



An
Bord
Pleanála

Inspector's Report ABP 313282-22

Development

Demolition of 2 no. houses and construction of 99 residential units in 3 no. blocks and associated works.

Location

Tinnahinch and Larch Grove, Plunkett Avenue, Westminster Road, Foxrock, Dublin 18.

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D22A/0035

Applicant

Macro Properties North West Ltd.

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

1. 1st Party v. refusal
2. 3rd Party v. refusal

Appellant(s)

1. Macro Properties North West Ltd.
2. Kilteragh Pines Management Society

Observer(s)

1. Cedric Chau

2. Ivy Chau
3. Stuart & Rhoda Margetson
4. Foxrock Area Community and Enterprise Ltd.
5. Frank & Breda McCabe
6. An Taisce
7. Robin McGhee
8. Derek Montgomery
9. Margaret Clarkin
10. Patricia & Tom Deveney
11. Thomas Greavy
12. Grainne O'Leary & Paul Ryan
13. Cllr John Kennedy
14. Jeannette Mee
15. Eleanor Greavy & Brian Murphy

Date of Site Inspection

21/11/22

Inspector

Pauline Fitzpatrick

Contents

1.0 Site Location and Description	5
2.0 Proposed Development	5
3.0 Planning Authority Decision	7
3.1. Decision	7
3.2. Planning Authority Reports	8
3.3. Prescribed Bodies	11
3.4. Third Party Observations	12
4.0 Planning History.....	12
5.0 Policy Context.....	12
5.1. Development Plan.....	12
5.2. Natural Heritage Designations	19
6.0 The Appeal	19
6.1. Grounds of Appeal	19
6.2. Responses to Appeal	25
6.3. Planning Authority Response	31
6.4. Observations	31
6.5. Further Responses.....	35
7.0 Assessment.....	36
7.1. Legal and Procedural Issues.....	37
7.2. Principle of Development	38
7.3. Residential Amenities.....	43
7.4. Impact on the Foxrock ACA	48
7.5. Site Services and Flood Risk	50
7.6. Traffic, Access and Parking.....	52

7.7. Other Issues.....	53
7.8. Appropriate Assessment	54
7.9. EIA Screening	58
8.0 Recommendation.....	60
9.0 Reasons and Considerations.....	60
10.0 Conditions	61

1.0 Site Location and Description

- 1.1. The site, which has a stated area of 0.986 hectares, comprises of two house plots, Tinnahinch and Larch Grove, and includes Plunkett Avenue which is a privately owned road. The houses are to either side of the road. Plunkett Avenue is located to the south of Westminster Road c. 400 metres to the east of the junction of Westminster Road and Brighton Road/Torquay Road and Foxrock village. It is c. 700 metres to the west of the N11. Plunkett Avenue provides access to 5 no. dwellings. It is approx. 4 metres wide with no footpath. It is bounded by tall hedgerows along almost the entire length.
- 1.2. Tinnahinch to the west of Plunkett Avenue is a two storey dwelling within a landscaped garden characterised by a number of mature trees. A small watercourse, referred to as St. Brid's Stream, traverses the southern part of the site. It flows in a south-easterly direction and is culverted under Plunkett Avenue.
- 1.3. Larch Grove to the east of Plunkett Avenue is a two storey dwelling in the Arts and Crafts style. Its rear boundary to Kilteragh Pines is delineated by fencing backed by mature trees.
- 1.4. The vicinity of the site is characterised by a mature residential area comprising mainly of detached dwellings on large plots. Kilteragh House which is a protected structure is to the east of the site and is surrounded by Kilteragh Pines which is small enclave of single and 1 ½ storey dwellings.
- 1.5. The northern end of Plunkett Avenue falls within the Foxrock ACA.

2.0 Proposed Development

- 2.1. The proposal entails:
 - Demolition of the two dwellings - Tinnahinch and Lark Grove
 - 99 apartments in 3 no. blocks ranging in height from 3 to 6 storeys

Unit Mix:

 - 29 no. 1 bedroom
 - 53 no. 2 bedroom

- 17 no. 3 bedroom
- 2 level basement under Blocks A and B and 1 level basement under Block C
- 145 no. parking spaces and 216 bicycle parking spaces
- Upgrading of existing entrance to Plunkett Avenue and provision of a footpath along same with 2 no. pedestrian crossings. Avenue to be widened to 6 metres.
- Substation

The application is accompanied by:

- Architectural Design Statement
- Heritage Impact Appraisal
- Engineering Planning Report
- Site Specific Flood Risk Assessment
- Stage 1 Stormwater Audit
- SUDS Health and Safety Risk Assessment Checklist
- Traffic and Transport Assessment
- Stage 1 Road Safety Audit
- Outline Construction Management Plan
- Outline Construction and Demolition Waste Management Plan
- Screening Report for Appropriate Assessment
- Ecological Impact Statement
- Bat Fauna Assessment
- Landscape Design Report
- Daylight and Sunlight Assessment
- Verified Views, Montages and CGIs
- Waste Management Plan
- Landscape and Visual Impact Assessment

- Building Lifecycle Report
- External Lighting Photometric Report
- Sustainability Report/Energy Statement
- NZEB Compliance Report
- Telecommunications Report

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the above described development for 3 reasons which can be summarised as follows:

1. The proposal by reason of its overall scale, massing and height would constitute overdevelopment. The separation distances between blocks A and B contravene section 8.2.3.3 of the development plan and would result in overlooking and create a substandard level of residential amenity for prospective occupants. The scale, design and positioning of block B adjacent to the footpath on Plunkett Avenue would negatively impact on the visual amenity of Plunkett Avenue and overbear the streetscape and proposed public realm.
2. The proposal fails to accord with the Building Height Strategy of the 2016 Development Plan and SPPR 3 of the Building Heights guidelines in that it fails to integrate with the existing single and two storey dwellings in the vicinity. Its height, in combination with the setbacks to boundaries and adjoining properties, would result in a visually dominant and overbearing form of development when viewed from Westminster Road, Plunkett Avenue and adjoining properties and would seriously injure the visual and residential amenities of these neighbouring properties.
3. The removal of 73 no. trees on a site with an objective to protect and preserve trees and woodlands, would adversely affect the special character and appearance of the Foxrock ACA and would negatively impact the streetscape of Westminster Road and Plunkett Avenue. The proposal would be contrary

to policy AR12 of the 2016 Development Plan and section 9.0 of the Foxrock ACA character appraisal report.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **planner's report** dated **15/03/22** notes:

- Contents of internal reports noted.
- Reference made to report from Department of Housing, Local Government and Heritage and Irish Water
- There are no concerns about the demolition of the two dwellings.
- Given its proximity to a QBC the density, in excess of 50 units per hectare, may be suitable.
- As Plunkett Avenue serves other dwellings and the permitted development at Weavers Hall it should not be included in the net site area for density calculation.
- The density has implications in terms of building height, impacts on residential and visual amenities, trees and impact on the Foxrock ACA.
- The height at 6 storeys is not acceptable and fails to accord with the building height strategy of the development plan (2016).
- The proposal does not accord with the provisions of the building height guidelines.
- The planning authority is not satisfied that this additional height can be absorbed at this location without unreasonably compromising the residential amenity of properties in the vicