-use development over basement consisting of a gastro-pub and two retail units at ground floor and 50 apartments to the upper floors (SDDC ref. SD21A/0271).

## **5.0 Section 5 Pre-application Consultation**

### **5.1. Pre-application Consultation**

- 5.1.1. A pre-application consultation meeting between representatives of An Bord Pleanála, the applicant and the Planning Authority took place on the 30<sup>th</sup> day of September, 2021, in respect of a proposed development comprising 147 build-to-rent apartments and associated site works. Copies of the record of this consultation meeting and the Inspector's report are appended to this file. The main topics raised for discussion at the tripartite meeting were as follows:

- appropriate land uses on 'REGEN' zoned lands, including the potential for live/work units;
- design strategy, including podium access and edge treatments, maintenance, building materials, build-to-rent aspects and Kennelsfort Road Upper frontage;
- residential amenity, including natural light to apartments, impact on the school grounds, compatibility with surrounding uses and overlooking;
- public open space, including planting proposals;
- drainage matters, including SUDS proposals;
- other matters, including Development Plan objectives and Environmental Impact Assessment (EIA) screening.

## 5.2. Board Opinion

5.2.1. In the Notice of Pre-Application Consultation Opinion (ABP ref. 310483-21) dated the 7<sup>th</sup> day of October, 2021, An Bord Pleanála stated that it was of the opinion that the documents submitted constituted a reasonable basis for an application under section 4 of the Act of 2016. In the opinion of An Bord Pleanála, the following specific information, in addition to the standard strategic housing development application requirements, should be submitted with any application for permission arising:

- mitigation measures for future occupants arising from surrounding uses;
- details of any material contraventions of the Development Plan;
- landscape proposals, including security, access, section and podium-edge details;
- dimensions between buildings;
- daylight, sunlight and overshadowing assessment;
- materials and finishes report;
- waste storage and collection details;
- a response to matters raised by the Planning Authority regarding transportation planning and drainage;
- a housing quality assessment;
- information referred to in article 299B(1)(b)(ii)(II) and article 299B(1)(c) of the Planning and Development Regulations 2001-2022.

5.2.2. The prospective applicant was requested to notify the following prescribed bodies in relation to the application:

- the Department of Culture, Heritage and the Gaeltacht (Development Applications Unit);
- Irish Water;
- Transport Infrastructure Ireland;
- the National Transport Authority;
- South Dublin County Childcare Committee.

### 5.3. Applicant's Response to Opinion

- 5.3.1. The application includes a Planning Report responding to An Bord Pleanála pre-application consultation opinion. Section 2 of the applicant's report outlines the specific application information that has been submitted with the application in response to the Board's request, while also detailing how the development is considered to comply with the respective requirements listed in the Board's opinion.

## 6.0 Planning Policy

### 6.1. National Planning Policy

#### Project Ireland 2040 - National Planning Framework

- 6.1.1. Project Ireland 2040 links planning and investment in Ireland through the National Planning Framework (NPF) and a ten-year National Development Plan (NDP). The NPF encapsulates the Government's high-level strategic plan for shaping the future growth and development of Ireland to the year 2040, and within this framework Dublin is identified as one of five cities to support significant population and employment growth. The NPF supports the requirement set out in the Government's strategy for 'Rebuilding Ireland: Action Plan for Housing and Homelessness (2016)', in order to ensure the provision of a social and affordable supply of housing in appropriate locations.
- 6.1.2. National policy objectives (NPOs) for people, homes and communities are set out under chapter 6 of the NPF. NPO 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. Other NPOs of relevance to this application include NPOs 3(a) (40% of homes in existing settlement footprints), 3(b) (50% of new homes in the five largest cities, including Dublin), 4 (attractive, liveable, well-designed urban places), 13 (development standards), 27 (transport alternatives) and 35 (increased densities) all relating to densification and compact urban growth.

#### Ministerial Guidelines

- 6.1.3. In consideration of the nature and scale of the proposed development, the receiving environment and the site context, as well as the documentation on file, including the submissions from the Planning Authority and other parties addressed below, I am

satisfied that the directly relevant Section 28 Ministerial Guidelines, including revisions to same, comprise:

- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020);
- Design Manual for Urban Roads and Streets (DMURS) (2019);
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018);
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009);
- The Planning System and Flood Risk Management - Guidelines for Planning Authorities, including the associated Technical Appendices (2009);
- Childcare Facilities – Guidelines for Planning Authorities (2001).

6.1.4. The following planning guidance and strategy documents are also considered relevant:

- Housing for All – A New Housing Plan for Ireland (2021);
- Climate Action Plan (2021);
- Water Services Guidelines for Planning Authorities – Draft (2018);
- Part V of the Planning and Development Act 2000 - Guidelines (2017);
- National Biodiversity Action Plan 2017-2021;
- Road Safety Audits (Transport Infrastructure Ireland, 2017);
- Rebuilding Ireland - Action Plan for Housing and Homelessness (2016);
- Traffic and Transport Assessment Guidelines (Transport Infrastructure Ireland, 2014);
- Building Research Establishment (BRE) 209 Guide - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice, (Paul J. Littlefair, 2<sup>nd</sup> Edition 2011);
- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (2009);

- Smarter Travel – A Sustainable Transport Future. A New Transport Policy for Ireland 2009 – 2020 (Department of Transport, 2009);
- British Standard (BS) 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting (2008);
- Best Practice Guidelines for Delivering Homes, Sustaining Communities – Quality Housing for Sustainable Communities (2007);
- Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development, issued by the Department of the Environment, Heritage and Local Government (2003);
- Greater Dublin Regional Code of Practice for Drainage Works (Version 6.0).

## 6.2. Regional Planning Policy

- 6.2.1. The ‘Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy (RSES) 2019-2031’ supports the implementation of Project Ireland 2040 and the economic and climate policies of the Government, by providing a long-term strategic planning and economic framework for the region. The following regional policy objective (RPO) of the RSES is considered relevant to this application:
- RPO 3.2 – in promoting compact urban growth, a target of at least 50% of all new homes should be built within or contiguous to the existing built-up area of Dublin city and its suburbs, while a target of at least 30% is required for other urban areas.
- 6.2.2. According to the RSES, the site lies within the Dublin metropolitan area, where it is intended to deliver sustainable growth through the Dublin Metropolitan Area Strategic Plan (MASP) to ensure a steady supply of serviced development land. Key principles of the MASP include compact sustainable growth and accelerated housing delivery, integrated transport and land use, and the alignment of growth with enabling infrastructure.

## 6.3. Local Planning Policy

- 6.3.1. The application site and the adjoining properties to the north and east have been assigned a land-use zoning ‘REGEN’ within the South Dublin County Development

Plan 2016-2022, with an objective 'to facilitate enterprise and/or residential-led regeneration'. A long-term high-capacity public transport (Railway Procurement Agency preferred route) objective and a National Transport Authority Greater Dublin Cycle Network Plan objective has been assigned along Ballyfermot Road and Coldcut Road 170m to the south of the application site.

6.3.2. Policies and objectives addressing new housing developments are included within chapter 2 of the Development Plan and development management standards are provided within chapter 11. Other sections of the Development Plan of particular relevance to this application include:

- Section 3.10.0 - Early Childhood Care and Education;
- Section 4.3.0 – Employment Location Categories;
- Section 6.3.0 - Walking and Cycling;
- Section 6.4.0 - Road and Street Network;
- Section 7.2.0 - Surface Water and Groundwater;
- Section 7.3.0 - Flood Risk Management;
- Section 8.4.0 – Sustainable Urban Drainage Systems.

6.3.3. South Dublin County Council has prepared a draft Development Plan for the period 2022 to 2028 with an anticipated adoption date expected in August 2022. Under the draft proposals the zoning for the application site would be objective 'REGEN' with a stated objective 'to facilitate enterprise and/or residential-led regeneration subject to a development framework or plan for the area incorporating phasing and infrastructure delivery'.

## **7.0 Statement of Consistency**

7.1. The applicant has submitted a Statement of Consistency, as per the provisions of Section 8(1)(iv)(I) of the Act of 2016. Section 2 of this Statement refers to the provisions of 'Project Ireland 2040' and 'Rebuilding Ireland – Action Plan for Housing and Homelessness' (2016). The Statement subsequently addresses Ministerial guidelines, including those referenced in section 6.1 above and other guidance documents. Section 4 of the Statement focuses on regional planning policy and the

Planning System and Flood Risk Management Guidelines 2009. Section 6 addresses local planning policy within the current Development Plan. Appendix 1 to the applicant's Statement features a strategic accessibility map with estimated walk times from the application site to various local services and infrastructures. Within the statement the applicant asserts that the proposed development would generally be consistent with national, regional and local planning policy, and that based on a review of precedent, a material contravention statement is required to address non-compliance with a number of Development Plan policy objectives.

## **8.0 Material Contravention Statement**

8.1. The applicant has submitted a Material Contravention Statement, as provided for under Section 8(1)(iv)(II) of the Act of 2016. The applicant states that this Statement is submitted with the application in the event that An Bord Pleanála consider the application for permission to materially contravene the provisions of the Development Plan with respect to the proposed building height, unit mix, podium-level parking, childcare provision and public open space. Within this statement the applicant sets out their rationale to justify granting permission, including:

- with a building height of greater than three-storeys for block A, which would be positioned within 35m of two-storey housing within Palmers Park, the proposed development would not strictly comply with the requirements of Development Plan housing policy 9 – objective 3;
- the proposed buildings would not be located in areas specifically assigned for heights of greater than five storeys, as allowed for under housing policy 9 – objective 4 of the Development Plan;
- having regard to the constraints for building heights in urban centre policy UC6 – objective 3 of the Development Plan, this conflicts with housing policy 9 – objectives 3 and 4, and the provisions of the Urban Development and Building Heights, Guidelines for Planning Authorities (2018) (hereinafter the 'Building Heights Guidelines') are applicable to this development;
- the proposed unit mix would not comply with housing policy 10 – objective 1 of the Development Plan, but would comply with national policy, including specific planning policy requirement (SPPR) 1 of the Sustainable Urban



Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020) (hereinafter the 'New Apartment Guidelines');

- the proposed development would not feature basement-level parking, as surface-level parking, under a podium structure, is only proposed with podium structure edges primarily designed to ensure active, non-residential uses address the street and landscaping is used to ensure this structure would not form a visually obtrusive aspect of the proposed development;
- childcare provision would be in line with the provisions of the New Apartment Guidelines 2020 and would not materially contravene community infrastructure policy C8(b) of the Development Plan;
- the public open space provision is in line with the quantum, quality, functionality and usability requirements of the Development Plan, and, accordingly, would not materially contravene the Development Plan policy.

8.2. In conclusion, the applicant asserts that the Board may grant permission for the proposed strategic housing development, with building heights and unit mix materially contravening the Development Plan, having regard to the provisions set out under subsections 37(2)(b)(ii) and (iii) of the Planning and Development Act 2000, as amended (hereinafter 'the Act of 2000').

## **9.0 Observers' Submissions**

9.1. A total of 30 submissions were received within the statutory period from local representative groups, local-elected representatives and residents of the neighbouring area. These submissions include photographs, as well as extracts from planning documents and planning applications, and they can be summarised as follows:

### Principle of the Development

- the proposed development represents a piecemeal form of development that is contrary to the proper planning and sustainable development of the area;
- proposals are premature, as a Local Area Plan is to be prepared for this area. The proposals are not based on a masterplan prepared in consultation with

the Planning Authority and fuller analysis of the cumulative impacts on traffic, support services, infrastructure and plans for the wider area is necessary;

- the scale and density of this proposed development was never envisaged for these lands and the proposals would lead to overdevelopment of the site and an excessive population increase;
- traditional housing would be supported in this location;
- contravention / breaching of Development Plan housing policy H7 objectives 1 (sustainable communities) and 4 (public realm), housing policy H8 – objective 4 (housing in regeneration areas), housing policy H9 objectives 1, 2, 3 and 4 (residential building heights), housing policy H10 – objective 1 (unit mix) and urban centres policy UC6 objectives 1 and 3 (building heights);
- the Board should not apply the provisions of section 37(2)(b) of the Act of 2000 in this case;
- some industrial use should be considered for the site;
- proposals fail to comply with NPOs 3a, 4, 11, 13 and 35 of the NPF,
- queries as to whether build-to-rent or build-to-sell units are being proposed;

#### Urban Design and Visual Impact

- the proposed development would be monolithic and excessive in terms of scale, bulk, height and massing and would have a negative visual impact;
- abrupt transition in building heights materially contravening housing policy 9 – objectives 3 and 4 of the Development Plan;
- the parking proposed conflicts with the need for open space to serve the development and the neighbouring community;
- an attractive high-quality development would not be formed and a modernist building would be out of character with the area;
- visually-intrusive, incongruous and dominant appearance of the development relative to the traditional two-storey housing and single-storey school building heights;

- inaccurate visual representation of Kennelsfort Road Upper as a wide boulevard, with overemphasis placed on the selected views from the open space serving Palmerstown Manor estate;

#### Development Standards

- a poor housing mix is proposed, which would be absent of three-bedroom units, with no consideration for families wanting to reside in the area, a lack of affordability and an intention to solely serve short-term housing needs;
- the accommodation would prove too small for the families that would eventually use it;
- additional open space is required, particularly considering the limited green and recreation space in the area;
- proposals feature a lack of external outdoor exercise and recreation areas;
- there is a need for a childcare facility to be provided, with other developments impacting on the existing provision in the area and misguided assumptions in the applicant's justification for not providing a childcare facility;
- there is a lack of capacity in local schools to serve the additional residential units proposed in the area;
- there would be adverse effects for future occupants of the scheme arising from the site context adjoining an industrial area, including the impact of pollution from neighbouring waste incinerators;

#### Impacts on Neighbouring Amenities

- impacts on lighting to neighbouring properties;
- overshadowing and overbearing impacts for neighbouring properties, including the school on lower ground to the north;
- loss of privacy for residents in Palmerstown Manor estate and overlooking of houses and a school;

#### Traffic, Access and Parking

- development would impact on the potential to upgrade the junction of Coldcut Road and Kennelsfort Road Upper to accommodate bus priority measures;

- increased traffic congestion would arise in an area already suffering from extensive congestion, with existing developments and future developments in the area contributing to this, including the National Children's Hospital and other permitted housing developments amounting to an additional 468 apartments;
- insufficient provision for car parking on site and an overreliance on public transport that does not presently have sufficient capacity to efficiently cater for the demand;
- increased traffic would lead to conflicts and potential for impacts on road safety;
- a superficial unrealistic approach has been taken in the traffic modelling submitted with the application;
- the existing road and cycling infrastructure is of limited capacity and hazardous;
- a road safety audit should be provided;
- limited width and capacity of Kennelsfort Road Upper to accommodate traffic;
- the application features a lack of clarity regarding the proposals for car and cycle parking to serve the development, as well as electric-vehicle charging facilities;

### Construction Impacts

- the building on site features an asbestos roof, which is to be demolished, and this could be harmful to the area;
- there would be disruption during the construction works;
- construction hours should finish at 19:00 hours and not 20:00 hours;
- there would be implications for the structural integrity of neighbouring houses arising from the construction works, including the potential pile-driving of foundation elements;
- health and safety implications would arise as a result of falling debris and materials;

## Other Matters

- permission was previously refused for a two-storey extension on 10 Palmers Park (SDCC refs. 07/32 and S02B/0061) due to parking constraints, the proposed design and the proximity to public sewers;
- job losses would arise for Cherry Orchard industrial estate;
- implications for fire and emergency services;
- increased anti-social behaviour would be likely;
- maximising of profit for the developer and devaluation of neighbouring property prices would arise;
- vague details have been submitted with respect to energy and sustainability;
- a letter of consent from Argbandouagh Ltd. for land on the southern and western edges of the site has not been provided.

## **10.0 Planning Authority Submission**

10.1. In accordance with the provisions set out under subsection 8(5) of the Act of 2016, the Planning Authority submitted the report of its Chief Executive Officer in relation to the application, summarising the external consultee and observers' submissions received, and providing planning and technical assessments of the proposed development. The views of the Chief Executive Officer of the Planning Authority can be summarised as follows:

### Principle and Density

- there is no local area plan or non-statutory plan prepared for the subject area;
- a masterplan context for the subject development is provided as part of the applicant's Architectural Design Statement;
- the development would not compromise the development of other regeneration lands and the zoning objective does not require an approved area plan;
- the proposed development is in accordance with the consolidation objectives of the settlement strategy, aligning with the RSES and NPF;

- the proposed build-to-sell tenure is noted;
- the increased density is justifiable, given the site zoning and neighbouring public transport routes;
- the subject site is brownfield and situated within 'an accessible location';
- revised Part V proposals are required, as the Planning Authority wish to acquire units on site, as opposed to the granting of a 25-year lease, and a universally-accessible type unit should also be provided as part of the acquisition to facilitate persons with medical needs;
- proof of when the site was purchased is also required with respect to the application of the appropriate Part V percentage;

#### Building Height, Scale, Layout and Design

- the inconsistency of the proposal with respect to the implementation of building height/separation distance guidance in section 11.2.7 of the Development Plan does not constitute a material contravention of the provisions of the Development Plan;
- the development would change the character of the area, by enhancing the area, and would have a positive contribution to the streetscape, housing typologies and place making, given the mix of uses and public interfaces proposed;
- it has been demonstrated that the proposals would comply with the requirements set out under SPPR3(a) of the Building Heights Guidelines;
- the southwest corner element can be considered a landmark structure;
- the eight and nine-storey elements closest to Kennelsfort Road Upper could have a significant visual impact;
- future access to the industrial lands to the north could be availed of via the new road proposed on site along the east boundary;
- employment uses onto the eastern side are welcomed, but pedestrian connectivity to lands to the east should be provided;

- the proposed blocks on the eastern and northern boundary would be positioned proximate to neighbouring buildings on these boundaries, with only limited green buffer on the north side;
- notwithstanding the information provided with respect to materials, a condition is recommended seeking amendments and final agreement of architectural treatments;
- the west elevation to block C would be blank, as illustrated in view 4 of the CGIs submitted, and this façade treatment should be avoided in the interest of increasing surveillance onto the undercroft car park access;

#### Residential Amenities and Development Standards

- the Planning Authority does not have a requirement for three-bedroom units to be provided, but these units should be provided based on the provisions of the Draft South Dublin County Development Plan 2022-2028 and in securing a balanced unit mix;
- minimum ground floor to ceiling heights of 3m to 3.1m would be preferable, to provide greater flexibility for potential uses;
- the security measures for undercroft parking should be provided;
- north-facing single aspect units are proposed and it is questionable whether or not a number of apartments in block C, including units C01 and C04, can be considered to feature dual aspect, particularly as they only feature small windows on one aspect;
- the undercroft carpark entrance between blocks C and D would benefit from additional windows overlooking this area;
- the resident communal facilities are to be welcomed;
- proposed mitigation measures to specifically address likely impacts for future residents arising from the positioning of the development adjacent to industrial uses, has not been provided for future occupants;
- triple glazing of windows to reduce potential noise nuisance from traffic and industrial uses is welcomed and an acceptable level of residential amenity would be provided;

- sufficient open space would be provided;
- the applicant's approach regarding the necessity childcare facilities is noted;

#### Neighbouring Residential Amenities

- more could be done with respect to the potential for overbearing impacts and overlooking of housing to the west;

#### Access, Traffic and Parking

- the Roads Department require the internal access road to be 5.5m in width;
- swept path / autotrack analysis of fire tender access through the entire site is required;
- the footpath layout along the southwest corner and the southern side is confusing due to the proposed positioning of seating areas, visitor cycle parking and public amenity space;
- pedestrian access to the proposed development should comply with Technical Guidance Document Part M;
- the location of various bus services are noted, and the application should be required to provide stronger connectivity with public transport;
- the car parking ratio of 0.45 spaces per unit is too low and should be increased by 15 to 20 spaces to provide a ratio of 0.55 to 0.59 spaces per unit;
- the shortfall in parking may lead to parking and traffic issues on site and within the surrounding road network;
- sufficient cycle parking is proposed and a dedicated cycle lane is to be provided connecting into the existing cycle lane on Kennelsfort Road Upper;
- specific haul routes and waste volumes for the construction phase will be required as part of an updated Waste and Construction Management Plan;
- road construction details for the elements to be taken in charge have not been submitted;



### Trees and Biodiversity

- details of replacement tree planting to compensate for the loss of street trees is required;
- details of bio-retention tree pits and rain gardens are required;
- the mitigation measures to address Buddleia plant identified on site should form a condition in the event of a grant of permission for the proposed development;
- the Board is the competent authority for the purposes of AA and EIA;

### Services and Other Matters

- the northern collection point for waste and recycling is sensitive to apartment locations, although some clarification is required regarding the eastern collection point, as it appears to overlap an incidental area of landscaping;
- the amenities of block B residents would be compromised by the bin collection route;
- generators, vents and flues or other equipment should not be positioned on the proposed building external elevations;
- operational phase mitigation measures to provide wind breaks should form conditions, in the event of a permission being granted;
- surface water drainage and flood risk assessment are satisfactory, including the exclusion of the underground attenuation systems;
- a minimum 3m buffer is required from all structures and trees to the centreline of the surface water sewer;
- a wayleave shall be provided for the 225mm-diameter surface water sewer;
- development contributions should be requested.

### Conclusion, Recommendation and Statement

10.1.1. The Planning Authority recommend a grant of planning permission for the strategic housing development, subject to 25 conditions, including the following of note:

**Condition 2 (i)** – increased privacy strip to the north and block C single aspect apartments should be amended to form three-bedroom units;

**Condition 2 (ii)** – revise the ground floor of block A, increasing the setback distance of floors 6 to 9 from the Kennelsfort Road Upper boundary;

**Condition 2 (iii)** – revise the balconies of block A, to ensure no overlooking of existing residences;

**Condition 2 (iv)** – increased floor to ceiling heights of 3.1m to all ground-floor units in blocks A and B, revise the ground floor plans for block A and increase the size of the external doors into the communal areas;

**Condition 10** – submit a landscape plan;

**Condition 14** – submit a tree bond;

**Condition 17** – 22 separate matters in relation to footpaths, roads and parking layouts.

## 10.2. Inter-Department Reports

- Environmental Services (Water Services) – no objection, subject to conditions;
- Roads Department – extracted comments provided in Chief Executive Officer’s report. No objection, subject to conditions;
- Housing Department – condition recommended;
- Parks and Landscaping / Public Realm Department – extracted comments provided in Chief Executive Officer’s report. No objection, subject to conditions;
- DCC – no comments received.

## 10.3. Elected Members

- 10.3.1. On the 25<sup>th</sup> day of January, 2022, the proposed development was presented to the Elected Members from the Lucan / Palmerstown / North Clondalkin Area Committee of the Local Authority. In accordance with subsection 5(a)(iii) of the Act of 2016, the

comments of the Elected Members at that meeting have been outlined as part of the Chief Executive Officer's report and these can be summarised as follows:

- the number of material contraventions arising from the proposals is indicative of the overdevelopment of the site;
- breaches in Development Plan policy would arise in relation to separation distances from the development to existing houses, building heights and public open space;
- proposals feature an absence of childcare provision and the applicant has set out poor rationale for not providing same. The proposed development would be only two units under the threshold for a childcare facility and there has not been sufficient consideration of the cumulative impact of the proposals with the Silver Granite pub site (SDDC ref. SD21A/0271) and the Vincent Byrne site (ABP ref. 307092-20) redevelopments;
- proposals would lead to concerns regarding traffic congestion along Kennelsfort Road Upper and the cumulative impacts with other developments would result in further congestion of roads infrastructure;
- the low quantum of car parking and the small footprint is noted;
- sets a precedent for similar development;
- amenities should be accessible to the public and the proposed scheme features limited community benefit;
- questioning of the application process.

## **11.0 Prescribed Bodies**

11.1. The following comments were received from prescribed bodies:

### Irish Water

- water – a new connection can be facilitated without upgrade;
- wastewater – a new connection is feasible without infrastructure upgrade;

- conditions are recommended, including those relating to connections and agreements, and compliance with Irish Water’s standards, codes and practices.

Department of Housing, Local Government and Heritage

- archaeological investigations, an archaeological impact assessment and recommendations with respect to the potential for archaeology should be presented as part of the application;
- where archaeological material/features are shown to be present, preservation in situ, preservation by record (excavation) or monitoring may be required.

Transport Infrastructure Ireland (TII)

- no observations to make.

11.1.1. The applicant states that the National Transport Authority and the South Dublin County Childcare Committee were notified of the application. An Bord Pleanála did not receive a response from these bodies within the prescribed period.

## **12.0 Oral Hearing**

12.1. The submission received from Councillors Guss O’Connell, Paul Gogarty and Liona O’Toole has requested that an oral hearing be held in respect of this application, as it is asserted that the decision on the application would have far-reaching consequences for the application site and the wider communities of Palmerstown and Ballyfermot. I note that Section 18 of the Act of 2016 provides that, before deciding if an oral hearing for a strategic housing development application should be held, the Board shall:

- (i) have regard to the exceptional circumstances requiring the urgent delivery of housing, as set out in the Action Plan for Housing and Homelessness, and;
- (ii) only hold an oral hearing if it decides, having regard to the particular circumstances of the application, that there is a compelling case for such a hearing.

12.2. Having regard to the circumstances of this case, to the issues raised in the observations and submissions received by the Board, and the assessments set out

in sections 13, 14 and 15 below, I consider that there is sufficient information available on the file to reach a conclusion on all matters arising. I do not consider therefore that there is a compelling case for the holding of an oral hearing in this case.

## **13.0 Assessment**

### **13.1. Introduction**

- 13.1.1. This assessment considers the proposed development in the context of the statutory plan for the area, as well as national policy, regional policy and relevant guidelines, including section 28 guidelines. The report of the Chief Executive Officer regularly refers to the amendments to the subject proposed development consequent to previous iterations of the scheme, including justification for aspects of the subject proposals where it is asserted that improvements would arise. From the outset I wish to highlight that it is not the amendments or asserted improvements to the scheme that are being assessed below, it is only the scheme as presented in the planning application to An Bord Pleanála that requires thorough and comprehensive assessments.
- 13.1.2. Observations assert that a letter of consent from Armbandouagh Ltd., who are stated to be in control of land on the southern and western edges of the site, has not been provided with the application. I note that such a letter dating from June 2021 has been appended to the applicant's application form.
- 13.1.3. Having regard to the documentation on file, including the application submitted, the contents of the Chief Executive Officer's report received from the Planning Authority, issues raised in the observations on file, the planning and environmental context for the site, and my visit to the site and its environs, I am satisfied that the substantive planning issues arising for this assessment can be addressed under the following headings:
- Development Principles;
  - Density;
  - Urban Design;

- Building Heights and Scale;
- Visual Impact Assessment;
- Impacts on Neighbouring Amenities;
- Residential Amenities and Development Standards;
- Access, Parking and Traffic;
- Services;
- Material Contravention.

## 13.2. Development Principles

### Strategic Housing

- 13.2.1. The site is located on lands with a zoning objective 'REGEN', where residential development is 'permitted in principle' under the terms of the South Dublin County Development Plan 2016-2022. The application seeks permission to demolish the existing building on site measuring a stated gross floor area of 3,628sq.m that was formally used for industrial purposes and was most recently used for recreational purposes. This building would be removed and it would not form useable floor space as part of the subject development.
- 13.2.2. The proposed buildings would comprise a stated 15,423sq.m of residential floor space, including balcony, circulation, plant, bin and other ancillary residential floor space. It is proposed to provide 547sq.m of communal amenity floor space, which I am satisfied would be for the enjoyment of the development's residents and, therefore, this space can be categorised as ancillary residential floor space. A total of 133sq.m non-residential floor space is proposed in the form of local employment uses comprising two incubator units and remote working space, and this would amount to 0.7% of the overall development gross floor area. A total of 2,035sq.m of associated undercroft floor space for parking and services, and an electricity substation of 27sq.m are also proposed. The undercroft area and substation would primarily provide ancillary floor space for the apartments, although they would also serve the employment uses. Notwithstanding this, even if the cumulative area of the non-residential and undercroft floor space amounting to 2,168sq.m floor area was considered to all be non-residential floor space, this would amount to 11.9% of the

overall development gross floor area. Accordingly, this would not exceed 4,500sq.m or 15% of the overall development gross floor area and, as such, I am satisfied that the proposed development would comfortably come within the statutory definition of a 'strategic housing development', as set out in section 3 of the Act of 2016.

#### Land-Use Zoning and Specific Objectives

- 13.2.3. The stated objective in the Development Plan for 'REGEN' zoned land, including the application site, is 'to facilitate enterprise and / or residential-led regeneration'. The Plan sets out that this regeneration zoning objective is applied to underutilised industrial lands that are close to town and district centres and transport nodes, and these areas have potential for more intensive forms of development. As stated above residential uses are permitted in principle on these lands, as are office and enterprise-type uses, which I am satisfied the two local incubator employment units and remote working space would comfortably fall into the category of. Consequently, I am satisfied that the proposed development would not materially contravene the Development Plan in relation to land-use zoning objectives for the site.
- 13.2.4. Observers assert that the proposed development should also feature an element of industrial use and that the proposals would result in job losses in the Cherry Orchard industrial estate. In this regard I note that the land-use zoning objectives do not specifically require industrial use on this site and the intensive regeneration of the lands required under the provisions of the Development Plan would be difficult to achieve if intensive residential and industrial uses were both located on site, given the conflicting land use requirements, including the need to provide access and amenities, as well as the control of emissions. Consequently, I am satisfied that the proposed development would not be required to feature an element of industrial use. The application site is not presently in use for industrial or similar purposes and as a discrete parcel of land, its potential redevelopment would not directly impact on employment levels elsewhere in the industrial estate. On the contrary during both the construction and operation stage it would provide direct employment for construction and maintenance workers, as well as the workers using the two proposed incubator units and remote working space.

13.2.5. The maps accompanying the Development Plan also identify transport infrastructure upgrade objectives along Ballyfermot Road and Coldcut Road approximately 170m to the south of the application site. Observers assert that the proposals would interfere with the achievement of these objectives, specifically as a result of the increased traffic associated with the proposed development. Given the separation distance the proposed development would not directly interfere with transport infrastructure upgrade proposals for the junction of Ballyfermot Road and Coldcut Road. I consider the indirect impact of the proposed development on traffic and transportation, including the Ballyfermot Road / Coldcut Road junction, in section 13.9 below.

### Phasing

13.2.6. Observers refer to the proposed development as being premature pending the preparation of a Local Area Plan for the area and a Masterplan for the site. Presently there is not a Local Area Plan or a non-statutory plan relating to this site and the statutory Development Plan for this area does not strictly require a Local Area Plan to be prepared for this area. Furthermore, as noted by the Planning Authority, the applicant has provided a Masterplan for the regeneration lands as part of their Architectural Design Statement (pages 8 and 9), identifying the potential linkages and connectivity with the Cherry Orchard industrial estate regeneration lands.

13.2.7. The proposed layout provided in the Masterplan and the application details appears to provide scope for connectivity between the adjoining lands via the provision of a road to be taken-in-charge by the Local Authority on the eastern and northern boundaries of the site. The suitability of the linkages across the site are discussed further below under section 13.4 when addressing the proposed development layout. The applicant's Masterplan does not explicitly stipulate the quantum or type of development replacing the existing industrial estate uses and the Masterplan generally indicates consistency in building heights across the regeneration lands. As noted above, I am satisfied that a sustainable mix of uses has been proposed on the subject site. While the detail of the applicant's Masterplan is limited and they have indicated a pedestrian link from the south into the central courtyard on the application site, which is not proposed as part of the application, I am satisfied that adequate development scenarios for the adjoining sites have been considered as



part of the proposed development and the layout, scale, building heights and arrangement of the proposed development would not reasonably impede the future development potential of the adjoining regeneration lands.

- 13.2.8. It is asserted in observations that the proposals represent a piecemeal form of development. As noted above, the application site features a discrete parcel of zoned land where the proposed residential and employment uses are permitted in principle. In map 1.3 of the Development Plan, lands that have capacity for development during the plan period (2016-2022) are identified, including the application site and the adjoining 'REGEN' zoned lands. In terms of phasing, planning prioritisation and infrastructure delivery, the Development Plan advises that 'REGEN' zoned lands are serviced and offer significant potential for more intensive employment and/or residential development and associated uses. The Plan envisages that not more than 50% of these areas would come forward for housing during the period 2016-2022. As part of their Masterplan proposals, the applicant highlights that the subject proposals are the first to come forward for intensive redevelopment on the subject parcel of 'REGEN' zoned lands. Furthermore, the applicant asserts that the location of the site at a gateway to the 'REGEN' zoned lands, positions it ideally and logically for the initial phase of regeneration. I am satisfied that there are no specific phasing requirements or other limitations outlined within the Development Plan to specifically require the development of other sites in advance of this site. On the contrary it would appear that lands, such as this, are assigned in the Development Plan for intensive development in the short term, while the location of the site at the northwest corner onto two primary access routes would provide a logical and practical location as part of the initial phase in redeveloping the subject parcel of 'REGEN' zoned lands.

#### Demolition Works

- 13.2.9. Details of the former factory / industrial building measuring 3,628sq.m in floor area and divided into two units internally are included in a set of floor plan, elevation and contextual elevation drawings submitted with the application (drawing nos.SB-2019-41-101 to 105). The Development Plan includes provisions preventing the demolition of protected structures and requiring justification for demolition of buildings of historic character or architectural interest. Observers do not specifically object to the demolition of this structure and the Planning Authority has not raised

any issues with this aspect of the proposed development, other than referring to the attachment of standard conditions with respect to demolition works in the event of a grant of planning permission. No parties have referred to the building that is proposed to be demolished as being of architectural merit or historical significance and I note that the building is not a Protected Structure, nor is it located within an architectural conservation area.

13.2.10. In order for an intensive scale of development to be realised on this site, in line with the regeneration provisions of the Development Plan, the existing building would need to be demolished and its removal would not be contrary to the provisions of the Development Plan. I am satisfied that there are no planning provisions restricting the principle of this part of the proposed works. I address the potential for nuisance and control of emissions during the demolition phase of the development under section 13.7 below.

#### Archaeology

13.2.11. An archaeological assessment was not submitted as part of the application, although the applicant did refer to archaeology in their Planning Statement. The Department of Housing, Local Government and Heritage has requested that a condition be attached in the event of a permission for the development requiring pre-development archaeological assessment, as well as archaeological preservation if deemed necessary. I am satisfied that given the present developed brownfield nature of the site featuring a building with extensive footprint and the site location approximately 1.2km from the nearest national monument (Rowlagh Castle ref. DU009-38), the proposals to redevelop the site would not give rise to a situation that would preclude the granting of permission for substantive archaeological reason. Notwithstanding this, given the potential for unknown archaeological features to survive on site, a condition similar to that required by the Planning Authority with respect to archaeological assessment and monitoring would appear reasonable and necessary to attach in the event of a grant of permission for the proposed development.

#### Housing Tenure

13.2.12. Given the number of units proposed and the size of the site, the applicant is required to comply with the provisions of Part V of the Act of 2000, which aims to ensure an adequate supply of housing for all sectors of the existing and future population. Part

V Guidelines require a planning application to be accompanied by detailed proposals in order to comply with Part V housing requirements, and the Housing Department should be notified of the application.

13.2.13. Housing policy 1 objective 2 of the Development Plan addresses the supply of social housing in the South Dublin area and requires 10% of units on all residential-zoned land to be reserved for the purpose of social housing. The applicant has submitted a Part V Proposal report, including correspondence from the Housing Department of South Dublin County Council on this matter. Their Part V proposals comprise the granting of a 25-year lease for 14 apartments (10% of the units) in the development to the Planning Authority, an Approved Housing Body (AHB) or persons nominated by the Authority. The apartments would comprise eight one-bedroom and six two-bedroom apartments, distributed from ground to fourth-floor level in proposed blocks A, C and D. In their pre-application response to the applicant and during consultation as part of this application, the Housing Department of the Planning Authority outlined their preference for the acquisition of units on site, as opposed to a leasing arrangement.

13.2.14. Part V of the Act of 2000 was amended by the Affordable Housing Act 2021, inter alia, amending provisions with respect to the Part V percentage allocation, dependent on the date of purchase of a site. The applicant's Part V Proposal report asserts that the applicant purchased the property after the 1<sup>st</sup> day of September 2015 and as a result they consider a 10% Part V requirement to be applicable. As is necessary to substantiate this approach, the applicant has not stated if this purchase took place prior to August 2021 and the Housing Department has requested proof of the timing of the purchase of the site. At this juncture I am not aware of any details contradicting the approach undertaken by the applicant in applying a 10% Part V requirement. I am satisfied that Part V requirements, including the final percentage allocation and the means of compliance, are matters that can be finalised with the Planning Authority by way of a condition, should the Board decide to grant permission for the proposed development. A dispute in reaching an agreement on the matter can be referred to An Bord Pleanála for determination

13.2.15. In conclusion, I am satisfied that the Part V housing proposal details provided at this juncture accord with the requirements set out within the relevant Guidelines, the proposed Part V provision can be finalised at compliance stage and the overall social

housing provision would help to provide a supply of housing for all sectors of the existing and future population, as well as facilitate the development of a strong, vibrant and mixed-tenure community in this location.

- 13.2.16. Observers to the application query whether the proposed development would provide for 'build-to-rent' residential units. The relaxed development standards contained in the New Apartment Guidelines to provide for build-to-rent units have not been specifically applied for in this application and the applicant has stated in their application documentation that the proposal is to provide for units falling into the build-to-sell tenure. Notwithstanding this, I acknowledge that units in the subject proposed development could be owner-occupied or rented in the future.
- 13.2.17. Based on the section 28 Guidelines addressing the regulation of commercial institutional investment in housing, there is not a requirement to regulate investment in the proposed units, as apartments are exempt from a restrictive ownership condition.

### 13.3. **Density**

- 13.3.1. Comprising 144 apartments on a gross site area of 0.85ha, the proposed development would feature a density of 169 units per hectare. Based on an overview of the site layout plan, which reveals that much of the site area includes sections of roadway, the actual development area would amount to approximately 0.78ha, which would result in a net density of 184 units per hectare. When compared with residential densities in the wider urban environment, such densities would be clearly at the higher end. Based on the gross site area, the subject development would have a plot ratio of 2.13 and a site coverage of 58%.
- 13.3.2. The Planning Authority consider the site to be brownfield and located in an 'accessible location' and that the density of the proposed development would be justifiable, given the site zoning and the access to public transport. The observers assert that the proposed scale and density of this development is not one that was envisaged for these lands and that the proposals would lead to overdevelopment of the site with an excessive increase in population placing constraints on local services. It is also asserted by observers that the proposals would be over reliant on public transport that does not have sufficient capacity at present to facilitate the

development, and as such it would not be in keeping with NPOs 3(a), 4, 11 and 35 of the NPF, which prioritise the provision of new homes at locations that can support development in a sustainable manner and at an appropriate scale relative to their location.

- 13.3.3. The applicant considers that the site is in a 'Central and/or Accessible Location', that is suitable for high-density development based on the site context, including its location within easy walking distance of high-capacity bus routes and its proximity to various employment centres, such as Cherry Orchard, Clondalkin, John F. Kennedy and Western industrial estates, Park West Business Centre, Cloverhill prison, Cherry Orchard hospital, Liffey Valley retail park and Palmerstown district centre. The applicant also refers to the density of development as being capable of being accommodated by Irish Water infrastructures and serving to support a future BusConnects Core Bus Corridor (CBC) service and cycling infrastructure, while also being compliant with National, regional and local planning policy encouraging increased and higher densities in urban areas, including areas within the Dublin city M50 motorway corridor.

#### Development Plan Policy

- 13.3.4. Core strategy policy 1 addressing consolidation areas within the Gateway, including the subject Palmerstown area, states that it is the policy of the Council to promote the consolidation and sustainable intensification of development to the east of the M50 and south of the River Dodder. Section 2.2.2 of the Development Plan provides guidance in relation to residential densities, stating that National guidance for sustainable residential development should be implemented and setting out that densities should take account of the location of a site, the proposed mix of dwelling types and the availability of public transport services. Subject to appropriate design safeguards and based on traditional urban forms adhering to urban design criteria, housing policy H8 - objective 4 of the Development Plan aims to support proposals for more intensive enterprise and/or residential-led development within 'REGEN' zones lands.
- 13.3.5. The Development Plan does not specifically set out minimum or maximum limitations for residential densities. However, it does specifically refer to the density provisions set out in the Sustainable Residential Development in Urban Areas - Guidelines for

Planning Authorities (2009), which set out where increased residential densities will generally be encouraged, including in city or town centres, on brownfield sites within city or town centres, along public transport corridors, on inner-suburban / infill sites, on institutional lands and on outer-suburban / greenfield sites.

- 13.3.6. No parties to the application contest that the site is 'brownfield' and I am satisfied that the site does fit into the definition of a 'brownfield' site based on the definition provided in the Sustainable Residential Development Guidelines, although it is not within a city or town centre. The Guidelines refer to walking distances from public transport services as best guiding densities along public transport corridors with scope for increased densities in locations within 500m walking distance of a bus stop or within 1km of a light rail stop or a rail station. The nearest public bus stops to the application site include stop no.4888 fronting the site and stop no.2207 approximately 40m to the south on the Kennelsfort Road Upper. These bus stops provide access to Go Ahead Ireland route 18 and Dublin Bus route 26. The Guidelines also refer to the capacity of public transport services requiring consideration with respect to appropriate densities, a matter that I specifically address further below.
- 13.3.7. I am satisfied that based on guidance the site would most suitably fall into the category of a site located within a public transport corridor. Such areas are stated in the Sustainable Residential Development Guidelines to generally be suitable for minimum net residential densities of 50 units per hectare, subject to appropriate design and amenity standards, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes. The proposed development meets this minimum net density target. Definitive maximum densities for developments within public transport corridors are not specified in the Development Plan or the Sustainable Residential Development Guidelines, and given this level of ambiguity it cannot be reasonably considered that development at the density proposed on the application site could be considered to contravene the provisions in the Development Plan with respect to residential density.

#### National and Regional Policy

- 13.3.8. In terms of the national policy context, the NPF promotes the principle of 'compact growth' at appropriate locations, facilitated through well-designed, higher-density

development. Of relevance are NPOs 13, 33 and 35 of the NPF, which prioritise the provision of new homes at increased densities through a range of measures including, amongst others, increased building heights. The NPF signals a shift in Government policy towards securing more compact and sustainable urban development within existing urban envelopes. It is recognised that a significant and sustained increase in housing output and apartment type development is necessary. The RSES for the region further supports consolidated growth and higher densities. As per RPO 5.4 of the RSES, the future development of strategic residential development areas within the Dublin metropolitan area shall provide for higher densities and qualitative standards.

- 13.3.9. In relation to Section 28 guidance addressing housing density, the Sustainable Residential Development Guidelines, which I have addressed above, the Building Heights Guidelines and the New Apartments Guidelines all provide further guidance in relation to appropriate densities and support increases in densities at appropriate locations, in order to ensure the efficient use of zoned and serviced land. All national planning policy indicates that increased densities and a more compact urban form is required within urban areas, subject to high qualitative standards being achieved in relation to design and layout.
- 13.3.10. The Building Heights Guidelines state that increased building height and density will have a critical role to play in addressing the delivery of more compact growth in urban areas and should not only be facilitated, but actively sought out and brought forward by our planning processes and in particular by Local Authorities and An Bord Pleanála. These Guidelines caution that due regard must be given to the locational context, to the availability of public transport services and to the availability of other associated infrastructure required to underpin sustainable residential communities.
- 13.3.11. The New Apartment Guidelines (2020) note that increased housing supply must include a dramatic increase in the provision of apartment development to support on-going population growth, a long-term move towards a smaller average household size, an ageing and more diverse population with greater labour mobility, and a higher proportion of households in the rented sector. The Guidelines address in detail suitable locations for increased densities by defining the types of location in cities and towns that may be suitable, with a focus on the accessibility of the site by public transport and proximity to city/town/local centres or employment locations.

Suitable locations stated in the Guidelines include 'central and/or accessible urban locations', 'intermediate urban locations' and 'peripheral and/or less accessible urban locations'. The Guidelines also state that 'the range of locations is not exhaustive and will require local assessment that further considers these and other relevant planning factors'.

#### Access to Public Transport

- 13.3.12. The applicant considers the site to constitute a 'central and/or accessible urban location' based on the terminology in the New Apartment Guidelines, as it is located within close proximity to numerous bus services, including those of frequent service. Observers to the application refer to the poor existing capacity of public transport in this area. In considering the general provision of public transport available in this area, I would note that the capacity of services is intrinsically linked to frequency, as inferred in section 5.8 of the Sustainable Residential Development Guidelines.
- 13.3.13. The no.18 bus connects Palmerstown with Sandymount via Baggot Street in the city centre, with three to four services per hour between 07:00 and 20:00 hours Monday through Friday, and less frequent services outside of this. The no.26 bus connects Liffey Valley with Merrion Square in the city centre providing four to six services per hour between 07:00 and 22:00 hours Monday through Friday and less frequent services outside of this. In addition to these services, Dublin bus route 40 connecting Liffey Valley with Charlestown shopping centre via O'Connell Street in Dublin city centre and Go Ahead Ireland services 76 and 76a connecting The Square in Tallaght with Blanchardstown shopping centre, operate from stop 4798 on Coldcut Road and stop 4799 on Ballyfermot Road, both of which are a three to four-minute walk from the application site. The no.40 operates five to six services per hour between 06:00 hours and 19:00 hours Monday through Friday with reduced services outside of this, while the nos.76 and 76a operate two to three services per hour between 07:00 and 24:00 hours Monday through Friday. By connecting with the city centre this would provide for good links to other public transport modes.
- 13.3.14. The applicant notes intentions for BusConnects CBC (G-Spine) to result in revised services in this area and I recognise the Development Plan objective for significant upgrades in terms of dedicated bus lane infrastructure to improve bus travel times. The site is a four-minute walk from Palmerstown district centre.



### Location Category

13.3.15. I note that the Guidelines state that for a site to be in a central and/or accessible urban location it must be within easy walking distance to/from a high frequency urban bus service. Easy walking distance is referred to in the Guidelines as being up to five minute walk time or up to 500m from a site. I am satisfied that based on bus timetables and guidance within the New Apartment Guidelines defining 'high-frequency' bus services as those operating at a minimum of every ten-minutes during peak hours, the bus stops within easy walking distance of the application site feature 'high-frequency' bus services. Based on the existing 14 to 19 bus services operating on an hourly basis between 07:00 and 19:00 hours from stops within easy walking distance of the application site, and assuming double-decker bus capacity of 85 persons for routes 18, 26 and 40, as well as standard bus capacity of 40 persons for routes 76/76a, such services could cater for in the region of 1,100 to 1,480 persons during peak hours. The completed proposed development would be likely to cater for an approximate maximum population of between 216 and 432 residents based on the number of bed spaces, and only a proportion of these residents would use local public transport services at varying times throughout the day. Given the present provision of bus services and the additional potential future population residing in the proposed development, public transport services would be unlikely to be overwhelmed by the proposed development.

13.3.16. Under the terms of the Dublin Transport Authority Act 2008, the NTA is required to review the Transport Strategy for the Greater Dublin Area and I note that a Draft Greater Dublin Area Transport Strategy 2022-2042 has been published, with policy measures such as 'Measure BUS5 – Bus Service Network Monitoring and Review' outlining the intention of the NTA to continually monitor the demand for bus services in the Dublin Area as part of the roll-out of the new service network and as part of the monitoring and periodic review of the Transport Strategy, and to enhance or amend the service network as appropriate. While the Strategy is currently in draft format, I am satisfied that this reveals the intention, and the ongoing transport strategy approach, to constantly ensure public transport serving the greater Dublin area have capacity to meet demand, whether this be via reduced or increased levels of service. Overall I am satisfied that the site would have good access to high capacity and high frequency public bus services available in the immediate area.

13.3.17. As referenced above, I do not consider the site to be within a central location in the city. On the basis of the proximity and accessibility criteria analysed above, I am satisfied that the site can be categorised as being within an 'accessible urban location' and in accordance with the New Apartment Guidelines such locations can support higher-density residential development that may wholly comprise apartments. Minimum and maximum residential densities are not set within the New Apartment Guidelines for such locations, although I recognise that with regard to less accessible 'intermediate urban locations' the Guidelines refer to densities of greater than 45 dwellings per hectare being appropriate.

#### Neighbouring Densities

13.3.18. The immediate area to the application site is very much defined by low residential densities to the west and low-rise non-residential development to the north, south and east.

13.3.19. A density of 197 units per hectare was considered acceptable in September 2020 by the Board when deciding upon ABP ref. 307092-20 for a build-to-rent apartment development at the junction of Kennelsfort Road Lower and the R148 regional road, approximately 0.9km to the north of the site. In April 2022 the Board granted permission for a strategic housing development on St. Loman's Road, located 1.8km to the northwest of the application site (ABP ref. 312275-21) with a residential density of 152 units per hectare.

#### Density Conclusion

13.3.20. The statutory plan for this area does not set out minimum or maximum densities for this site, while strategic guidance in national and regional plans, as well as section 28 guidance highlights that increased densities should generally be sought in the subject location, primarily based on access to public transport. My assessment of the location of the site relative to the range of locations within the New Apartment Guidelines, would suggest that the site is within an accessible urban location where higher-density development should be sought. A general overview of planning decisions, would suggest that the density proposed on the subject site would be comparable with densities recently permitted for other large-scale housing developments closest to the site.

- 13.3.21. Observers to the application refer to the site being suitable for traditional housing. Traditional housing in the immediate area would be unlikely to be compliant with the minimum residential densities that are noted above to be required for a site of this type in this area, and the site is earmarked for intensive redevelopment under regeneration proposals within the Development Plan.
- 13.3.22. Having regard to national and local planning policy, I am satisfied that the site, which is within the Dublin city and suburbs area of the metropolitan area, as defined in the RSES, is well placed to accommodate growth at the net density proposed of 188 units per hectare. In conclusion, the proposed density for the application site complies with the provisions of the Development Plan and Government policy seeking to increase densities in appropriate locations and thereby deliver compact urban growth. Notwithstanding this, certain criteria and safeguards must be met to ensure a high standard of design and I address these issues in my assessment directly below.

#### **13.4. Urban Design**

- 13.4.1. The layout, massing, design and open space are considered in this section in terms of the urban design quality of the proposed development, with the potential impacts on the visual and residential amenities primarily considered separately below.
- 13.4.2. The observations assert that the proposed development would feature a monolithic design and would be of excessive scale, bulk, height and massing. While the Planning Authority do not object to permission for this development, they do detail some concerns with respect to the layout of the development, which I address further below.
- 13.4.3. Section 11.2 of the Development Plan addressing 'place making and urban design', includes a specific section dealing with regeneration zones, requiring a design statement to be submitted with an application for development in such areas. Based on the provisions of section 11.2.4 of the Development Plan, this design statement is required to address the transition towards a more urban form of development and a traditional street network, connectivity and linkages, the avoidance of residential uses onto heavily-trafficked routes and potential conflicts with other uses, including noise and air pollution, as well as other nuisances. As part of the site analysis in

their Architectural Design Statement, the key constraints in developing the site are indicated by the applicant, while matters required to be addressed in the Development Plan are also directly and indirectly referred to. The applicant also addresses the key principles of the Urban Design Manual in their Architectural Design Statement, asserting that all principles were considered as part of the proposals in response to sustainable place-making.

#### Layout

- 13.4.4. The applicant is proposing to construct four blocks generally laid out in a square courtyard arrangement overlooking and enclosing a central podium-level platform forming a landscaped semi-private amenity space for the future development residents. A plaza would be provided fronting the main entrance area between blocks A and D onto the Kennelsfort Road Upper frontage and a landscaped strip would be provided between these blocks and the roadside. The southern entrance off the industrial estate access road would feature a stepped terrace area accessible to the public. The main entrances to the four buildings would be from the front street areas, which feature footpaths and grass verges. The proposed vehicular access off the industrial estate access road would follow the eastern and northern boundaries to the undercroft car park and would restrict vehicles to the outer edge and periphery of the site. A new cycle lane would be provided on the southern boundary with the industrial estate access road, connecting into the existing cycle lane infrastructure along Kennelsfort Road Upper to the west.
- 13.4.5. A selection of views from locations along the perimeter of the development are illustrated in computer-generated images (CGIs) as part of the applicant's Architectural Design Statement, which I am satisfied reveal that a legible layout and cohesive interface at surface level would largely be provided for. The applicant has also addressed the issue of accessibility across the site, with a particular focus on the perimeter treatment to the central podium space, and after consideration of the inclusion of a ramped access from the southern side, a final decision was made to incorporate a lift access from front street level to the south to the central podium level. Basement-level car parking is not proposed, therefore the proposals would not materially contravene section 11.4.3 of the Development Plan, which requires the restriction of protruding basement parking areas from front street level. Below podium surface-level parking areas are primarily positioned to the rear of the

residential, employment and associated uses fronting onto the main internal and external streets, thereby largely avoiding any direct interface between the undercroft parking areas and the public realm.

13.4.6. The Planning Authority recognise that vehicular access to the lands to the north would be possible via the new roadway proposed to be built off the industrial estate access road, however, they require a pedestrian access to be provided across the site into the property adjoining to the east. I note that the subject proposals do not provide for a formal pedestrian route along the northern boundary connecting the Kennelsfort Road Upper frontage with the adjoining site to the east. In terms of addressing future connectivity with the adjoining lands and ensuring improvements to permeability across the area, I consider that the site layout should be amended to provide for this pedestrian route across the north of the site. Without the provision of this necessary pedestrian route generally running parallel with the northern boundary from Kennelsfort Road Upper to the eastern site boundary, I am satisfied that the subject development would provide for negligible improvements in terms of permeability and connectivity. I recognise that the pedestrian route could only extend as far as the boundary with the Planning Authority lands on the northwest boundary and that the design and treatment of this route would need to be considerate of the need to traverse the root protection zone of the existing street trees to be maintained along Kennelsfort Road Upper. Consequently, the request of the Planning Authority for a connection to the site to the east to be provided would appear reasonable and in the event of a grant of planning permission for the proposed development a condition can be attached to comprehensively address the requirements above.

13.4.7. The Planning Authority also refer to the limited provision of a green linear strip between the proposed blocks and the northern and eastern boundaries, including neighbouring buildings. Notwithstanding this, I am satisfied that the new road would serve as a physical buffer between the site and the adjoining properties. Landscaped verges of varying depth would also be provided in locations between the ground-floor uses and the public footpath. These verges should feature planting capable of forming defensible space fronting the windows to ground-floor apartments and this can be specifically provided for as a condition in the event of a grant of planning permission.

13.4.8. The Development Plan recommends that residential development should not be introduced at ground-floor level adjacent to busy roads or roads that are subject to significant movements by Heavy Goods Vehicles (HGVs). Kennelsfort Road Upper could reasonably be considered to be a 'busy road' in terms of throughput of traffic, while the access road on the southern side clearly caters for HGV movements into and out of the industrial estate. Along these streets, residential uses are only proposed at ground floor onto the northern end of the frontage with Kennelsfort Road Upper. In this regard I note that there would be an average of 14m-deep building setbacks from the road and these setbacks would feature street trees and additional planting within landscaped verges. This layout would follow similar setbacks achieved for housing along Palmerstown Court to the northwest of the site on the western side of Kennelsfort Road Upper. I am satisfied that the site layout arrangements in this regard would be satisfactory and the provision of ground floor residential uses onto the northern end of the frontage onto Kennelsfort Road Upper would not compromise the amenities of future residents of the respective apartments. Potential impacts on the amenities of future residents of the development are considered further below with regard to nuisances and development standards.

#### Design and Appearance

13.4.9. In relation to the proposed building materials, the Planning Authority are generally satisfied with the palette chosen. I am satisfied that the applicant's use of a varied tone of brick as the primary hard finish for the differing elements of the building blocks, would harmonise with the dark metal railing to the balconies and the coloured-cladding panels set above and below the graphite grey windows. There would be a consistent architectural language throughout the scheme based on these materials and the building proportions. The proposed primary use of brick throughout would provide a robust, low maintenance and long-lasting finish to the buildings. The choice of materials for the buildings articulates the massing arrangements and would provide modulation in both the horizontal and vertical elements. There is variety in the scale and a consistency in the rhythm and proportions of the proposed apartment buildings. As per the requirement of the Planning Authority, the final details of materials, can be addressed via condition in the event of a permission for the development.

13.4.10. Observations refer to the appearance and design of the development being modernist and not in character with the immediate area. I recognise that the development would provide for a development of a scale and contemporary design much different to that which presently exists in this area, however, I consider the proposals to feature an appropriate urban design response relative to the primary constraints of the area, the context of the site within REGEN zoned lands and the context relative to existing developments within the area, including the much lower buildings surrounding the site. There is a clear relationship and definition between the apartment blocks, a hierarchy of open spaces, including overlooked walking routes and central play space, and a reasonable setback from the existing housing areas to the west and the site boundaries. The proposed development would create a visually diverse urban cell, when compared with its immediate surrounds, which would form a strong sense of place. Furthermore, the proposed development would feature strong urban edges with variety in heights along the main thoroughfares with openings for access and buildings responsive to neighbouring properties, avoiding the formation of monolithic blocks fully enclosing or excessively dominating the public realm.

13.4.11. The applicant's arborist has identified 11 street trees along the site boundaries, including six Italian alder trees and five Norway maple trees. The trees would all appear to be within the site boundaries. The applicant proposes the removal of two of the Norway maple trees and the pruning of the remainder of the trees. The Planning Authority require the replacement of six of the street trees, as they consider it better in the longer term to replace these trees with specimens that would have a longer life expectancy and would be more suitable for the site. The Planning Authority request that the landscape proposals are revised to ensure no net loss of trees with the trees to be replaced by native, pollinator-friendly trees and with a minimum of 20 to 25 cm girth. All of the trees proposed to be maintained are stated to be of low quality with an estimated remaining life expectancy of at least ten years. Considering the stated condition of the trees and the nature of the subject proposals, including building lifecycle, the request of the Planning Authority to provide replacement tree planting for six street trees would appear a reasonable request that could be addressed as a condition in the event of a grant of planning permission.

## Public Open Space

- 13.4.12. Observers to the application and the Elected Members assert that the development would not feature sufficient open space provision, and the observations assert that the parking provision would conflict with the need for open space to serve future residents and the neighbouring community. The Planning Authority do not object to the quantum of open space proposed based on Development Plan standards, while they consider there would be a strong and legible delineation of these open spaces.
- 13.4.13. Housing policy H12 requires all residential development to be served by a clear hierarchy and network of high-quality public open spaces that provide for active and passive recreation and enhance the visual character, identity and amenity of an area. Housing policy H12 objective 2 requires a clear definition between public, semi-private and private open space at a local and district level, and all such open spaces should benefit from passive surveillance from nearby residential development. Section 11.3.1 of the Development Plan includes a section addressing standards for public open space and children's play areas in residential development, including the need for a minimum of 10% of a site area to be allocated for public open space. This quantum is in line with the requirement set out in the Sustainable Residential Development Guidelines. Based on the Guidelines and the Development Plan, a children's play area should also be provided in public or semi-private open spaces as part of a residential development greater than 50 units.
- 13.4.14. The applicant states that 1,385sq.m of public open space would be provided, amounting to a stated 16% of the overall site area. This public open space and other spaces are delineated in landscape drawing no.1000 P01. The applicant asserts that the provision of public open space would be generous and would feature a landscaped green buffer along the western and southern site boundaries with a number of small public squares. The applicant considers Section 00 in the Landscape Design Strategy submitted to demonstrate that the open space provision is in line with the quantum, quality, functionality and usability requirements for open space based on the Development Plan provisions.
- 13.4.15. While the open space throughout would be accessible and overlooked by residential buildings, I would have some reservations regarding the inclusion of the green buffer areas fronting the ground-floor residential uses as part of the actual public open



space, given the limited functionality and usability of this space and as it would not be of substantive active or passive use value based on the landscaping proposals submitted. The square spaces referenced by the applicant, including the main apartment complex entrance areas onto Kennelsfort Road Upper and the industrial estate access road, as well as the intervening spaces between these squares and at the junction of the main roads, amounting to the majority of the proposed public open space provision, would clearly serve as attractive landscaped areas open to the public for passive uses and forming part of the public realm. There would be scope for a pocket park type arrangement in the green buffer area to the northwest corner of the Kennelsfort Road Upper site frontage, including the area adjacent to the waste and recycling collection vehicles turning head. With the attachment of a condition to address same, I am satisfied that the 10% minimum public open space would readily be achieved and a reasonable provision of public open space would be provided in line with the relevant planning provisions. A material contravention of the Development Plan would not arise in this respect. The applicant's Sunlight Reception and Shadow study refers to 50% of the proposed public open space receiving four hours of sunlight on the 21<sup>st</sup> day of March (the Spring equinox), which would exceed the minimum lighting requirements for such spaces, as set out in the BRE 209 Guide - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice.

#### Communal Open Space

- 13.4.16. Housing policy H13 addressing private and semi-private open space requires all dwellings, including apartments, to have access to high-quality private and semi-private open space that is carefully integrated into the design of new residential developments. According to table 11.21 of the Development Plan and appendix 1 of the New Apartment Guidelines, the communal open space provision to serve the development should amount to a minimum of 5sq.m per one-bedroom unit and 7sq.m for a two-bedroom unit.
- 13.4.17. Based on the housing mix and the Development Plan provisions, the proposed development would require 864sq.m of communal open space. A central podium level communal or semi-private open space would be provided as part of the development and this would amount to 1,303sq.m, including a children's play space. Based on the New Apartment Guidelines the play space should be approximately 85

to 100sq.m and specifically provided for children up to the age of six. The location of the communal space, as well as the area and functionality of the play area appear to accord with the requirements set out in the New Apartment Guidelines. There is variety in the function and aesthetics of the communal spaces, including the lawn area to the eastern side. Over half of the communal open space would receive four hours of sunlight on the 21<sup>st</sup> day of March, which would again exceed the minimum requirements set out within the aforementioned BRE 209 Guide. In conclusion, I am satisfied that the communal open space proposals would provide a reasonable level of amenity for future residents based on the relevant applicable standards.

#### Landscaping and Lighting

13.4.18. Extensive details of the features and materials within the public space are provided as part of the applicant's Landscape Design Strategy and Masterplan, as well as the associated drawings. According to the report from the Chief Executive Officer of the Planning Authority, the Parks and Landscape/Public Realm Department require standard conditions to be attached as well as conditions to provide more details of bioretention tree pits and rain gardens for sustainable urban drainage purposes, and the replacement of six low-quality street trees. I am satisfied that such details would be reasonable to request and can be agreed with the Planning Authority via condition in the event of a grant of planning permission. The existing post boxes close to the road junction would remain in situ as part of the landscaping proposals.

13.4.19. Comprehensive lighting details have also been provided as part of the application package, including a surface-level lighting layout plan, an External (Public) Lighting Analysis setting the intending lighting illumination levels and an Outdoor Lighting Report identifying likely illumination levels relative to the proposed lighting stands to be used within the proposed development. The proposed lighting stand positions do not appear to conflict with tree planting and underground service locations. In their Ecological Impact Assessment the applicant refers to the use of bat-sensitive lighting techniques on a precautionary basis, as part of the protection of habitats and species. The Planning Authority are satisfied that finalised lighting can be agreed as a condition in the event of a permission and I am satisfied that this would be a reasonable request.

### Urban Design Conclusion

13.4.20. Subject to conditions, I am satisfied that the overall layout, massing and design of the scheme would provide a logical, practical and legible response in developing this site from an urban design perspective, particularly considering the regeneration context for the site, in accordance with the principles set out in the Urban Design Manual and the NPF and generally in accordance with the provisions of the Development Plan. Furthermore, and subject to conditions, I am satisfied that the necessary quantum, function and lighting for the public and communal open spaces required to serve the development would be provided as part of the overall development on this site. Accordingly, I am satisfied that the proposed development would create an appropriate form of urban development on this site, which would comply with the provisions of section 11.2.4 of the Development Plan addressing place making and urban design in regeneration areas. Further consideration of the proposed building heights and scale is undertaken directly below.

### **13.5. Building Heights and Scale**

13.5.1. The Planning Authority refer to the height of the development requiring a reduction to minimise overbearing impacts on neighbouring properties, a matter which I specifically consider under section 13.7 below. I address the issue of building heights and scale, specifically with respect to visual amenities in the proceeding section 13.6. The proposed building heights and scale are asserted to be excessive by the observers to the application, which they consider to feature an abrupt transition when compared with surrounding building heights, thereby materially contravening housing policy 9 – objectives 3 and 4 of the Development Plan. The Elected Members consider the proposed heights to be in breach of Development Plan provisions and the applicant considers the height of the proposed buildings to materially contravene the specific provisions of the Development Plan, although they assert these heights to be appropriate primarily having regard to contemporary national guidance.

### Context and Proposals

13.5.2. The existing building on site features a maximum height of 8.6m according to the details submitted with the application, similar to the height of the two-storey housing

to the west, as well as the neighbouring industrial and commercial buildings. The highest element of the proposed development would comprise the nine-storey apartment block A. When discussing the maximum height of the buildings proposed, I recognise that the eighth-floor element of block A, forming the highest floor area in the proposed development, has not been picked up in the section drawings illustrating the proposed development. This eighth floor would appear to feature floor to ceiling heights of approximately 3.45m, which would be greater than those on the floors below, and with additional provision at roof level behind the parapet to facilitate plant and/or lift overruns. Based on the drawings submitted, the maximum height of the proposed building would be 31.3m. In effect this would provide for a building with a height comparable to a ten-storey building.

- 13.5.3. Block A would also feature five and eight-storey elements, while block B would feature three and four-storey elements. Block C would be a five-storey block and block D would feature four and five-storey elements. Existing ground levels drop gradually by approximately 1.7m from the southwest boundary to the northeast boundary. The variations in building heights are illustrated on contiguous site elevation and section drawings (nos.SB-2019-41-300, 301, 302, 400 and 401). The proposed development would be substantially higher than the surrounding existing buildings in the immediate area.
- 13.5.4. The policy basis for my assessment of the proposed building heights is informed by both national and local planning policy. In terms of national policy, I assess the development against the Building Heights Guidelines, which provide a detailed approach to the assessment of building heights in urban areas. I have considered these Guidelines alongside other relevant national planning policy standards, including national policy in the NPF, particularly NPO 13 concerning performance criteria for building height, and NPO 35 concerning increased residential density in settlements. I have had regard also to the observers' submissions, to the application details, including the Townscape / Landscape and Visual Impact Assessment, the photomontages and CGIs, and the Architectural Design Statement, as well as my visit to the site and its surroundings.

## Local Planning Policy

- 13.5.5. Development Plan housing policy 9 (H9) supports varied building heights across residential areas in south Dublin County and includes four objectives of relevance to the subject application. Policy H9 objective 1 encourages varied building heights in new residential developments to support compact urban form, a sense of place, urban legibility and visual diversity. I am satisfied that the proposed development would feature varied building heights and would provide for a compact urban form, and as concluded above, the proposed development would create a sense of place, would feature legible urban space and would also feature a visually-diverse appearance.
- 13.5.6. Policy H9 objective 2 requires higher buildings in established areas to respect their surrounding context. The site is situated within an established industrial area that is earmarked for regenerative development. Masterplan proposals indicate a reasonable level of sensitivity as part of the proposals with regard to neighbouring industrial and commercial lands, while more detailed assessment of the impacts of the development with respect to established residential areas to the west, as undertaken in section 13.7 below, concludes that the development would be sufficiently respectful to this context.
- 13.5.7. Policy H9 objective 3 requires new residential developments immediately adjoining existing one and two-storey housing to incorporate a gradual change in building heights with no significant marked increase in building height in close proximity to existing housing. The site is not immediately adjoining existing one and two-storey housing, as there is a road situated between the site and the nearest two-storey houses in Palmers Crescent and Palmers Court to the west, and in Palmerstown Court to the northwest. For this reason I am satisfied that the proposed development could not be considered to materially contravene policy H9 objective 3 of the Development Plan. This objective also directly refers to the building height implementation standards within section 11.2.7 of the Development Plan setting out that the appropriate maximum or minimum height of any building will be determined by the prevailing building heights, the proximity of existing housing, the formation of a cohesive streetscape pattern and the proximity of any Protected Structures, Architectural Conservation Areas or other sensitive features. As noted the proposed development would create strong urban edges with a consistency in the design of

the blocks, which I am satisfied would ensure a cohesive streetscape. I am not aware of any sensitive features from a visual perspective in the immediate area and it is clear that the proposed building heights would substantively exceed the height of prevailing building heights.

- 13.5.8. With regard to the proximity of new residential development to existing housing, the standards in section 11.2.7 of the Development Plan only refer to a 35m-separation distance where new residential development adjoins existing one or two-storey housing, including where it backs, sides onto or faces such housing. The Planning Authority and the applicant address the separation distances achieved between the proposed blocks and the existing housing, asserting that the 35m determination standard would fail to be strictly adhered to. The Planning Authority do not consider this to represent a material contravention of the Development Plan and the applicant considers that this could possibly be considered a material contravention of the Development Plan. I do not consider the 35m separation distance to be a strict requirement to be adhered to for the subject development, as the site of this development does not adjoin existing one or two-storey housing.
- 13.5.9. Policy H9 objective 4 of the Development Plan directs tall buildings that exceed five storeys in height to strategic and landmark locations in Town Centres, Mixed Use zones and Strategic Development Zones, and subject to an approved Local Area Plan or Planning Scheme. The observers, the applicant and the Planning Authority assert that the proposed development would materially contravene policy H9 objective 4 and I am satisfied that this would be the case, given the exceedance of five storeys in block A, as the site is not within a designated town centre, a mixed-use zone or a Strategic Development Zone, and as the area is not subject of an approved Local Area Plan or Planning Scheme. The applicant has addressed this as part of their Material Contravention Statement and it is therefore open to the Board to consider this aspect of the proposal in terms of material contravention procedures, a matter that I address further below in section 13.11.
- 13.5.10. The Development Plan urban centre policy 6 (UC6) supports varied building heights across town, district, village, local centres and regeneration areas in south Dublin County and includes four objectives of relevance to the subject application. The commentary in section 1.6.4 of the Development Plan clarifies that regeneration areas are identified in the Plan as having a 'REGEN' land-use zoning objective.

While the site is not within an urban centre, it is within a regeneration area. Policy UC6 objective 3 only allows for tall buildings exceeding five storeys in height in regeneration areas that are subject of an approved Local Area Plan or a Planning Scheme. This provision is reaffirmed at the end of section 11.2.7 of the Development Plan. A group of local elected representatives observing on the application have asserted that policy UC6 objective 3 would be breached by the subject proposals, while the Planning Authority state that the site is not identified for building heights over five storeys, nor is it subject of an approved plan, such as a Local Area Plan or a Planning Scheme. The applicant's Masterplan would not suffice in this regard.

13.5.11. I am satisfied that as building heights in block A would exceed five storeys and as the regeneration area that the site is situated within is not subject of an approved Local Area Plan or a Planning Scheme, the proposed development could reasonably be considered to materially contravene the provisions set out in urban centre policy UC6 objective 3 of the Development Plan. The applicant has not addressed the material contravention with the provisions of urban centre policy UC6 objective 3 of the Development Plan as part of their Material Contravention Statement, therefore, this would appear to preclude the Board from granting permission in these circumstances. Notwithstanding this, in the interest of providing a comprehensive assessment of the proposed building heights, I consider the proposals with respect to National planning policy for building heights directly below.

#### National Planning Policy

13.5.12. The Building Heights Guidelines describe the need to move away from blanket height restrictions and that within appropriate locations, increased height will be acceptable even where established heights in the area are lower in comparison. In this regard, SPPRs and the Development Management Criteria under section 3.2 of these section 28 Guidelines have informed my assessment of the application. SPPR 3(a) of the Building Heights Guidelines states that where a Planning Authority is satisfied that a development complies with the criteria under section 3.2, then a development may be approved, even where specific objectives of the relevant Development Plan may indicate otherwise. Section 3.1 of the Building Heights Guidelines presents three broad principles that Planning Authorities must apply in considering proposals for buildings taller than the prevailing heights:

1. does the proposal positively assist in securing National Planning Framework objectives of focusing development into 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?
2. is the proposal in line with the requirements of the Development Plan in force and such a plan has taken clear account of the requirements set out in Chapter 2 of the Building Heights 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?

13.5.13. 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, I am satisfied that the proposed development meets the requirements set out in item 1 of 3 directly above. 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 NPF.

13.5.14. Item 2 above would not be met as part of the subject proposals. Blanket height limits relative to context, as well as limited scenarios are applied in the Development Plan, which I am satisfied does not take clear account of the requirements set out in the Guidelines and lacks the flexibility to secure compact urban growth through a combination of both facilitating increased densities and building heights, while also being mindful of the quality of development and balancing amenity and environmental considerations.

13.5.15. In relation to the question in item 3 above, it cannot be demonstrated that implementation of the policies of the Development Plan, which predate the Guidelines, support the objectives and policies of the NPF.

13.5.16. The applicant has provided a Material Contravention Statement that asserts compliance of the proposals with SPPR 3(a) of the Building Heights Guidelines and the Planning Authority are satisfied that this would be the case. In principle, I am



satisfied that there is no issue with the height in terms of compliance with national policy, therefore the issue of height should be considered in the context of SPPR 3(a), which refers to the criteria in section 3.2 of the Building Heights Guidelines. Section 3.2 of the Building Heights Guidelines states that the applicant shall demonstrate to the satisfaction of the Planning Authority or An Bord Pleanála that the proposed development satisfies criteria at the scale of the relevant city or town, at the scale of district/neighbourhood/street and at the scale of site or building, in addition to specific assessments.

#### Scale of relevant city/town

- 13.5.17. The first criteria under section 3.2 of the Building Heights Guidelines relates to whether the site is well served by public transport with high capacity, frequent service and good links to other modes of public transport. I recognise that observers do not consider the site to be served by high capacity/frequency public transport services, however, my assessment above addressing the location of the proposed development with respect to appropriate densities, indicates that the site would be within easy walking distance of high frequency and high capacity public bus services, which would have good links to other public transport modes.
- 13.5.18. National and local policy recognises the need for a critical mass of population at accessible and serviced locations within the Dublin metropolitan area. I am satisfied that the site is well located and serviced with options to access existing high-frequency, high-capacity public transport routes, with links between modes, as well as increased access and connections available through more active modes of walking/cycling, and with an array of services and amenities within walking and cycling distance.
- 13.5.19. Overall, I am satisfied that the level of public transport currently available is of a scale that can support the resultant additional future population. Additional planned services in this area by way of BusConnects, will be supported by providing for developments such as this, which will support a critical mass of population in this accessible location within the metropolitan area, in accordance with national policy for consolidated urban growth and higher densities.
- 13.5.20. Point two under this part of the section 3.2 criteria relates to the scale of the development and its ability to integrate into/enhance the character and public realm

of an area, having regard to topography, cultural context, the setting of key landmarks and the protection of key views. The observers assert that the proposals would be over dominant, resulting in an abrupt transition in building heights, and the Planning Authority raise some concerns regarding the eighth and ninth-storey elements to block A, although they consider the mix of uses and public interfaces would contribute positively to place making. The applicant asserts that the site is not located within an architecturally-sensitive area and the design of the development has regard to the immediate context, while the development would feature improvements to the public realm to the south and west sides. As required, a Townscape / Landscape and Visual Impact Assessment carried out by suitably qualified practitioners has been submitted as part of the application. I have viewed the site and its surrounds from various locations. The visual impact assessment undertaken below in section 13.6 concludes that the proposed development would largely have a positive effect on the cityscape.

13.5.21. With regard to the contribution of the development to place-making and the delivery of new streets and public spaces, I note that a section of new cycleway and an upgraded pedestrian route would be provided along the industrial estate access road. A new street would also be formed between the application site and the adjoining property to the east, with scope to connect into the property adjoining to the north. The development would feature some improvements to the public realm along Kennelsfort Road Upper, including a landscaped green buffer. Subject to a condition, a new pedestrian route could also be formed along the northern boundary of the site connecting the Kennelsfort Road Upper frontage with the adjoining site to the east. In conclusions, I am satisfied that the development would make a positive contribution to place-making at the scale of the city.

#### Scale of District / Neighbourhood / Street

13.5.22. The bullet points under this section of the Building Heights Guidelines relate to how the proposals respond to the overall natural and built environment, the contribution of the proposals to the urban neighbourhood and streetscape, whether the proposal is monolithic in form, whether the proposal enhances the urban design of public spaces, legibility and integration with the wider urban area, and the contribution to building/dwelling typologies available in the neighbourhood. The Planning Authority assert that at this scale the proposed development would make a positive

contribution to the streetscape, compliant with DMURS and with massing minimised by the block arrangement, although some concerns regarding the housing mix was expressed, which I address in section 13.8 below.

- 13.5.23. The applicant considers the development to respond to its overall natural and built environment by making an extremely positive contribution to the urban neighbourhood, providing much-needed housing and facilitating the future redevelopment of the regeneration lands. As referred to above, the block arrangement and modulated building heights would avoid the creation of a development monolithic in appearance and would provide for passive surveillance of the public realm, open spaces and the pedestrian and cycle routes running through the site.
- 13.5.24. In terms of how the development responds to the overall natural environment, I note the limited presence of flora and fauna on site and the applicant's mitigation measures outlined in their Ecological Impact Assessment, as well as the landscaping proposals. I am satisfied that the development would respond appropriately to the existing built and natural environment and the height and scale of the buildings would positively contribute to the urban neighbourhood and streetscape. The site is not considered to be at risk of flooding, a matter that is addressed further below in section 13.10 of this report.
- 13.5.25. With regard to the consideration of the criteria relating to legibility, the proposals would make a positive contribution to the improvement of legibility in the wider urban area, subject to an additional route along the northern boundary and given the provision of a new section of cycle route on the southern side with the industrial estate access road. Additional positive contributions would arise via the provision of a new pedestrian crossing on Kennelsfort Road Upper, improving connectivity with public bus services.
- 13.5.26. The mix of residential units is discussed further below, and I am satisfied that given the existing nature of housing in the area, as referenced by various parties to the application to be formed by three and four bedroom family-size houses, the provision of apartments would add to the typology of housing in this area.

### Scale of the site / building

13.5.27. In section 13.7 below, I assess in detail the impact of the height of the proposed buildings on the amenity of neighbouring properties, including the potential for overshadowing and loss of light, views and privacy. I consider the form of the proposed development to be well considered in this regard and issues in relation to sunlight, daylight and overshadowing have been adequately addressed as part of the proposed development (see sections 13.7 and 13.8 below). I am satisfied that with only a slender element of the overall proposals featuring taller elements above five storeys, and given the scale of the site, the separation distances between existing and proposed buildings, and the immediate adjoining land uses, development at the height and scale proposed can be absorbed onto this site.

### Specific Assessments

13.5.28. A number of specific assessments have been undertaken and submitted with this application, specifically in relation to sunlight/daylight, air quality and noise impact. The applicant's microclimate report concludes that the proposed development would have no significant adverse effects on microclimate. Evidence to the contrary has not been submitted by parties to the application and the Planning Authority require any mitigation measures, such as the provision of planting to serve as wind breaks, to form conditions in the event of a permission being granted, which I am satisfied would be a reasonable requirement.

13.5.29. The applicant's telecommunications statement states that the proposed development would not have any impact on telecommunications channels. The subject site is located within an Outer-Approach Area relating to Casement/Baldonnell Aerodrome, which is situated approximately 6km to the southwest of the application site. Section 7.8.1 of the Development Plan refers to Casement Aerodrome with infrastructure and environmental quality (IE) policy 8 outlining the objectives to be complied with in safeguarding the current and future operation of the facility. Under the Outer-Approach Surface (outside the Inner-Approach Area, but within the approach funnels), graded heights of development below the obstacle limitation surfaces of the runways may be permitted, subject to demonstration that the development is not an obstacle to the operation of a runway. Under section 11.6.6 of the Development Plan, an applicant is required to submit a longitudinal section through the relevant

Approach Surface funnel based on the ordnance datum of the relevant runway and the application of specified aerodrome surface slopes. A flight-path section drawing (no. SB-2019-41-900) is stated to confirm that there would be a flight path clearance of 151m above the height of the proposed buildings and no adverse impacts for aviation safety would arise from the proposed development. Evidence to the contrary has not been submitted by parties to the application.

13.5.30. A Screening Report for AA and an Ecological Impact Assessment, including bat and bird surveys, have been submitted as part of the application to demonstrate no significant impact on ecology, and no likely adverse impact on protected habitats or species, including bats and birds. Strategic Environmental Assessment would not be required for this project and screening for EIA concluded that an EIA would not be necessary either (see section 14 below). I am satisfied that adequate information has been submitted and is available to enable me to undertake a comprehensive assessment of the impact of the proposed development.

#### Building Heights and Scale Conclusion

13.5.31. Overall, I am satisfied that the proposed development would make a positive contribution to the area and would respond well to the natural and built environment in visual terms. At the scale of the neighbourhood there would be capacity to absorb buildings at the height proposed. I am also satisfied that the scale of the site and its context as part of the immediate area of regeneration lands, would readily allow for development at the heights proposed. The Planning Authority suggest the omission of the two upper floors to block A for reasons relating to overbearing impacts, the necessity or otherwise of which I address further below (see section 13.7).

13.5.32. The Board may in circumstances approve development for higher buildings, even where specific objectives of the relevant Development Plan may indicate otherwise, as per SPPR 3(a). In this regard, the proposed building heights are greater than the standard heights outlined within the Development Plan and would be greater than the height of existing neighbouring buildings. Notwithstanding that the building heights proposed would be in accordance with national policy and guidance to support compact consolidated growth within the footprint of existing urban areas, the building heights proposed would materially contravene the provisions of policy H9 objective 4 and policy UC6 objective 3 of the Development Plan. The failure of the

applicant to address in their Material Contravention Statement the fact that the proposals would materially contravene the provisions of policy UC6 objective 3 of the Development Plan, would appear to preclude the Board in granting permission for the proposed development in these circumstances.

### 13.6. Visual Impact Assessment

- 13.6.1. The observations assert that the proposed development would have a negative visual impact, would be out of character with the surrounding low-rise, low-density setting and would feature a visually intrusive, incongruous and overly-dominant appearance. The Planning Authority recognise that the development would change the character of the area, with positive impacts arising from the contribution of the development to the streetscape, including the public realm interfaces. The Planning Authority also expressed that the eight and nine-storey elements closest to Kennelsfort Road Upper, which they consider to form a landmark structure, could have a significant visual impact on the area.
- 13.6.2. The site is within an urban landscape character area based on figure 9.1 of the Development Plan. The Development Plan does not identify any prospects to be preserved and protected effecting the site, nor are there features of visual interest contained within the site or immediate to the site. A 'Townscape / Landscape and Visual Impact Assessment' and a booklet of photomontages, as well as contextual elevations and sections accompanied the application. CGIs of the development are provided as part of the applicant's Architectural Design Statement. A total of six short and medium-range viewpoints are assessed in the 'Townscape / Landscape and Visual Impact Assessment'.
- 13.6.3. Observations assert that the applicant has presented a visually inaccurate portrayal of Kennelsfort Road Upper as a wide boulevard in the application details submitted. The photomontages submitted with the application include visual representations, which I am satisfied would appear to provide a reasonably accurate portrayal of the completed development, including those elements along Kennelsfort Road Upper featuring building setbacks of between 10m to 17m approximately from the back edge of the footpath. The following table 5 provides a summary assessment of the likely visual change from the applicant's six selected viewpoints arising from the completed proposed development.

**Table 5. Viewpoint Changes**

<b>No.</b>	<b>Location</b>	<b>Description of Change</b>
<b>1</b>	Kennelsfort Road Upper – 60m southwest	The entire façade to blocks A and D, including nine storeys to the corner element of block A, would be visible from this short-range viewpoint approaching the site. An open boundary would be provided onto Kennelsfort Road Upper and the industrial estate access road. I consider the magnitude of visual change from this location to be substantial in the context of the receiving suburban environment.
<b>2</b>	Palmers Crescent – 50m northwest	The entire façade to block D and the upper-level elevations to block A, would be visible from this short-range viewpoint approaching the site from within the neighbouring housing estate. An open boundary would be provided onto Kennelsfort Road Upper. I consider the magnitude of visual change from this short-range view to be substantial in the context of the receiving suburban environment.
<b>3</b>	Oakcourt Avenue (Pobalscoil Iosolde entrance)– 165m north	Upper-level building formation for proposed block A would be visible, but would be substantially screened by the school buildings and trees within the schools grounds. I consider the magnitude of visual change from this medium-range viewpoint to be slight in the context of the receiving suburban environment.
<b>4</b>	Kennelsfort Road Upper (Palmerston Court) – 90m north	The entire façade to blocks A and D, including nine storeys to the corner element of block A, as well as the upper-floors to block C, would be visible from this short-range viewpoint approaching the site. An open boundary would be provided onto Kennelsfort Road Upper and the existing buildings and boundary treatments to the north of the site would provide some screening of the lower-levels to block C. I consider the magnitude of visual change from this location to be substantial in the context of the receiving suburban environment.
<b>5</b>	Palmers Road – 140m southwest	The entire façade to blocks A and D, including nine storeys to the corner element of block A, would be visible from this

		medium-range viewpoint across a residential greenspace. Existing houses and industrial buildings, as well as trees, would provide some screening of the lower-levels to part of blocks A and C. I consider the magnitude of visual change from this location to be substantial in the context of the receiving suburban environment.
6	Palmerstown Close (green space) – 180m northwest	Upper-level building formation for proposed blocks A and C would be visible from across the residential greenspace, with some screening provided by the existing houses and mature trees within the greenspace. I consider the magnitude of visual change from this medium-range viewpoint to be moderate in the context of the receiving suburban environment.

13.6.4. The applicant’s assessment of the visual impact asserts that the immediate landscape is of ‘medium-low’ cityscape sensitivity due to the potential magnitude of change arising when viewed from the housing areas to the north and west and the industrial / institutional lands to the east and south. The most sensitive visual receptors comprise the adjacent housing areas to the west and south. Short-term construction stage landscape / cityscape impacts are considered in the application to be of low impact. According to the applicant, the taller elements of the proposed development are likely to read as a node or a marker of a new higher intensity residential precinct. In addition to the physical separation from housing to the west, the applicant asserts that there would be a perceptual separation from these houses and the proposed higher building elements that would be reinforced by grass-buffer strips, cycle and pedestrian paths, vehicle carriageways and a landscaped plaza incorporating tree planting, serving as an apron to the building. Overall, the applicant considers the development to have a medium to low magnitude of impact on the cityscape character. Mitigation measures to address the visual impacts are not proposed by the applicant, other than those embedded elements of the design that respond to its immediate setting in combination with the objectives of the subject REGEN zoning.

13.6.5. In the immediate area the development would be most visible from the approaches on Kennelsfort Road Upper to the north and south, from the housing areas to the west and from the industrial estate to the east, with only intermittent views of the



higher building elements from local vantage points in the neighbouring areas. Observations to the application assert that the applicant has overemphasised the views from the open spaces serving Palmerstown Manor estate to the west. I am satisfied that a reasonable representative sample of viewpoints has been provided in the photomontages submitted, however, I consider the 'Townscape / Landscape and Visual Impact Assessment' would have benefited from an assessment of a photomontage viewpoint from the east of the site within the industrial estate, particularly on the access road approach to the site. Notwithstanding this, I have viewed the site from this area to the east and I have considered the likely impact of the development presented in the application from this area and other vantage points in the vicinity. I am satisfied that the development would also be likely to have a substantial visual impact from the eastern approach road in the context of the low-rise receiving environment.

- 13.6.6. The CGIs submitted illustrate the development in summer settings with landscaping matured and in good maintenance. The CGIs also indicate potential developments within the wider REGEN zoned lands, although I am not aware of planning permission for substantive redevelopment of any of these neighbouring plots. Environmental conditions would also influence the appearance of the development from the selected viewpoints and I am not aware of any permitted proposals that would have substantive cumulative visual effects alongside the proposed development.
- 13.6.7. The proposed development would change the site from a low-rise industrial development to a higher-density apartment scheme with buildings of up to nine storeys. This represents a substantial change in operational use, as well as a substantive increase in building heights and scale when considering the existing low-rise buildings characterising the site and area. The development would substantially alter the character of the site and the magnitude of visual impact on the cityscape would be substantial, however, I am satisfied that the potential effect on the cityscape character and the site itself would be largely positive based on the present condition and nature of the site, as well as the quality of urban design presented in the proposed scheme.
- 13.6.8. I am satisfied that the visual change would be largely imperceptible from the wider areas, but substantial visual impacts would arise on the Kennelsfort Road Upper

approaches to the site, from the housing area to the west and from the industrial estate access road. Where potentially discernible from long-range views, the proposed development would read as part of the wider urban landscape and screening offered by existing buildings and mature tree planting would largely negate the visual impact of the development from the wider area.

13.6.9. The development would be viewed as a substantial insertion into the urban setting where it is most visible and as a substantive new feature where visible from the neighbouring properties to the west. While the immediate context of the area would appear to have undergone limited change in recent years, the subject site and immediate lands to the east are earmarked in the Development Plan for intensive redevelopment, which could feature high-density apartment developments. From the immediate approaches, the taller elements of the development when completed would initially be seen as substantive consolidating features within the urban landscape at the gateway of lands to be subject of regeneration and redevelopment. As the other regeneration lands come forward for development into the future, the magnitude of the visual impact would reduce overtime, particularly where the development would be visible from the eastern area and as part of a broader community of buildings higher than the existing and immediately surrounding buildings.

13.6.10. I am satisfied that the broad changes that would arise from the proposed development, albeit substantive in terms of magnitude of impact, would largely have a positive effect on the cityscape based on the information available, the existing site context and condition, as well as the objectives and policies of the statutory plan for this area. I am therefore satisfied that the proposed development would have acceptable direct, indirect and cumulative effects on the cityscape and acceptable direct, indirect and cumulative impacts on the visual amenities of the area. The impact on the outlook from neighbouring residences is considered separately in section 13.7 directly below.

### **13.7. Impacts on Neighbouring Amenities**

13.7.1. The observations assert that the proposals would have undue impacts on the amenities of properties in the area, including houses and a school, as a result of overlooking, overshadowing and overbearing impacts, as well as the loss of light and

privacy. The Planning Authority asserts that more could be done with the design and scale of the proposed development to address the potential for overbearing impacts and overlooking to the housing area to the west. The Elected Members refer to potential breaches of Development Plan policy with respect to separation distances from the development to existing houses.

### Context

- 13.7.2. The nearest existing residential properties are located to the west, comprising the two-storey semi-detached houses, including 10 Palmers Park, 1 and 2 Palmers Crescent and 1 Palmerstown Court. Separation distances to these neighbouring houses are identified on the proposed site layout plan and height differences are illustrated on the site section and elevation drawings. The nine-storey element to block A would be 34.1m from 10 Palmers Park and 29.5m from 1 Palmers Crescent with an approximate height difference of 21.7m between the proposed block A roof parapet and the existing roof ridge height to these houses. The front eight-storey element of block A would be 26.7m from 1 Palmers Crescent, with a proposed roof parapet approximately 20.2m over the existing roof ridge height to this house. The five-storey block D would be 33.1m from 2 Palmers Crescent and 40m from 1 Palmerstown Court with an 8.1m difference between the proposed roof parapet to block D and the roof ridge heights to these houses.

### Overlooking and Loss of Privacy

- 13.7.3. The Development Plan includes numerous provisions with respect to the protection of residential amenities and a requirement for developments to have regard to the surrounding context. Section 11.3.1(v) of the Development Plan refers to a minimum separation distance of approximately 22m between ground-floor windows to maintain privacy. In certain instances, including higher density development incorporating innovative design solutions, reduced separation distances may be acceptable under the Development Plan provisions.
- 13.7.4. The stepped block arrangement would not position the highest elements of the proposed buildings furthest from the neighbouring residences. However, given the separation distances listed above, as well as the Development Plan provisions in this regard, and the fact that the closest houses, 10 Palmers Park and 1 and 2 Palmers Crescent, feature secondary side elevations onto Kennelsfort Road Upper with

limited size window openings, I am satisfied that the proposed blocks would not provide for excessive direct overlooking or loss of privacy to the internal areas of housing closest to the development, which is representative of the worst-case scenario in this regard. Windows to the front and rear elevations of those houses due west of the site do not directly face the development, therefore direct overlooking could not arise, and the nearest house with primary windows orientated facing directly towards the application site, would be 1 Palmerstown Court, located 45m to the north of proposed block D, a sufficient distance to ensure excessive direct overlooking could not arise between this residence and the proposed development.

- 13.7.5. Several observers refer to excessive direct overlooking of the neighbouring school, the closest building of which would be located 54m to the north of proposed block C. The separation distance from the school buildings to the nearest apartment buildings would be substantive and could not reasonably be considered to facilitate excessive direct overlooking of this education facility.
- 13.7.6. In relation to the potential to overlook the amenity areas of neighbouring housing, I recognise that each of the neighbouring properties feature gardens to the rear and scope for same would reduce with distance from the site. Existing boundaries separating each of the properties, as well as extensions and shed structures would to an extent screen some private amenity areas from view from the upper-level amenity areas and apartments in the proposed development along Kennelsfort Road Upper. There would already be scope for overlooking of these amenity areas and associated loss of privacy from the first-floor windows of the neighbouring houses and I do not consider that the proposed development would present any worse a situation than that which presently exists in this regard. I am satisfied that the separation distances that would be achieved from neighbouring residences would be typical for an urban setting earmarked for intensive regeneration and the existing intervening public roadway and green verges would offer additional visual distraction and buffers between the existing and proposed residences.
- 13.7.7. I am satisfied that no measures would be required to reduce the potential for overlooking of neighbouring residences from the proposed development. Furthermore, the proposed development would not substantially inhibit the future development potential of neighbouring lands, given the setback provided between

the proposed buildings and the northern and eastern boundaries. I consider the impacts on privacy for residents of the proposed apartments separately under section 13.8 below.

#### Outlook and Overbearing Impacts

- 13.7.8. The proposed development would be visible from schools and commercial buildings, as well as the private amenity areas and internal areas of housing neighbouring the site. Consequently, it would change the outlook from these neighbouring properties. Having visited the area and reviewed the application documentation, including the photomontages and CGIs, which I believe to provide a reasonably accurate portrayal of the completed development, I consider that the extent of visual change that would arise from those areas with views of the development, would be reasonable having regard to the separation distances to housing, as referred to above, the existing appearance of the site and as a contemporary development of this nature would not be unexpected in this area owing to the intensive regeneration development objectives for the site, as contained in the statutory plan for this area.
- 13.7.9. Another key consideration is whether the height, scale and mass of the proposed development and its proximity to neighbouring properties is such that it would be visually overbearing where visible from neighbouring properties. The proposed development clearly exceeds the prevailing lower building heights of the area. The most sensitive neighbouring properties, including the existing and proposed building height differences and the minimum separation distances between these buildings, are detailed above. Observers assert that the proposed development would be overbearing on neighbouring properties and the Planning Authority has raised some concerns in this regard.
- 13.7.10. Photomontages 1, 2, 4 and 5 of the applicant's Photomontage booklet best illustrate the appearance of the development closest to the housing areas to the west. The CGIs within pages 12, 13 and 14 also provide some additional information to appreciate the scale of the development when viewed from neighbouring properties. I am satisfied that the proposed development would not be overly prominent when viewed from the nearest houses, with an open outlook and sky view maintained for neighbouring residences. Photomontage view 1 provides an image of the development along the most sensitive boundary with Kennelsfort Road Upper and

the neighbouring houses closest to the site, and while I note the height of the eight and nine-storey block A elements onto the roadway, there would be sufficient intervening space between the existing houses to ensure that the proposed buildings would not be excessively overbearing onto this route and the neighbouring houses. The stepped and modulated design of the proposed apartment blocks, coupled with the separation distances from the existing housing and other buildings, is such that where visible from neighbouring properties the proposed development would not be excessively overbearing.

#### Impacts on Lighting - Sky and Sunlight

- 13.7.11. In assessing the potential impact on light access to neighbouring properties where the occupants would have a reasonable expectation of daylight, two primary considerations apply, including the potential for excessive loss of daylight and light from the sky into existing buildings through the main windows to living rooms, kitchens and bedrooms, and the potential for excessive overshadowing of existing external amenity spaces, including parks and gardens. The Planning Authority acknowledge the applicant's submission on daylight to existing neighbouring buildings and properties. Observers raise concerns regarding the potential for the development to overshadow properties and result in loss of light to these properties.
- 13.7.12. The applicant has provided an Effects on Daylight Reception Report assessing the effect of the proposed development on the vertical sky component (VSC) and relying on the standards of the aforementioned BRE 209 Guide, the European/British Standard EN17037/BS EN17037 Lighting for buildings code of practice for day lighting and CIBSE Guide 10 Day light and lighting for buildings. Notwithstanding provision within the BRE 209 Guide allowing developers or Planning Authority's to use different target values in special circumstances, given that 'special circumstances' have not been identified and as the BRE 209 Guide and BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' are referred to in the relevant guidelines for the assessment of residential development in Ireland, it would be more prudent to rely on the BRE 209 Guide and BS 8206-2: 2008 standards.
- 13.7.13. The BRE 209 guidance on daylight is intended to be used in assessing daylighting to rooms in neighbouring houses, including living rooms, kitchens and bedrooms.

When considering the impact on existing buildings, criteria is set out in figure 20 of the guidance, and this can be summarised as follows:

- if the separation distance is greater than three times the height of the proposed building above the centre of the main window, then the loss of light would be minimal. Should a lesser separation distance be proposed, further assessment would be required;
- if the proposed development subtends an angle greater than 25° to the horizontal when measured from the centre line of the lowest window to a main living room, then further assessment would be required;
- if the VSC would be greater than 27% for any main window, enough skylight should still be reaching this window and any reduction below this level should be kept to a minimum;
- if the VSC with the development in place is less than 0.8 of the previous value, occupants would notice a reduction in the amount of skylight;
- in the room impacted, should the area of the working plane that can see the sky be less than 0.8 the previous value, then daylighting is likely to be significantly affected. Where room layouts are known, the impact on daylight distribution in the existing building can be assessed.

13.7.14. The tests above are a general guide only and the BRE 209 guidance states that they need to be applied flexibly and sensibly with figures and targets intended to aid designers in achieving maximum sunlight and daylight for residents and to mitigate the worst of the potential impacts for existing residents. It is clear that the guidance recognises that there may be situations where reasonable judgement and balance needs to be undertaken cognisant of circumstances. To this end, I have used the Guidance documents referred to in the Ministerial Guidelines to assist me in identifying where potential issues and impacts may arise and also to consider whether such potential impacts are reasonable, having regard to the need to provide new homes within the Dublin metropolitan area, the need for increased densities within zoned, serviced and accessible sites and the need to address impacts on existing residents, as much as is reasonable and practical.

13.7.15. Neighbouring windows were not identified proximate and facing directly onto the site from the north, south and east sides. The existing baseline VSC for 14 windows on neighbouring properties to the west was calculated and presented in the applicant's Effects on Daylight Reception Report, and the results were compared with the proposed development in place. I am satisfied that the VSC assessment has been targeted to the existing neighbouring windows, rooms and houses that have greatest potential to be impacted and would be representative of the worst-case scenario in terms of access to light arising from the proposed development. I am also satisfied that the applicant appears to have sufficiently modelled the position of windows serving the neighbouring houses to the west to enable a precise assessment of the impacts on lighting to these houses. The separation distance from the classrooms in the school to the north that is on slightly lower ground, in particular the distance of 125m from the tallest elements of block A (31.3m height) and 65m from block C (17.6m height) could not reasonably be considered to facilitate excessive loss of light to the rooms in the school that require access to light, based on the BRE 209 Guide test steps outlined above.

13.7.16. Baseline VSC values of between 34% and 36% are outlined in section 5.3 of the applicant's report for each of the tested windows. Estimated VSC values of 30% to 33% with the proposed development in place would arise for the tested windows according to the application details, therefore, the VSC value would not fall below the required 27% value. Furthermore, the range of ratio of change in VSC would amount to between 0.84 and 0.95 of the existing value and above the minimum recommended 0.8 VSC ratio value. VSC target values set out in the BRE 209 Guide are therefore complied with as part of the proposed development. I am satisfied that based on the worst-case scenario results presented, any potential for loss of light to other houses would be minimal and assessment of their VSC levels would not be necessary. Accordingly, a refusal of permission or modifications to the proposed development for reasons relating to lighting to neighbouring properties would not be warranted.

#### Overshadowing

13.7.17. Observations assert that the proposed development would overshadow neighbouring properties. The BRE 209 Guide requires greater than half of neighbouring gardens to receive at least two hours of sunlight on the Spring equinox. Image 6.1 of the



applicant's Sunlight Reception Analysis report illustrates those properties with greatest potential to be overshadowed by the proposed development. Appendix A to the report illustrates the likely shadow effect of the proposed development on neighbouring properties at different times and dates throughout the year. An analysis of the shadow effect is undertaken for 45 front and rear gardens along Palmers Park and Palmers Crescent, as well as the closest green spaces serving Palmers estate to the west of the application site and Pobalscoil Iosolde to the north of the site. Table 6.2 of the applicant's analysis highlights that all of the neighbouring gardens and green spaces tested would receive more than two hours sunlight for over half of their area on the Spring equinox and that the change in sunlight to these spaces would not be less than a ratio of change of 0.8 when compared with the existing situation. In conclusion, based on the information provided showing compliance with the minimum requisite standards, I am satisfied that excessive overshadowing of neighbouring gardens and green spaces would not arise as a result of the proposed development.

### Construction Impacts

- 13.7.18. Observations refer to the potentially harmful impacts of asbestos arising from the demolition works. An asbestos survey of the warehouse to be demolished was undertaken and included as Appendix A to the applicant's Outline Waste and Construction Management Plan. Some asbestos containing material was found in the roof and the report notes that this should be removed by a competent asbestos contractor. Given the hazardous nature of such material it should be disposed of correctly to a licenced waste facility and all standard procedures for same should be followed. A standard condition can be attached in the event of a grant of permission for the proposed development to require a Construction and Demolition Waste Management Plan and a Construction Environmental Management Plan to be submitted and agreed with the Planning Authority prior to the commencement of the demolition works, including the final means of asbestos removal to ensure no harmful impacts would arise for humans as a result of its presence on site. The Planning Authority also refer to the need to provide details of mitigation measures to address the medium-level invasive Buddleia plant (butterfly bush) identified on site. Such details can be provided as part of the project Construction Environmental Management Plan.

13.7.19. Observations assert that the proposed development would result in nuisance for neighbouring residents as a result of disruption during the construction phase. The construction phase is estimated to take place over 16 months according to the applicant. The applicant's Outline Waste and Construction Management Plan sets out intended measures to address traffic during the construction phase, as well as control noise, dust and vibration emissions below relevant levels. Any construction phase impacts, would only be of a temporary nature and would also be subject of a project Construction Environmental Management Plan that can be agreed with the Planning Authority in the event of a grant of planning permission. Details to be provided would include the haul routes for construction vehicles. With respect to the health and safety implications of debris and material potentially falling from the works and development, as raised by observers, I note that the applicant states in their Outline Waste and Construction Management Plan that the contractor shall comply with the requirements as set out in the Public Health Act.

13.7.20. The applicant sets out working hours of 08:00 to 20:00 hours Monday to Friday and 08:00 to 14:00 hours on Saturdays, and observers require the working hours to be provide for a finishing time of 19:00 hours. As would be standard practice, I am satisfied that site development and building works should only be carried between the hours of 0700 to 1900 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. A condition can be attached to this effect in the event of a grant of planning permission.

13.7.21. Observers have raised concerns regarding the potential for structural impacts on neighbouring properties. The scale of works subsurface would not be substantial with limited excavation works throughout primarily for services and foundations, and these works would be at a remove from the nearest neighbouring residential properties. The excavation works are not extensive and I note that these works would also be subject to further site investigations and engineering details prior to and during the construction stage. As per the request of the Planning Authority, a final Construction Environmental Management Plan can be agreed in the event of permission, and I am satisfied that finalisation of and adherence to such a plan would ensure the management of demolition and construction activity is carried out in a planned, structured and considerate manner that minimises the impacts of the works on local residents and properties in the vicinity.

### Anti-Social Behaviour

13.7.22. The observations assert that the completed development would lead to an increased potential for anti-social behaviour. The proposed development would redevelop vacant properties previously used for commercial purposes and which the applicant notes have been subject to fly-tipping. Matters relating to anti-social behaviour are dealt with under differing legal codes and I am satisfied that there is no reason to suggest that the layout and design of the proposed development could reasonably be considered to support increased levels of anti-social behaviour in this area, particularly as the design of the scheme provides for extensive passive surveillance of the open spaces, new routes and existing streets. This is recognised by the Planning Authority who note that the development layout would discourage anti-social behaviour.

### Conclusions

13.7.23. In conclusion, sufficient information has been provided with the application to allow a comprehensive and thorough assessment of the impacts of the proposals on neighbouring residential amenities, as well as the wider area. I am satisfied that the proposed development would not result in excessive overshadowing or overlooking of neighbouring properties and would not have excessively overbearing impacts when viewed from neighbouring properties, as well as the public realm. Accordingly, the proposed development should not be refused permission for reasons relating to the likely resultant impacts on neighbouring amenities.

13.7.24. The observations assert that the proposed development would lead to a depreciation in the value of property in the vicinity. Following on from the assessment above, sufficient substantive and objective evidence has not been provided to support claims that the proposed development would be likely to result in a depreciation of property values in the vicinity.

## **13.8. Residential Amenities and Development Standards**

13.8.1. An assessment of the amenities of the proposed development relative to quantitative and qualitative standards for residential development is undertaken below having regard to the guidance set out in the New Apartments Guidelines, the Development Plan and the Building Heights Guidelines, which also refer to documents providing

guidance for daylight and sunlight assessments within new developments. The subject development would not come within a category of development that would be open to relaxed development standards.

- 13.8.2. I note that section 8.2.3.3 of the Development Plan seeks to have regard to various Department guidance documents, including the 'Sustainable Urban Housing: Design Standards for New Apartments' (2015). Since the adoption of the Development Plan, these section 28 New Apartment Guidelines were updated in 2018 and again in 2020. Where guidelines referred to in the Development Plan have been updated since the Development Plan was adopted, the Planning Authority generally refer to the current guidance in their report on this application, which would appear a reasonable approach in assessing the acceptability or otherwise of the subject proposals. I recognise the Planning Authority reference to the 2018 version of the New Apartment Guidelines when considering the proposed car parking provision.
- 13.8.3. Further to this, I am satisfied that the provisions within section 18.2 of the Development Plan are clearly standards and, where not directly referenced within policies or objectives of the Development Plan, deviation from these standards would not be likely to be of a material nature, particularly where there is compliance with more contemporary and up-to-date national policy and standards.

#### Apartment Mix

- 13.8.4. Observations assert that an inappropriate housing mix is proposed as part of the development, with an absence of three-bedroom units suitable for family-living and the provision only of apartments intended to serve short-term housing needs. The mix of apartments proposed would comprise 50% one-bedroom and 50% two-bedroom apartments. Housing policy H10 of the Development Plan seeks to ensure that a wide variety of adaptable housing types, sizes and tenures are provided in the county, in accordance with the provisions of the Interim South Dublin County Council Housing Strategy 2016-2022. The Planning Authority recognise that the unit mix would be in keeping with the New Apartment Guidelines, and although they state that the Development Plan does not specifically require three-bedroom units, they consider that the housing mix could be improved through the provision of a number of three-bedroom apartments.

- 13.8.5. As referenced above, the immediate area to the west is primarily defined by houses of larger size when compared with the proposed one and two-bedroom units, and the Planning Authority accept that the proposed units would provide an alternative to these units. The applicant addresses the housing mix matter within their Material Contravention Statement, as housing policy 10 Objective 1 refers to the provisions of the Interim South Dublin County Council Housing Strategy 2016-2022, which they state to feature a specific requirement for a minimum of 30% three-bedroom units in residential schemes. This 30% three-bedroom unit requirement in new residential schemes is a requirement of the South Dublin Housing Strategy and Interim HNDA 2022 – 2028 forming Appendix 11 to the Draft South Dublin County Development Plan 2022-2028, but it is not a requirement of the South Dublin County Council Interim Housing Strategy 2016 forming schedule 3 to the current statutory Development Plan. Accordingly, I do not consider this to be a material contravention of the housing mix provisions of the Development Plan, as it does not relate to non-compliance with a policy or objective of the current statutory Development Plan for this area.
- 13.8.6. SPPR1 of the New Apartment Guidelines states that apartment developments may include up to 50% one-bedroom or studio-type units and that there shall be no minimum requirement for apartments with three or more bedrooms. Accordingly, I am satisfied that an appropriate unit mix for the development has been proposed, based on SPPR1 of the New Apartment Guidelines.

#### Apartment Standards

- 13.8.7. Housing policy 14 of the Development Plan addressing internal residential standards requires a high standard of accommodation that is flexible and adaptable, to meet the long-term needs of a variety of household types and sizes. Objective 1 of this housing policy refers to the 2015 version of the New Apartment Guidelines. The applicant asserts that the proposed apartments have been designed to fully accord with the apartment sizes within the New Apartment Guidelines (2020). A Housing Quality Assessment comprising a schedule of accommodation has been submitted with the application, which provides details of apartment sizes, aspect, room sizes, storage space and private amenity space. Observations assert that the accommodation would be too small for future occupation by families.

- 13.8.8. Minimum unit size requirements of 45sq.m and 73sq.m are respectively required for one and two-bedroom units in the New Apartment Guidelines. The proposed development with the smallest one-bedroom unit measuring a stated 45.1sq.m and two-bedroom unit measuring a stated 74.6sq.m, would meet the minimum apartment floor area standards required in the New Apartment Guidelines and, as such, I am satisfied that compliance with the relevant development standards would be achieved for each proposed apartment.
- 13.8.9. The internal design, layout, block configuration, room sizes and storage space for each of the apartments and blocks, as identified in the drawings and Housing Quality Assessment, would appear to accord with or exceed the relevant standards, as listed in the New Apartment Guidelines, including the appendix 1 standards. Floor to ceiling heights of 3.35m are illustrated on the section plans for the non-residential uses on ground-floor level and 2.85m floor to ceiling heights for the apartments at ground-floor. Floor to ceiling heights of 2.5m are identified for the upper-floor apartments. The Planning Authority refer to a preference for minimum ground floor to ceiling heights of 3m to 3.1m to provide for greater flexibility of uses. I am satisfied that the ground floor to ceiling height standard of 2.7m required in SPPR5 of the New Apartment Guidelines would be achieved for the proposed development with some provision for increased heights at ground-floor level.
- 13.8.10. In safeguarding higher standards, the 10% additional floor space required in section 3.8 of the New Apartment Guidelines for the majority of apartments would also be achieved, with 89 proposed apartments, accounting for 62% of the proposed scheme, meeting or exceeding the 10% additional floor space standard.
- 13.8.11. Private amenity space for each of the apartments, including balcony and terrace sizes and depths, would meet or exceed the minimum requirements set out in the New Apartment Guidelines.
- 13.8.12. The number of apartments per floor per core would not exceed 12 and, accordingly, the proposed development would accord with the lift and stair core provisions set out in SPPR6 of the New Apartment Guidelines.

#### Dual Aspect Apartments

- 13.8.13. With regard to aspect, the Development Plan requires schemes to comply with the 2015 version of the New Apartment Guidelines. SPPR4 of the New Apartment

Guidelines requires 33% dual aspect apartments in new residential development within accessible urban locations such as this. A total of 84 apartments are stated to form dual aspect units, which would equate to 58% of the apartments within the scheme. The Planning Authority query whether a number of the apartments within block C should be included as dual aspect units due to the restricted form of openings on one aspect to the respective apartments. These units comprise ground-floor apartments C01 and C04 and the units directly above these units. Having reviewed the drawings submitted, I am satisfied that given the positioning of windows providing aspect in two directions for the apartments, there is no reason to exclude the subject apartments in block C from being categorised as featuring dual aspect. Accordingly, I am satisfied that the provision of dual aspect units would be in compliance with SPPR4 of the New Apartment Guidelines.

13.8.14. Section 3.18 of the New Apartment Guidelines states that where single-aspect apartments are to be provided, the number of south-facing units should be maximised, with west or east-facing single-aspect units also being acceptable. The Guidelines state that north-facing single-aspect apartments may be considered, where overlooking a significant amenity, such as a public park, a garden or formal space, a waterbody or some other amenity feature. A total of 12 of the apartments or 8% of the total apartments are stated to be single-aspect units with north aspect only. Having reviewed the plans it is apparent that these apartments, which are all in block A at first to fourth-floor level, would overlook the communal space to serve the proposed development, as well as the south elevation to block D, which would be a minimum of 14m to the north of these units. Given the substantive views over the communal open space, I am satisfied that the aspect serving the 12 single-aspect north-facing apartments in proposed block A, would be acceptable and would be in compliance with the provisions set out in the New Apartment Guidelines.

#### Daylight Provision

13.8.15. Section 3.2 of the Building Heights Guidelines state that the form, massing and height of a proposed development should be carefully modulated, in order to maximise access to natural daylight, ventilation and views, and to 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 such as BRE 209 and BS 8206-2: 2008. Where

a proposal may not be able to fully meet all the requirements of the daylight provisions in these guides, this must be clearly identified and a rationale for any alternative, compensatory design solution 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 site specific 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. Section 6.6 of the New Apartment Guidelines also states that Planning Authority's should have regard to the BRE 209 Guide and the BS 8206-2: 2008 standards.

13.8.16. The applicant's Daylight Reception Report provides an assessment of daylight access within the proposed scheme having regard to the quantitative standards in the BRE 209 Guide. The Planning Authority do not raise concerns with respect to the provision of daylighting to the proposed apartments. The BRE 209 Guide and BS 8206-2: 2008 standards recommend that for the main living spaces/living rooms of residences, a minimum average daylight factor (ADF) of 1.5% should be achieved, with a 1% ADF for bedrooms and a 2% ADF for kitchens. The applicant has referred to these targets in their assessment.

13.8.17. The applicant has tested the ADF value for each of the 54 habitable apartment rooms on the ground and first-floors of the development. This would allow for inferred results being assumed for habitable rooms on higher levels within the proposed development based on the lower floors providing the worst-case scenario in the development in terms of access to daylight. The results of testing for the proposed development calculated ADF values between the range of 2.05% to 3.95% for the living/kitchen/dining rooms and 1.05% to 3.27% for the bedrooms. This suggests that on the basis of the worst-case scenario, all bedrooms and living/kitchen/dining rooms in the proposed development would comply with the ADF target values in the BRE 209 Guide. In conclusion, I am satisfied that the lighting to the proposed development would provide for suitable levels of residential amenity for future residents of the development.



## Privacy and Overlooking

13.8.18. As mentioned above the Development Plan requires a minimum separation distance of approximately 22m between ground-floor windows to maintain privacy with scope for acceptance of reduced separation distances in higher density development when incorporating innovative design solutions. At ground-floor level this separation distance would be achieved throughout the development. At upper-floor levels scope for the minimum separation distances not to be achieved would only arise where the building is stepped or above the entrances to the complex and above the incubator units on the east side of the development. Where minimum separation distances below 22m arise between directly opposing apartment windows and balconies, the applicant proposes the use of opaque glazing in windows to mitigate against the potential for excessive direct overlooking. For example, opaque glazing is proposed to be used in the windows on the east elevation to block A where facing the west elevation to block B, which would be approximately 15m to the east. Landscaping at podium level would act as a visual buffer between block A and D first-floor apartments, which would be separated by a minimum of approximately 16m, and at upper-floor levels opaque glazing would be installed in the narrow, secondary south-facing windows serving the living rooms in block D where proximate and facing block A. I am satisfied that the design measures proposed would be appropriate and would address the potential for excessive direct overlooking between the apartments in the development.

13.8.19. The Planning Authority raise an issue regarding the blank treatment of the west elevation to block C and the fact that this would provide for limited overlooking of the vehicular entrance to the undercroft parking. In this regard I note that the windows and balconies to first-floor apartment D.2.14 in block D and the units above this would facilitate passive surveillance of this vehicular access from the upper-floor levels of the apartment complex. The applicant has proposed installing opaque glazing to the windows and private amenity space along the west side of apartment C.0.3 and the apartments above in block C. These windows and amenity spaces do not directly face other apartment windows and the omission of opaque glazing in place of standard glazing would allow for additional passive surveillance of the vehicular access. Such a measure could be addressed as a condition in the event of a grant of permission for the proposed development. While I recognise that some

views of the blank west elevation wall would be possible from the public realm, as illustrated in view 4 of the CGIs submitted, such views would be restricted to a very limited area and at a distance, by virtue of the approximately 44m setback of the subject elevation off Kennelsfort Road Upper and the screening that would be provided by the positioning of proposed block D.

13.8.20. In general, there is sufficient space fronting the buildings to ensure that the privacy of a majority of the residents on the ground floor and at podium level would not be substantially undermined. The provision of planting within landscaped privacy strips to serve as defensible space in locations fronting terraces and windows throughout the development has been proposed, including apartments onto the communal amenity space and pedestrian routes. Privacy strips should also be provided fronting the windows and terraces serving the podium-level east-facing apartments (nos.D.1.8 and D.1.9) in block D. This could also be addressed via the attachment of a condition in the event of a grant of planning permission for the proposed development.

#### Noise and Air Quality

13.8.21. Observations highlight concerns regarding the positioning of the development relative to adjoining and neighbouring industrial uses and the resultant implications for future residents arising from the potential emissions and pollution from these industrial uses. The Planning Authority assert that mitigation measures have not been provided to address the likely impacts for future residents arising from this industrial area context. As part of the application, the applicant refers to the provision of ground-floor incubator units along the east side of the site addressing the position of the adjoining industrial properties.

13.8.22. An External Noise Impact Report was submitted with the application, addressing the potential for industrial and traffic noise to impact on ambient internal room noise levels in the proposed apartments relative to various stated guidelines and standards, including European Environmental Noise Regulations 2018 (S.I. No. 549), the NPF, BS 8233 providing guidance on sound insulation and noise reduction for buildings and World Health Organisation (WHO) standards. The assessment was undertaken following the results of a noise survey in March 2021 and this highlighted that the majority of the noise level effecting the site is generated by the traffic on

Kennelsfort Road Upper, with limited nuisance from noise generated by the industrial estate units. Actual internal habitable room noise levels ranging from day time 25dB(A) to 34dB(A) and night time from 16dB(A) to 22dB(A) were predicted, which would be within the stated recommended standards. Noise levels within the amenity areas were also predicted by the applicant to be within the standards set out within Environmental Protection Agency (EPA) NG4 guidelines. Notwithstanding compliance with the relevant standards, on a precautionary basis the applicant's report recommended the inclusion of noise reduction ventilation outlets and tree vegetation barriers. In their statement of consistency, the applicant states that triple glazing to apartment windows would be used to minimise sound transmission. Given the surveyed sources of noise arising in the area and the proposed measures by the applicant to address same relative to various stated standards, it would appear that the potential noise impacts for future residents the proposed apartments would not be likely to be any worse than that presently experienced in the neighbouring housing to the west.

13.8.23. Observations refer to the adverse effects for future occupants of the scheme arising from the impact of pollution from neighbouring waste incinerators. An Air Quality Impact Assessment report was submitted with the application demonstrating that air quality is in the 'good' band in terms of health for people in the vicinity. Within the Cherry Orchard industrial estate, the applicant states that there are no business activities that exceed EPA emission thresholds requiring an industrial emissions development or pollution control license and the site is not in a location where facilities generate industrial emissions on a large scale. I am not aware of any information contrary to this.

13.8.24. With standard mitigation measures in place, the applicant's report considers the impacts of the construction phase of the proposed development on air quality to likely to result in negligible impacts. During the operational phase, results predict a small increase in annual nitrogen dioxide, particulate matter, benzene and carbon monoxide, however, each parameter would remain well below the limit values set in the EU regulations. The predicted increase above the existing situation results in a negligible impact and would not result in a perceptible change in the existing local air quality environment. Overall, the air quality health index for the area is predicted to be categorised as 'good' and suitable for future occupants.

13.8.25. I am satisfied that the applicant has comprehensively considered the noise and air quality environment and its implications for future residents of the development, and the measures proposed would appear to address the requirements to provide reasonable levels of amenity for residents in this context based on the information provided and available. The Planning Authority has requested that generators, vents and flues or other equipment should not be positioned on external elevations to avoid undue impacts for future residents, and I am satisfied that a standard condition could be attached to address same, in the event of a grant of planning permission for the proposed development.

#### Communal Facilities

13.8.26. The Planning Authority welcome the provision of residents' communal amenity areas, including a lobby space, four lounges, a meeting room, a residents' gym and an activity room amounting to 558sq.m in floor area. The Elected Members would prefer if these facilities would be available to the wider community, however, there is not a strict necessity for the application to provide for same based on planning policy and guidance. I am satisfied that the provision of residents' amenity facilities would be comparable with other contemporary apartment schemes of a similar scale and would be in line with the provisions set out in the New Apartment Guidelines.

13.8.27. The Elected Members from the Planning Authority and observations assert that there would not be an appropriate provision of childcare facilities in the area to serve the development, particularly when considering proposals for other developments in the area, and the subject development should feature provision for same. Permission for the neighbouring redevelopment of the Silver Granite pub site (SDDC ref. SD21A/0271) allows for a mixed-use development, including 25 one-bedroom and 25 two-bedroom apartments, while the redevelopment of the Vincent Byrne site approximately 0.9km to the north (ABP ref. 309899-21), also referenced by the Elected Members, provides for 128 one-bedroom and 122 two-bedroom apartments. These permissions would allow for an additional 147 two-bedroom apartments in the area.

13.8.28. Community infrastructure (C) policy 8(b) of the Development Plan recommends the provision of childcare facilities in tandem with the delivery of new communities. The Childcare Facilities - Guidelines for Planning Authorities (2001) require one childcare

facility for every 75 units to serve 20 childcare spaces. The applicant has submitted a Statement of Childcare Rationale, which undertakes a review of the demographic profile of the area, as well as a survey of the capacity of childcare facilities within 1km of the site.

13.8.29. Based on the provisions within the New Apartment Guidelines and the Childcare Facilities Guidelines, including an allowance to omit the 72 proposed one-bedroom units from calculations, the applicant asserts that on the basis of demographic analysis and unit mix, the development would not generate the requirement for the minimum size 20-space childcare facility. A total of 121 childcare spaces are asserted to be available in six facilities in the neighbouring area and the applicant accepts that the available childcare spaces may fluctuate, while acknowledging that their survey was undertaken during COVID-19 restrictions. The New Apartment Guidelines also acknowledge that some apartments of two bedrooms or more may not attract a requirement for childcare facilities.

13.8.30. South Dublin County Childcare Committee has not responded to consultation regarding the application. While I recognise the additional number of two-bedroom apartments in the subject development and those permitted on the Vincent Byrne and Silver Granite pub sites, I am satisfied that the identified childcare spaces available in the neighbouring facilities in the area, would be sufficient to serve the proposed development and the other referenced developments based on the relevant standards. The proposed development would not materially contravene policy C8(b) of the Development Plan, and it would comply with the provisions of the New Apartment Guidelines and the Childcare Facilities Guidelines in this regard.

#### Waste and Recycling Management

13.8.31. The applicant has submitted a Waste Management Plan, setting out how the type and storage volumes for waste have been calculated for the apartments, ancillary and employment units, as well as details of how waste operators would service the site. This plan sets out that four bin stores to serve future residents and patrons would be provided at ground level below the podium, with one store allocated to each block. With the exception of the lift core to proposed block A, the bin stores would be in convenient locations proximate to the respective block cores. The applicant's Statement of Consistency outlines that all waste management in the

development has designated recycling areas for residents that would be actively promoted and monitored by management. Two temporary collection points at surface level would be provided for ease of access for waste and recycling collection vehicles. Collection point A is in the northwest corner of the site, adjacent to block D, while collection point B would be along the east side of block B onto the new access road.

13.8.32. The Planning Authority refer to the fact that collection point B would conflict with an area identified on the landscape plan as consisting of incidental soft landscaping. There would appear reasonable scope for an alternative temporary collection point to be allocated and identified close to the entrance to the bin store serving block B. The Planning Authority also raise concerns regarding the proposed bin collection route, as it would take vehicles travelling close to ground-floor apartments in block B. The route would only bring collection vehicles close to one such apartment (B.0.1). I do not consider the temporary and infrequent movements of refuse vehicles running along the new access route to substantially compromise the amenities of residents of the development, however, considering the fact that the Waste Management Plan details that the employment uses in block B would use the more distant collection point A and collection point B would only serve the 17 apartments, I would have some reservations regarding the necessity for collection point B.

13.8.33. Notwithstanding this, I am satisfied that sufficient provision for waste and recycling collection, comparable with developments of a similar scale and nature, would appear to be provided as part of the development and further details relating to waste and recycling management, including the finalised collection point details, can be addressed in response to a condition in the event of a grant of permission.

#### Schools

13.8.34. An observation queries whether there would be sufficient education spaces to accommodate the additional population arising from the proposed development. Within their Statement of Consistency, the applicant has referred to the site as being within 200m of Pobalscoil Iosolde / Palmerstown Community College, as well as there being six other schools within 1.25km of the site.

13.8.35. Increased housing in locations such as this, ensure the efficient and increased use of existing and planned services, including schools and other social infrastructure.

Such services are dependent on a critical mass of population to justify the establishment of additional services or for them to become viable. In the immediate and wider environs of the site there are schools, shops, medical facilities, parks, and open spaces, all of which would benefit from a development that is a comfortable walking or cycling distance from the site. Based on the unit mix of the development and demographics, the number of school-going children residing in the proposed development would be likely to attract limited demand for additional primary and post-primary school places. The Planning Authority did not raise concerns regarding the capacity of schools to accommodate the development. In conclusion, the development would not be likely to place significant demands on schools in the vicinity and permission for the development should not be refused for this reason.

#### Building Lifecycle and Management

13.8.36. As required within the New Apartment Guidelines, a Lifecycle Report assessing the long-term running and maintenance costs and demonstrating the measures that have been considered by the applicant to manage and reduce costs for the benefit of residents, has been included with the planning application as part of the applicant's Architectural Design Statement. Prior to the lease of individual units, the developer would have to achieve compliance with the terms of the Multi-Unit Development Act 2011, inclusive of the establishment of a development specific Owners' Management Company.

#### Sustainability and Energy Efficiency

13.8.37. Housing policy 11 objective 2 of the Development Plan promotes energy efficiency and renewable energy, as part of new residential developments. Observations assert that only vague details have been submitted with respect to energy and sustainability. An Energy Statement has been submitted with the application outlining specific mechanical and electrical measures to address energy efficiency. A series of measures are listed in the Energy Statement to address energy savings in the development. Suggested measures include targeted U-Values for various building elements and cold bridging, use of low-energy lighting, heating / hot water controls and circulation pumps to address potential heat loss. Use of an air-source heat pump as an efficient energy source is to be examined and roof-top photovoltaic array to block C has been proposed as part of the development. The building is

designed to current nearly zero energy building (NZEB) standards with green roofs and photovoltaic energy combined in the sustainable design, and it is intended to achieve an A2 building energy rating (BER). I am satisfied that the information provided with the application reveals that due consideration for energy efficiency has been undertaken as part of the design of the development, in compliance with the Development Plan provisions. Further consideration of energy efficiency matters will be evaluated under a separate code, including Part L of the building regulations.

#### Residential Amenities and Development Standards - Conclusion

13.8.38. In conclusion, subject to conditions, I am satisfied that the proposed development would provide a quality and attractive mix of apartments and open space, meeting the relevant design standards and providing a suitable level of amenity for future residents.

### **13.9. Access, Parking and Traffic**

13.9.1. The Roads Department of the Planning Authority did not object to the proposed development, although they did raise issues in relation to access and movement within the site, while also requiring increased car parking and further details regarding matters such as construction haul routes and road construction details. The vast majority of observations from neighbouring residents and the comments from Elected Members highlight concerns in relation to the potential for the development to result in increased traffic congestion in the immediate area, particularly when taking into consideration other developments within the wider area.

#### Access and Connectivity

13.9.2. The site is currently only accessible by vehicles from the industrial estate access road and the observers refer to the immediate roads and cycle routes as having limited capacity to serve the development, particularly due to existing traffic congestion, which can increase with the operation of the neighbouring school to the north. Currently there are public footpaths adjoining the roads to the west and south of the site, and there are on-road unsegregated cycle lanes on both sides of Kennelsfort Road Upper.

13.9.3. The vehicular access to serve the proposed development would be provided at a repositioned location along the industrial estate access road and this would facilitate



movement along the eastern and northern boundaries of the site to the undercroft car park. Two parallel car-club / car-share parking spaces are proposed along the industrial estate access road and there would be no turning lanes provided along this access road to serve the development. Revised turning radii within the lands available for same are proposed as part of the development at the junction of Kennelsfort Road Upper and the industrial estate access road. Visibility distances from the vehicular access onto the access road would be substantially in excess of the minimum 49m required in the DMURS. The new access road on site would be 4.8m in width and the Roads Department require this internal access road to be 5.5m in width. Under the provisions of the DMURS, the total carriageway width for a local street where a shared surface is to be provided should not exceed 4.8m. The DMURS outlines that carriageway widths vary dependent upon the function of the street, the number of vehicles served, the number of traffic lanes and pinch points. The standard carriageway width for local streets should be between 5m and 5.5m according to the DMURS. Based on the spot levels annotated on the applicant's Engineering Services – Proposed Site Layout Plan (drawing no.20D018\_02\_Rev P1) a shared surface is not proposed for the access road. I am satisfied that the volume of traffic expected to be served by the proposed road and the adjoining lands that it may in future potentially serve, would be sufficiently served by a standard carriageway. The drawings presented appear to indicate scope for widening of the road to at least 5m and I am satisfied that a condition to address same would be reasonable and warranted in this case. The construction details required by the Planning Authority could also be provided in response to this revised access road width.

- 13.9.4. A new stretch of cycle lane would be provided along the frontage with the industrial estate access road and this would tie in with the cycle lane along Kennelsfort Road Upper. The Planning Authority consider the layout of the footpath along the southern boundary to be confusing, as it weaves through seating areas, cycle parking and amenity space proposed along this frontage. The proposed footpath to the southern side would be largely segregated from the cycle lane and roadway by green verges, however, more refinement of the details is required to provide greater clarity regarding the pedestrian routes along this frontage and to ensure pedestrian priority.

This can be addressed as a condition in the event of a grant of planning permission for the proposed development.

- 13.9.5. A Road Safety Audit or a Quality Audit did not accompany the application. The applicant asserts that a Road Safety Audit would not be necessary, whereas observations assert that such an audit should have been carried out. The roads layout of the proposed development is not particularly confusing or liable to create substantive hazard. As noted above there may be some confusion along the southern boundary and this may extend to the potential for conflict between cyclist movements and vehicular movements at the new access onto the industrial estate access road. Transport Infrastructure Ireland (TII) guidance on Road Safety Audits (2017) provides a representative sample of schemes whereby a road safety audit may be required, including reference to development projects of major scale meeting the criteria in table 2.2 of the TII Traffic and Transportation Assessment Guidelines (2014). The criteria in table 2.2 of the Traffic and Transportation Assessment Guidelines identifies advisory thresholds for traffic and transportation assessments relative to the extent of vehicle movements, the size of a development or the parking to be provided. Development projects meeting the advisory thresholds include those comprising 100 dwellings within urban areas with a population equal to or greater than 30,000. I am satisfied that based on the size and location of the proposed development, the TII guidance and my assessment above, it would be advisable for stage 2 and 3 road safety audits to be undertaken as part of the project, and this can be requested, as is standard, as a condition in the event of a grant of planning permission.
- 13.9.6. The Roads Department of the Planning Authority refer to the requirement for a swept path / autotrack analysis of fire tender access through the entire site to be provided, while observations refer to the potential implications of the development for fire and emergency services. The applicant states that the proposed internal access arrangements have been designed to accommodate the inbound and outbound movements of fire tender and waste collection vehicles, with these vehicles undertaking a series of turning manoeuvres within the proposed development site. A drawing (no. SB-2019-41-120-A31-SP01) titled 'vehicle movements' is included with the application and this illustrates manoeuvrability for a three-axle refuse vehicle and a 9.5m-long fire tender vehicle and I am satisfied that sufficient information has been

provided and is available from a planning perspective to show scope for such vehicles to readily access, move through and exit the development.

- 13.9.7. The observations assert that the subject area is not well served by public transport and the Roads Department of the Planning Authority require improved connectivity with public transport services. The applicant's Traffic Impact Assessment provides details of public transport services currently available in the environs of the site, as well as future proposals. As noted in section 13.3 above, based on the information available, I am satisfied that the site would have easy access to amenities via public transport and consultation with TII, the National Transport Authority (NTA) and other parties has not highlighted concerns regarding the existing capacity of public transport neighbouring the site. Provision of the proposed pedestrian crossing along Kennelsfort Road Upper would further improve connectivity with local public transport services.

#### Parking

- 13.9.8. The applicant is proposing a total of 65 car parking spaces to serve the development, 63 of which would be at undercroft level. Six of the spaces would feature access for persons with a disability and six spaces would feature electric-vehicle charging points. Eight motorcycle parking spaces are also proposed. As referred to above, along the industrial estate access road it is proposed to provide two car-share / car-club spaces. The Planning Authority request the provision of 15 to 20 additional car parking spaces and observers consider the proposed development to feature a shortfall in car parking, which may lead to overspill parking in the surrounding area with implications for road safety. The observations and comments from Elected Members assert that the proposed provision of car parking would be incapable of sufficiently serving the development. The applicant considers the provision of car parking to serve the residential units to be appropriate with reference to public transport availability, modal splits, the maximum Development Plan standards allowing for up to 126 car parking spaces and the provisions of the New Apartment Guidelines seeking to reduce car parking provision in intermediate urban locations.
- 13.9.9. The New Apartment Guidelines advocate the consideration of reduced overall car parking in urban locations served by public transport or close to urban centres,

particularly in residential developments with a net density of greater than 45 units per hectare. The applicant states that a Mobility Management Plan would be provided with the application and that this would include various measures to influence use of more sustainable modes of transport as part of the development. The proposed ratio of parking per apartment (0.45) would be comparable with many other recently permitted strategic housing developments in a similar context within the city, including the Vincent Byrne site redevelopment (ABP refs. 307092-20 / 309899-21), which would feature a ratio of 0.51 parking spaces per apartment. The applicant also refers to a permitted strategic housing development on Airton Road, Tallaght, which provided for a ratio of 0.4 car parking spaces per apartment (ABP ref.306705-21).

13.9.10. I am satisfied that car parking standards below the Development Plan maximum standards for the residential element of the proposed development would be reasonable, given its location relative to public transport services. Based on the information submitted with the application, I am satisfied that sufficient car parking would be provided to serve the proposed development and the request of the Roads Department of the Planning Authority would not encourage use of sustainable modes of transport. The implementation of a mobility management plan and a car parking management strategy should be a condition in the event of a permission. The car parking management plan should detail how access to the undercroft car parking would be managed, as per the request of the Planning Authority. Ducting to allow for all car spaces to feature electric-vehicle charge points should also be required as a condition in the event of a permission.

13.9.11. A total of 310 cycle parking spaces would be provided, comprising 226 standard spaces for residents and 84 visitors' spaces at podium level. All spaces would be of the 'Sheffield' type stands. The Planning Authority note that this provision would exceed the Development Plan minimum standards, as well as the New Apartment Guidelines standards, requiring 288 spaces. I am satisfied that the quantum and locations of cycle parking for the residential development would be welcome in supporting sustainable transport options.

## Traffic

- 13.9.12. The observers refer to an array of concerns regarding the potential for the development, as well as other developments, to increase traffic congestion already experienced in the area, which would impact on road safety, including along Kennelsfort Road Upper. The applicant submitted a Traffic Impact Assessment as part of their application and the observers assert that this does not provide for a realistic model of the likely impacts of traffic on the local roads network arising from the development. The applicant's assessment includes traffic survey details for three junctions along Kennelsfort Road Upper with Coldcut Road, Cherry Orchard industrial estate and Palmers Crescent. The applicant's modelling predicts the number of vehicular trips associated with the proposed development exiting onto the industrial estate access road during the morning peak hour (08:15 – 09:15) would amount to 37 trips, with 29 returning trips during the evening peak hour (16:30 – 17:30).
- 13.9.13. Using Picady software analyses the applicant undertook modelling of the traffic in the opening year (2024) and in a year 15 years following development completion (2039). The Kennelsfort Road Upper and Cherry Orchard industrial estate access road junction was only assessed in relation to traffic flow impacts arising from the development. The submitted Traffic Impact Assessment asserts that, if permitted, the proposed development would not result in any material queuing of traffic at the Kennelsfort Road Upper and Cherry Orchard industrial estate access road junction in 2039. I note that the applicant's modelling assumes all traffic entering or exiting the development onto the industrial estate access road would only be to or from Kennelsfort Road Upper. This fails to recognise the potential for alternative traffic movements from the site turning left into the industrial estate access roads and subsequently onto the Ballyfermot Road (R833) to the southeast of the site. This would result in a reduced proportion of traffic to and from the development onto Kennelsfort Road Upper and would further alleviate the potential for queuing traffic along this road.
- 13.9.14. I am satisfied that based on the information provided in the Traffic Impact Assessment, a reasonable approach to modelling future traffic scenarios on the local road network with the development in place has been set out and this does not reveal substantive impacts on traffic, including the Ballyfermot Road / Coldcut Road

junction that has been earmarked for future junction upgrades. The assessment broadly follows the TII guidance on this matter and an alternative technical assessment contradicting the approach or the findings of the applicant's assessment has not been provided. Furthermore, the Planning Authority has not objected to the findings of the traffic assessment, and I am satisfied that the applicant has provided adequate justification and rationale for the approach undertaken in their Traffic Impact Assessment with sufficient information included for the purpose of this assessment.

13.9.15. The site is located on zoned lands with reasonable access to an array of services. The proposed development would provide for a substantive scale of development, replacing existing vacant industrial premises. There would undoubtedly be some increase in traffic numbers as a result of the proposed development, which would invariably add to the existing congestion that is acknowledged in the application. However, traffic congestion at peak periods in an urban area such as this, would be anticipated to occur and various measures and design features have been set out within the application and as part of the proposed development to support the use of public transport, cycling and walking, as an alternative to the use of private vehicles. All road networks feature limited capacity in terms of accommodation of private cars and increased population in locations such as the application site area, which are reasonably well served by public transport and have the capability for additional services as demand requires, should be developed in the interest of providing for sustainable communities.

### Conclusion

13.9.16. In conclusion, subject to conditions, the proposed development would not reasonably result in an unacceptable risk of traffic hazard or significant additional traffic congestion in the area, and it would feature an appropriate provision of car and cycle parking.

### 13.10. **Services**

13.10.1. The observations assert that the proposed development would impact on existing services, including water supply and drainage. The application was accompanied by a Civil Engineering Services Report, including various appendices.

## Surface Water Drainage

- 13.10.2. Within their Civil Engineering Services Report the applicant states there is a 225mm-diameter surface water sewer running in a northern direction along the site frontage with Kennelsfort Road Upper. The Planning Authority require a minimum 3m buffer from the centre of this surface water sewer, which the applicant has stated would be provided, although this should be revisited based on the positioning of trees as part of the project landscaping (see Landscape Design – Street / Car park level plan drawing no. 2000 Revision P.0). A condition would be required to address this conflict. There is also a 300mm to 750mm-diameter surface water sewer running in an easterly direction under the industrial estate access road, which the proposed development would discharge attenuated surface water runoff from the site to (as per details in drawing no. 20D018 03 Revision P1).
- 13.10.3. Features to be provided in the interception of rainwater falling onto the site would not include underground attenuation systems, which is welcomed by the Planning Authority, but would include surface attenuation in the form of green roofs and permeable paving, with a flow control feature to limit the final rate of runoff to greenfield rates. The applicant's flood risk assessment refers to the provision of an attenuation tank, although this is not apparent on the drawings submitted. A fuel interceptor would be installed at the discharge exiting the podium-level car park. According to the applicant, the surface water management measures would have sufficient capacity to accommodate 1-in-100 year storm events and a freeboard for climate change factors, in accordance with the requirements of the Greater Dublin Strategic Drainage Study. The applicant also states that the development would not be at material risk of flooding. The Planning Authority state that the surface water drainage and flood risk proposals are generally acceptable, subject to further details with respect to SUDS measures. The requested details are standard elements requiring agreement with the Planning Authority following a grant of planning permission and I am satisfied that conditions can be attached in the event of a permission to address same. Accordingly, subject to conditions, I am satisfied that the drainage details submitted with the application reveal that the subject development can be satisfactorily served by drainage services.

### Foul Water

13.10.4. It is proposed to discharge foul wastewater from the development by gravity to an existing 225mm-diameter foul sewer running eastwards under the frontage to the site along the industrial estate access road. Irish Water have no objection to the proposals noting that the connection to their wastewater infrastructure can be facilitated. I consider the foul drainage proposals to serve the subject development to be satisfactory, subject to appropriate and standard conditions.

### Water Supply

13.10.5. There is an existing 6-inch watermain running along the frontage of the site with the industrial estate access road, which the proposed development would connect into. Irish Water has confirmed in their submission that a connection to their water supply infrastructure can be made based on the details of the proposed development and subject to standard connection agreements. In conclusion, I consider the water supply proposals to serve the subject development to be satisfactory, subject to appropriate conditions.

### **13.11. Material Contravention**

13.11.1. Having regard to the above assessment, including the various submissions and my site visit, I am satisfied that the following would arise with respect to the potential for the proposed development to materially contravene the provisions of the Development Plan. The Board would not be in a position to invoke the provisions of section 37(2)(b) of the Act of 2000 for matters, other than those addressed in the applicant's Material Contravention Statement. Furthermore, the observations and Elected Members assert that a material contravention would arise with respect to the building height of the proposed development and the separation distances from existing two-storey houses (housing policy H9 objective 3 referring to section 11.2.7 of the Development Plan), and I am satisfied, for reasons outlined above addressing this matter, material contravention of housing policy H9 objective 3 of the Development Plan would not arise.

13.11.2. Observations assert that the Board should not apply the provisions of section 37(2)(b) of the Act of 2000 in this case and the Elected Members assert that the



extent of material contraventions arising is reflective of the extent of overdevelopment proposed for the site.

- 13.11.3. Having regard to the absence of basement level parking and the provisions of section 11.4.3 of the Development Plan requiring the restriction of protruding basement level parking, the absence of childcare facilities proposed in the development and the provisions of community infrastructure policy C8(b) of the Development Plan requiring the delivery of new childcare facilities in tandem with new communities and the proposed provision of public open space relative to requirements for same set out in section 11.3.1 of the Development Plan, I do not consider that the proposed development materially contravenes the Development Plan in relation to the provision of basement parking structures, childcare facilities and public open space. However, these issues have been raised in the applicant's Material Contravention Statement, therefore, the Board can invoke the provisions of section 37(2)(b) of the Act of 2000 in relation to these matters should they wish to do so.
- 13.11.4. Having regard to the provisions of housing policy 10 objective 1 of the Development Plan, including reference to the provisions of the Interim South Dublin County Council Housing Strategy 2016-2022 of the Development Plan, I do not consider that the proposed development materially contravenes the Development Plan in relation to unit mix, as deviation from unit mix standards would not be likely to be of a material nature, particularly where there is compliance with contemporary and more up-to-date standards, and as the asserted non-compliance with unit mix standards is not with respect to the current Development Plan. Notwithstanding this, as this matter is addressed in the applicant's Material Contravention Statement, it is open to the Board to invoke the provisions of section 37(2)(b) of the Act of 2000 in relation to this matter.
- 13.11.5. As stated above, I consider that the proposed building heights would materially contravene the provisions in housing policy H9 objective 4 of the Development Plan, which directs tall buildings that exceed five storeys in height to strategic and landmark locations in Town Centres, Mixed Use zones and Strategic Development Zones, and subject to an approved Local Area Plan or Planning Scheme. This matter is addressed in the applicant's Material Contravention Statement and it is therefore open to the Board to invoke the provisions of section 37(2)(b) of the Act of

2000 in relation to this matter. Further to my assessment above, I also consider the proposed building heights to materially contravene the provisions of urban centre policy UC6 objective 4 of the Development Plan, which also directs tall buildings that exceed five storeys in height to regeneration areas that are subject of an approved Local Area Plan or a Planning Scheme. This matter is not addressed in the applicant's Material Contravention Statement, therefore, based on the provisions of the Act of 2016, the Board would appear to be precluded from invoking the provisions of section 37(2)(b) of the Act of 2000 in relation to this matter. Accordingly, I do not address the matter of material contravention with respect to building height any further.

## **14.0 Environmental Impact Assessment Screening**

14.1.1. The applicant has addressed the issue of EIA within an EIA Screening report. This report contained information to be provided in line with Schedule 7A of the Planning and Development Regulations 2001-2022 (hereinafter 'the Regulations'). I have had regard to same in this screening assessment. The information provided by the applicant identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. Where an application is made for subthreshold development and Schedule 7A information is submitted by the applicant, the Board must carry out a screening determination, therefore, it cannot screen out the need for EIA at preliminary examination.

14.1.2. This proposed development, is of a class of development included in Schedule 5 to the Regulations. Class 10(b) of Part 2 to Schedule 5 of the Regulations provides that mandatory EIA is required for the following classes of development:

- (i) construction of more than 500 dwelling units,
- (iv) urban development which would involve an area greater than 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.

\*a 'business district' means a district within a city or town in which the predominant land use is retail or commercial use.

- 14.1.3. Class 14 of Part 2 to Schedule 5 of the Regulations provides that mandatory EIA is required for:
- Works of demolition carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.
- 14.1.4. The development would provide for the construction of 100 dwelling units, all on a site measuring 0.85 hectares in a built-up urban area, which is not a 'business district'. Having regard to classes 10(b)(i) and 10(b)(iv) of Part 2 to Schedule 5 of the Regulations, the proposed development, is subthreshold in terms of the mandatory submission of an EIA. The nature and the size of the proposed development is well below the applicable 'class 10' thresholds for EIA, and further consideration with respect to 'class 14' demolition works is undertaken below.
- 14.1.5. The criteria within Schedule 7 to the Regulations are relevant in considering whether this proposed subthreshold development would be likely to have significant effects on the environment that could and should be the subject of EIA. The residential use proposed would be similar to the surrounding land uses in the area to the west. The proposed development would not increase the risk of flooding and it would not give rise to significant use of natural resources, the production of waste, pollution, nuisance or a risk of accidents. The former use of the site is noted, and preliminary site investigations have been undertaken, which do not reveal any significant constraints in developing the site for an apartment complex. The development would be served by municipal drainage and water supplies. The site is not subject to any architectural or nature conservation designation and does not support habitats or species of conservation significance, as highlighted in the applicant's Ecological Impact Assessment.
- 14.1.6. The various reports submitted with the application, as listed in section 3.3 above, address a variety of environmental issues and the impact of the proposed development, in addition to the cumulative impacts with regard to other permitted and existing developments in proximity to the site. The reports demonstrate that, subject to the various recommended construction and design-related mitigation measures, the proposed development would not have a significant impact on the environment.

14.1.7. I have had regard to the characteristics of the site, the location of the proposed development, and the type and characteristics of the potential impacts. Having regard to the Schedule 7A information, I have examined the sub-criteria and all submissions, and I have considered all information that accompanied the application including in particular the following:

- Statement of Consistency;
- Planning Report, including Response to Board's Opinion;
- Architectural Design Statement;
- Townscape / Landscape and Visual Impact Assessment;
- Civil Engineering Services Report, including Site Investigation Report;
- Traffic Impact Assessment, including Mobility Management Plan and DMURS Compliance Statement;
- Outline Waste and Construction Management Plan;
- Energy / Part L Compliance Statement;
- Report in Support of Appropriate Assessment Screening;
- Ecological Impact Assessment Report.

14.1.8. In addition, noting the requirements of section 299B(1)(b)(ii)(II)(C) of the Regulations, the applicant is required to provide to the Board a statement indicating how the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation, other than the EIA Directive, have been taken into account. In this regard I note the following EU directives are directly addressed by the applicant in their submitted Statement in accordance with Article 299B(1)(b)(ii)(II)(C) of the Planning and Development Regulations 2001-2021:

- Habitats Directive (92/43/EEC);
- Birds Directive (2009/147/EC);
- Directive 2007/60/EC, Floods Directive;
- Directive 2002/49/EC, Environmental Noise Directive;

- Directive 2000/60/EC, Water Framework Directive;
- Directive 2001/42/EC, SEA Directive;
- Directive 2008/50/EC, Clean Air for Europe Directive;
- Directive (1992/57/EEC), Minimum Safety and Health requirements at temporary or mobile construction sites.

14.1.9. Under the relevant themed headings, the EIA screening information prepared by the applicant has considered the implications and interactions between these assessments and the proposed development, and concludes that the development would not be likely to have significant effects on the environment. I am satisfied that all other relevant assessments have been identified for the purposes of screening for EIA. I have had regard to all of the reports detailed above and I have taken them into account in this assessment, together with the Strategic Environmental Assessment of the Development Plan.

14.1.10. I have completed an EIA screening assessment of the proposed development with respect to all relevant considerations, as set out in Appendix A to this report. I am satisfied that the location of the project and the environmental sensitivity of the geographical area would not justify a conclusion that the proposed development would be likely to have significant effects on the environment. The proposed development does not have the potential to have effects of which would be rendered significant by their extent, magnitude, complexity, probability, duration, frequency or reversibility, and this opinion extends to my conclusion that the proposed development is subthreshold in terms of the mandatory submission of an EIA based on class 14 of Part 2 to Schedule 5 of the Regulations. In these circumstances, the application of the criteria in Schedule 7 of the Regulations to the proposed subthreshold development demonstrates that it would not be likely to have significant effects on the environment and that an EIA is not required before a grant of permission can be considered. This conclusion is consistent with the EIA screening information submitted with the application. I am overall satisfied that the information required under article 299B(1)(b)(ii)(II) of the Regulations has been submitted. A Screening Determination can be issued confirming that there is no requirement for an EIAR to be prepared for the project based on the above considerations.

## **15.0 Appropriate Assessment**

15.1.1. The requirements of Article 6(3) of the Habitats Directive, related to screening the need for appropriate assessment (AA) of a project under section 177U of the Act of 2000, are considered in the following section.

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

15.2.1. The Habitats Directive deals with the conservation of natural habitats, including 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 AA of its implications for the site, in view of the site's conservation objectives. The competent authority must be satisfied that the proposal would not adversely affect the integrity of a European site before consent can be given. The proposed development at the junction of Cherry Orchard industrial estate access road and Kennelsfort Road Upper, 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) of the Habitats Directive.

### **15.3. Stage 1 AA Screening**

15.3.1. The applicant has submitted a Report in Support of AA Screening dated November 2021 and prepared by professional ecologists and ornithologists from DixonBrosnan Environmental Consultants. This Report provides a description of the proposed development and identifies European Sites within the possible zone of influence of the development.

#### Site Location

15.3.2. A description of the site is provided in section 1 above and throughout the assessments above. The site is a brownfield site that contains former industrial / warehouse buildings and associated lands that were most recently used for recreational purposes. The site is stated by the applicant to be dominated by buildings and artificial surfaces (BL3) with treelines (WL2) along part of the roadside verges and recolonising bare grounds (ED3) on the north and west sides of the

building on site. The River Liffey is located approximately 1.2km to the northeast of the application site and this is the closest substantial natural waterbody to the application site flowing east towards Dublin Bay. The Grand Canal is situated 2km to the south. No Annex I habitats were recorded within the application site during the applicant's habitat surveys and no species listed for protection under the Habitats Directive or the Wildlife Act were recorded as using the site. Butterfly bush (buddleia), a medium-impact invasive species was recorded in one location on the application site.

### Proposed Development

- 15.3.3. A detailed description of the proposed development is provided in section 2 above and expanded upon below where necessary. Details of the construction phase of the development are provided throughout the application documentation, including the Outline Waste and Construction Management Plan. Foul wastewater from the operational phase of the proposed development would discharge to the public network for treatment at the Ringsend Wastewater Treatment Plant (WWTP). Following various standard practice construction site environmental management measures, as well as SUDS measures, surface waters would be discharged into the network running along the Cherry Orchard industrial estate access road. Ultimately the resultant treated wastewaters and surface waters from the proposed development would discharge to Dublin Bay.
- 15.3.4. The potential direct, indirect and secondary impacts that could arise as a result of the proposed works and which could have a negative effect on the qualifying interests of European sites, include the following:
- Construction Phase – demolition, surface water runoff, disturbance and emissions, including dust, noise and vibration;
  - Operation Phase – disturbance, surface water runoff and emissions to water.

### Submissions and Observations

- 15.3.5. The submissions and observations from observers, the Planning Authority and prescribed bodies are summarised in sections 9, 10 and 11 of this Report. The Planning Authority refer to An Bord Pleanála as being the competent authority for the purposes of appropriate assessment of strategic housing development applications.

## European Sites

15.3.6. The nearest European sites to the application site, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), comprise the following:

**Table 6.** European Sites

Site Code	Site Name / Qualifying Interests	Distance	Direction
001398	Rye Water Valley / Carton SAC <ul style="list-style-type: none"> <li>• Petrifying springs with tufa formation (Cratoneurion) [7220]</li> <li>• <i>Vertigo angustior</i> (Narrow-mouthed Whorl Snail) [1014]</li> <li>• <i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) [1016]</li> </ul>	8.0km	west
004024	South Dublin Bay and River Tolka Estuary SPA <ul style="list-style-type: none"> <li>• Light-bellied Brent goose <i>Branta bernicla hrota</i> [A046]</li> <li>• Oystercatcher <i>Haematopus ostralegus</i> [A130]</li> <li>• Ringed plover <i>Charadrius hiaticula</i> [A137]</li> <li>• Grey plover <i>Pluvialis squatarola</i> [A141]</li> <li>• Knot <i>Calidris canutus</i> [A143]</li> <li>• Sanderling <i>Calidris alba</i> [A149]</li> <li>• Dunlin <i>Calidris alpina</i> [A149]</li> <li>• Bar-tailed godwit <i>Limosa lapponica</i> [A157]</li> <li>• Redshank <i>Tringa totanus</i> [A162]</li> <li>• Black-headed gull <i>Chroicocephalus ridibundus</i> [A179]</li> <li>• Roseate tern [A193]</li> <li>• Arctic tern [A194]</li> <li>• Wetland and waterbirds [A999]</li> </ul>	10km	east
001209	Glenasmole Valley SAC <ul style="list-style-type: none"> <li>• Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]</li> <li>• Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]</li> <li>• Petrifying springs with tufa formation (Cratoneurion) [7220]</li> </ul>	10km	south
000210	South Dublin Bay SAC	11.1km	east



	<ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>• Annual vegetation of drift lines [1210]</li> <li>• Salicornia and other annuals colonising mud and sand [1310]</li> <li>• Embryonic shifting dunes [2110]</li> </ul>		
002122	<p>Wicklow Mountains SAC</p> <ul style="list-style-type: none"> <li>• Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110]</li> <li>• Natural dystrophic lakes and ponds [3160]</li> <li>• Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]</li> <li>• European dry heaths [4030]</li> <li>• Alpine and Boreal heaths [4060]</li> <li>• Calaminarian grasslands of the <i>Violetalia calaminariae</i> [6130]</li> <li>• Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe) [6230]</li> <li>• Blanket bogs (* if active bog) [7130]</li> <li>• Siliceous scree of the montane to snow levels (<i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i>) [8110]</li> <li>• Calcareous rocky slopes with chasmophytic vegetation [8210]</li> <li>• Siliceous rocky slopes with chasmophytic vegetation [8220]</li> <li>• Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0]</li> <li>• <i>Lutra lutra</i> (Otter) [1355]</li> </ul>	12.3km	south
004040	<p>Wicklow Mountains SPA</p> <ul style="list-style-type: none"> <li>• Merlin (<i>Falco columbarius</i>) [A098]</li> <li>• Peregrine (<i>Falco peregrinus</i>) [A103]</li> </ul>	13.2km	south
000206	<p>North Dublin Bay SAC</p> <ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>• Annual vegetation of drift lines [1210]</li> <li>• Salicornia and other annuals colonising mud and sand [1310]</li> </ul>	13.2km	northeast

	<ul style="list-style-type: none"> <li>• Atlantic salt meadows [1330]</li> <li>• Mediterranean salt meadows [1410]</li> <li>• Embryonic shifting dunes [2110]</li> <li>• Shifting dunes along the shoreline with marram grass <i>Ammophila arenaria</i> (white dunes) [2120]</li> <li>• Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</li> <li>• Humid dune slacks [2190]</li> <li>• Petalwort <i>Petalophyllum ralfsii</i> [1395]</li> </ul>		
004006	<p>North Bull Island SPA</p> <ul style="list-style-type: none"> <li>• Light-bellied brent goose [A046]</li> <li>• Shelduck <i>Tadorna</i> [A048]</li> <li>• Teal <i>Anas crecca</i> [A054]</li> <li>• Pintail <i>Anas acuta</i> [A054]</li> <li>• Shoveler <i>Anas clypeata</i> [A056]</li> <li>• Oystercatcher [A130]</li> <li>• Golden plover <i>Pluvialis apricaria</i> [A140]</li> <li>• Grey plover [A141]</li> <li>• Knot [A143]</li> <li>• Sanderling [A144]</li> <li>• Dunlin [A149]</li> <li>• Black-tailed godwit <i>Limosa</i> [A156]</li> <li>• Bar-tailed godwit [A157]</li> <li>• Curlew <i>Numenius arquata</i> [A160]</li> <li>• Redshank [A162]</li> <li>• Turnstone <i>Arenaria totanus</i> [A169]</li> <li>• Black-headed gull [A179]</li> <li>• Wetland and waterbirds [A999]</li> </ul>	13.3km	northeast
000199	<p>Baldoyle Bay SAC</p> <ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>• Salicornia and other annuals colonising mud and sand [1310]</li> <li>• Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330]</li> <li>• Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</li> </ul>	17.5km	northeast

004016	Baldoyle Bay SPA <ul style="list-style-type: none"> <li>• Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</li> <li>• Shelduck (<i>Tadorna tadorna</i>) [A048]</li> <li>• Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</li> <li>• Golden Plover (<i>Pluvialis apricaria</i>) [A140]</li> <li>• Grey Plover (<i>Pluvialis squatarola</i>) [A141]</li> <li>• Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</li> <li>• Wetland and Waterbirds [A999]</li> </ul>	17.5km	northeast
004113	Howth Head Coast SAC <ul style="list-style-type: none"> <li>• Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</li> <li>• European dry heaths [4030]</li> </ul>	18.8km	northeast

15.3.7. In determining the zone of influence I have had regard to the nature and scale of the project, the distance from the development site to European sites, and any potential pathways that may exist from the development site to a European Site, aided in part by the EPA AA Tool ([www.epa.ie](http://www.epa.ie)). Table 1 of the applicant's screening report identifies the potential links from European sites to the application site. Distances and direction from the site to European sites are listed in table 6 above. I do not consider that any other European Sites other than those identified in table 7 potentially fall within the zone of influence of the project, having regard to the nature and scale of the development, the distance from the development site to same, and the lack of an obvious pathway to same from the development site.

**Table 7.** Identification of relevant European Sites using Source-Pathway-Receptor model and compilation of information (Qualifying Interests and Conservation Objectives)

Site Name / Code	Qualifying Interests (QIs) / Special Conservation Interest (SCIs)	Connections	Consider Further
South Dublin Bay and River Tolka Estuary SPA 004024	QIs – 14 bird species <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004024.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004024.pdf</a>		
North Bull Island SPA	QIs – 18 bird species		

004006	To maintain the favourable conservation condition of the wetland habitat in North Bull Island SPA as a resource for the regularly occurring migratory waterbirds that utilise it  To maintain the favourable conservation condition of the qualifying species	Yes  Weak hydrological connections exist through:  Surface water ultimately discharging to Dublin Bay  Wastewater from the site passes and would be treated in Ringsend WWTP, which also discharges to Dublin Bay.	Yes
North Dublin Bay SAC  000206	QIs – ten coastal habitats and species  <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000206.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000206.pdf</a>		
South Dublin Bay SAC  000210	QIs - Mudflats and sandflats not covered by seawater at low tide [1140]  Annual vegetation of drift lines [1210]  Salicornia and other annuals colonising mud and sand [1310]  Embryonic shifting dunes [2110]  <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000210.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000210.pdf</a>		

## 15.4. Potential Effects

15.4.1. Habitat loss and fragmentation would not arise given the location and nature of the site. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- increased noise, dust and/or vibrations as a result of construction activity;
- management of invasive species;
- surface water drainage from the proposed development site;

- increased wastewater being sent to Ringsend Wastewater Treatment Plant during the operational phase of the proposed development.

### Construction Phase

- 15.4.2. Having regard to the information submitted with the application, including the Civil Engineering Services Report and the Outline Waste and Construction Management Plan, pollution sources would be controlled through the use of normal best practice site management. The proposed construction management measures outlined, including asbestos removal and disposal, are typical and well-proven construction (and demolition) methods and would be expected by any competent developer whether or not they were explicitly required by the terms and conditions of a planning permission. Furthermore, their implementation would be necessary for a residential development on any site, in order to protect the surrounding environs, regardless of proximity or connections to any European site or any intention to protect a European site. I am satisfied that the construction practices set out are not designed or intended specifically to mitigate any potential effect on a European site.
- 15.4.3. There are no surface watercourses on site based on the survey data for the site and the drainage proposals submitted. The nearest watercourse is the River Liffey located approximately 1.2km to the northeast of the site. Surface water from the proposed development would drain to the surface water sewer running along the industrial estate access road, which ultimately drains to Dublin Bay coastal waters. According to the EPA, the water quality of the Dublin Bay coastal waterbody is classified as 'good' and is 'not at risk' based on categorisation for the purposes of the Water Framework Directive.
- 15.4.4. I am satisfied that the potential for likely significant effects on the qualifying interests of European sites in Dublin Bay can be excluded given the absence of a likely pollution source on the site, the considerable intervening distances and the volume of waters separating the application site from European sites in Dublin Bay (dilution factor).
- 15.4.5. Survey details provided with the applicant's AA Screening report and Ecological Impact Assessment do not highlight qualifying interest species or other species associated with the conservation objectives of European sites habituating the site or its adjoining area. The development would not increase disturbance effects to birds

in Dublin Bay, including during construction (and operational) phases, given the separation distance from these sensitive areas across an extensive urban area.

- 15.4.6. In the event that the pollution and sediment-control measures were not implemented or failed during the construction phase, I remain satisfied that the potential for likely significant effects on the qualifying interests of European sites can be excluded given the distant and interrupted hydrological connection, the nature and scale of the development and the distance and volume of water separating the application site from European sites in Dublin Bay (dilution factor).
- 15.4.7. Buddleia or butterfly bush is only located in one area of the site and standard management measures typically required to require its removal and disposal would be put in place as part of the project Construction Environmental Management Plan. Such management measures would be necessary for development on any site, in order to protect the surrounding environs, regardless of proximity or connections to any European site or any intention to protect a European site. I am satisfied that the management of this medium-impact invasive species would not be designed or intended specifically to mitigate any potential effect on a European site.
- 15.4.8. The construction phase will not result in significant environmental impacts that could affect European Sites within the wider catchment area.

#### Operational Phase

- 15.4.9. During the operational stage surface water from the site would be discharged at rates compliant with the Greater Dublin Regional Code of Practice for Drainage Works to the public surface water drainage system after passing through a fuel interceptor and a flow-control hydrobrake. In the event that the pollution control and surface water treatment measures were not implemented or failed, I remain satisfied that the potential for likely significant effects on the qualifying interests of European sites in Dublin Bay can be excluded given the distant and interrupted hydrological connection, the nature and scale of the development featuring a piped surface water network, including standard control features, and the distance and volume of water separating the application site from European sites in the Dublin Bay area (dilution factor).
- 15.4.10. Wastewater would ultimately be treated at Ringsend Wastewater Treatment Plant (WWTP) and the proposed development would result in a residential loading

equivalent to approximately 216 to 432 residents based on the number of bed spaces proposed. Having regard to the scale of the development proposed, it is considered that the development would result in an insignificant increase in the loading at Ringsend WWTP, which would in any event be subject to Irish Water consent, and would only be given where compliance with EPA licencing in respect of the operation of the plant was not breached. Notwithstanding this, water quality is not a target for the maintenance of any of the qualifying interests within the SACs closest to Ringsend WWTP (i.e. South Dublin Bay SAC and North Dublin Bay SAC). Their qualifying interest targets relate to habitat distribution and area, as well as vegetation structure and the control of negative indicator species and scrub. The development would not lead to any impacts upon these qualifying interests, consequent to changes to the physical structure of the habitats or to the vegetation structure that defines their favourable conservation status.

15.4.11. On the basis of the foregoing, I conclude that the proposed development would not impact the overall water quality status of Dublin Bay and that there is no possibility of the operational proposed development undermining the conservation objectives of any of the qualifying interests or special conservation interests of European sites in or associated with Dublin Bay via surface water runoff and emissions to water.

#### In-combination Impacts

15.4.12. This project is taking place within the context of greater levels of construction development and associated increases in residential density in the Dublin area. This can act in a cumulative manner through surface water run-off and increased volumes to the Ringsend WWTP.

15.4.13. The expansion of the city is catered for through land use planning by the various Planning Authorities in the Dublin area, including the South Dublin County Development Plan 2016-2022. The Development Plan has been subject to AA by the Planning Authority, who concluded that its implementation would not result in significant adverse effects on the integrity of any European sites. The proposal would not generate significant demands on the existing municipal sewers for foul water. While this project would marginally add to the loadings to the municipal sewer, evidence shows that negative effects to European sites are not arising. Furthermore, I note that the first phase of upgrade works to the Ringsend WWTP

extension (ABP ref. PL.29N.YA0010) serving an additional population equivalent of 400,000 persons were completed in December 2021 and the facility is currently operating under the EPA licencing regime that was subject to AA Screening.

15.4.14. The development is not associated with any loss of semi-natural habitat or pollution that could act in a cumulative manner to result in significant negative effects to any European site. I am satisfied that there are no projects which can act in combination with the development that could give rise to significant effects to European sites within the zone of influence.

#### AA Screening Conclusion

15.4.15. The significant distance between the proposed development site and any European sites, and the very weak ecological pathways are such that the proposal would not result in any likely changes to the European sites that comprise part of the Natura 2000 network in Dublin Bay.

15.4.16. The proposed development was considered in light of the requirements of section 177U of the Act of 2000. Having carried out screening for AA of the project, it has been concluded that the project individually or in combination with other plans or projects, would not have a significant effect on European sites, including European Site No. 004024 (South Dublin Bay and River Tolka Estuary SPA), European Site No. 004006 (North Bull Island SPA), European Site No. 000206 (North Dublin Bay SAC) and European Site No. 000210 (South Dublin Bay SAC) in view of the sites' Conservation Objectives, and Appropriate Assessment is not, therefore, required.

15.4.17. The possibility of significant effects on other European sites has been excluded on the basis of objective information. Measures intended to reduce or avoid significant effects on European sites have not been considered in the screening process.

## **16.0 Conclusion and Recommendation**

16.1. Having regard to the above assessment, I recommend that section 9(4)(a) of the Act of 2016 be applied and that permission be refused to be granted for the proposed development, for the reasons and considerations set out in the draft Order below.



## 17.0 Recommended Order

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 11<sup>th</sup> day of January, 2022, by AAI Palmerstown Limited care of HW Planning of 5 Joyce House, Barrack Square, Ballincollig, Cork.

### **Proposed Development:**

The development will consist of:

- demolition and removal of a warehouse / factory building measuring a stated gross floor area of 3,628sq.m;
- construction of 144 apartments in four blocks of three to nine storeys with residential amenity and support services, and employment uses comprising two incubator units and a remote working space;
- vehicular access off Cherry Orchard industrial estate access road to an undercroft car park, the provision of a pedestrian cycle path and a set-down area along Cherry Orchard industrial estate access road and a signal-controlled pedestrian crossing over Kennelsfort Road Upper;
- provision of 67 car parking spaces, including two car-club spaces, eight motorcycle parking spaces and 310 bicycle parking spaces;
- provision of 1,303sq.m of a central podium-level courtyard serving as landscaped communal open space;
- all associated site and infrastructural works, including sustainable urban drainage systems, lighting, landscaping, roof-mounted solar panels, plant areas, electricity substation and all associated site development works.

at units 64/65 Cherry Orchard Industrial Estate, Kennelsfort Road Upper, Palmerstown, Dublin 10.

### **Decision**

**Refuse to grant permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under.**

### **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**

1. Having regard to the proposed building heights, the location of the site within a regeneration area that is not subject of a Local Area Plan or a Planning Scheme and the provisions of the South Dublin County Development Plan 2016-2022, specifically urban centre policy UC6 – objective 4 directing tall buildings that exceed five storeys in height to regeneration areas that are subject of an approved Local Area Plan or a Planning Scheme, it is considered that the proposed development materially contravenes the urban centre policy UC6 – objective 3 of the South Dublin County Development Plan 2016-2022.

The statutory requirements relating to the submission of a material contravention statement have not been complied with by the applicant in respect of this matter. Accordingly, the Board is precluded from granting permission in circumstances where the application is in material contravention of the Development Plan and where the statutory requirements referred to above have not been complied with.

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Colm McLoughlin  
Senior Planning Inspector

10<sup>th</sup> June 2022

## Appendices

### Appendix A: EIA Screening Determination for Strategic Housing Development Applications

A. CASE DETAILS		
<b>An Bord Pleanála Case Reference</b>		ABP-312430-22
<b>Development Summary</b>		Demolish factory/warehouse and construct 144 apartments in four blocks of three to nine storeys and associated development at units 64/65, Cherry Orchard industrial estate, Kennelsfort Road Upper, Palmerstown, Dublin 10.
	<b>Yes / No / N/A</b>	
<b>1. Has an AA screening report or NIS been submitted?</b>	Yes	A Report in Support of AA Screening and an Ecological Impact Assessment were submitted with the application.
<b>2. Is an IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?</b>	No	
<b>3. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA</b>	Yes	SEA and AA were undertaken in respect of the South Dublin County Development Plan 2016-2022

B. EXAMINATION	Yes/ No/ Uncertain	Briefly describe the nature and extent and Mitigation Measures (where relevant)  (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact) <b>Mitigation measures</b> –Where relevant specify features or measures proposed by the applicant to avoid or prevent a significant effect.	Is this likely to result in significant effects on the environment? Yes/ No/ Uncertain
<b>1. Characteristics of proposed development</b> (including demolition, construction, operation, or decommissioning)			
1.1 Is the project significantly different in character or scale to the existing surrounding or environment?	No	There is a clear consistency in the nature and scale of development in the surrounding area, comprising low-rise buildings of varying uses, including industrial/warehousing, commercial, residential and educational buildings. While the proposed building heights would not be in character with surrounding heights, the proposed development is not regarded as being of a scale or character significantly at odds with the surrounding pattern of development.	No
1.2 Will construction, operation, decommissioning or demolition works cause physical changes to the locality (topography, land use, waterbodies)?	Yes	The proposed residential development would take place on an existing residential site within Dublin city and would have minimal physical change for the locality with no substantive waterbodies on site or proximate to the site.	No

<p><b>1.3</b> Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?</p>	<p>Yes</p>	<p>Construction materials will be typical of such urban development. The loss of natural resources as a result of the redevelopment of the site are not regarded as significant in nature.</p>	<p>No</p>
<p><b>1.4</b> Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?</p>	<p>Yes</p>	<p>Asbestos has been identified in the roof of the building to be demolished. Proposals for safe removal and disposal of this material have been outlined and would be finalised as part of the project Construction Environmental Management Plan (CEMP) and Construction and Demolition Waste Management Plan (CDWMP).</p> <p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances. Use of such materials would be typical for construction sites. Any impacts would be local and temporary in nature and the implementation of the standard measures outlined in a CEMP and a CDWMP would satisfactorily mitigate potential impacts. No operational impacts in this regard are anticipated.</p>	<p>No</p>

<p><b>1.5</b> Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</p>	<p>Yes</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other similar substances, and will give rise to waste for disposal. The use of these materials would be typical for construction sites. Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature and with the implementation of standard measures outlined in a CEMP and a CDWMP would satisfactorily mitigate the potential impacts.</p> <p>Operational waste would be managed through a waste management plan to obviate potential environmental impacts. Other significant operational impacts are not anticipated.</p>	<p>No</p>
<p><b>1.6</b> Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?</p>	<p>No</p>	<p>No significant risks are identified. There is no direct connection from open water on the site to other waters. Operation of standard measures outlined in a CEMP and a CDWMP will satisfactorily mitigate emissions from spillages during construction.</p> <p>The operational development will connect to mains services and discharge surface waters only after passing through a fuel interceptor and a hydrobrake to the public network. Surface water drainage will be separate to foul drainage within the site and leaving the site.</p>	<p>No</p>

<p><b>1.7</b> Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?</p>	<p>Yes</p>	<p>There is potential for the construction activity to give rise to noise and vibration emissions. Such emissions will be localised, short term in nature and their impacts would be suitably mitigated by the operation of standard measures listed in a CEMP and a CDWMP. Management of the scheme in accordance with an agreed management plan will mitigate potential operational impacts.</p>	<p>No</p>
<p><b>1.8</b> Will there be any risks to human health, for example due to water contamination or air pollution?</p>	<p>Yes</p>	<p>Construction activity is likely to give rise to dust emissions. Such construction impacts would be temporary and localised in nature and the application of standard measures within a CEMP and a CDWMP would satisfactorily address potential risks on human health. No significant operational impacts are anticipated, with water supplies in the area provided via piped services.</p>	<p>No</p>
<p><b>1.9</b> Will there be any risk of major accidents that could affect human health or the environment?</p>	<p>No</p>	<p>No significant risk is predicted having regard to the nature and scale of development. Any risk arising from construction will be localised and temporary in nature. The site is not at risk of flooding. The site is outside the consultation / public safety zones for Seveso / COMAH sites.</p>	<p>No</p>
<p><b>1.10</b> Will the project affect the social environment (population, employment)</p>	<p>Yes</p>	<p>Redevelopment of this site would result in an intensification of use and an increase in population in this area. The development would provide housing that would serve towards meeting an anticipated demand in the area.</p>	<p>No</p>

1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?	No		No
<b>2. Location of proposed development</b>			
<p><b>2.1</b> Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:</p> <ol style="list-style-type: none"> <li>1. European site (SAC/ SPA/ cSAC/ pSPA)</li> <li>2. NHA/ pNHA</li> <li>3. Designated Nature Reserve</li> <li>4. Designated refuge for flora or fauna</li> <li>5. Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan</li> </ol>	No	Sensitive ecological sites are not located on site. The nearest European sites are listed in table 6 of this report and other designated sites, including proposed Natural Heritage Areas (pNHA) are referred to by the applicant in their Ecological Impact Assessment. The River Liffey pNHA is located 1km to the northeast of the site and the Grand Canal pNHA is located 2km to the south. The proposed development would not result in significant impacts to any of these sites. Annex II habitats or habitat suitable for protected species, including plants, were not found on site during ecological surveys.	No
2.2 Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be affected by the project?	No	The proposed development would not result in significant impacts to protected, important or sensitive species. Biodiversity measures in the form of additional tree planting is anticipated to be of benefit to nesting and foraging birds.	No



<b>2.3</b> Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?	No	The site and surrounding area does not have a specific conservation status or landscape of particular importance and there are no Protected Structures on site or in its immediate vicinity.	No
<b>2.4</b> Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?	No	No such features are in this urban location.	No
<b>2.5</b> Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?	No	The development will implement SUDS measures to control surface water run-off. The site is not at risk of flooding. Potential impacts arising from the discharge of surface waters to receiving waters are considered, however, no likely significant effects are anticipated.	No
<b>2.6</b> Is the location susceptible to subsidence, landslides or erosion?	No	The site features relatively level terrain and the proposed development would feature limited excavation works.	No
<b>2.7</b> Are there any key transport routes (eg National Primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?	No	Direct access would be provided to the industrial estate access road. The site is served by an existing urban road network. There are sustainable transport options available to future residents. No significant contribution to traffic congestion is anticipated.	No
<b>2.8</b> Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be affected by the project?	Yes	A school is situated to the north of the site, however, arising from the project, including standard measures of a CEMP and a CDWMP, no significant construction or operational impacts would be anticipated for this facility.	No

3. Any other factors that should be considered which could lead to environmental impacts			
<b>3.1 Cumulative Effects:</b> Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?	No	The applicant refers to a neighbouring planning application to extend an industrial unit located in Cherry Orchard industrial estate (unit 78) approximately 100m to the south of the application site (SDCC ref. SD21A/0257). I am not aware of a permission for this development. No existing or permitted developments have been identified in the immediate vicinity that would give rise to significant cumulative environmental effects with the subject project. Any cumulative traffic impacts that may arise during construction would be subject to a project construction traffic management plan.	No
<b>3.2 Transboundary Effects:</b> Is the project likely to lead to transboundary effects?	No	No transboundary considerations arise	No
<b>3.3</b> Are there any other relevant considerations?	No	No	No

C. CONCLUSION			
<b>No real likelihood of significant effects on the environment.</b>	<input checked="" type="checkbox"/>	<b>EIAR Not Required</b>	
<b>Real likelihood of significant effects on the environment.</b>	<input type="checkbox"/>	Refuse to deal with the application pursuant to section 8(3)(a) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended)	

## D. MAIN REASONS AND CONSIDERATIONS

Having regard to

- the nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i), 10(b)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2022;
- the location of the residential units on lands zoned 'REGEN' within the South Dublin County Development Plan 2016-2022 with a stated objective ' to facilitate enterprise and / or residential-led regeneration', and the results of the Strategic Environmental Assessment of the Development Plan;
- the nature of the existing site and the pattern of development in the surrounding area;
- the availability of mains water and wastewater services to serve the proposed development;
- the location of the development outside of any sensitive location specified in Article 299(C)(1)(a)(v) of the Planning and Development Regulations 2001-2022;

- the guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001-2022, and;
- the standard features and measures that would be required to avoid or prevent what might otherwise be significant effects on the environment, including measures proposed as part of the project Outline Waste and Construction Management Plan and to be provided as part of the project Construction Environmental Management Plan and Construction and Demolition Waste Management Plan.

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

Inspector: \_\_\_\_\_ **Colm McLoughlin**

Date: **10<sup>th</sup> June 2022**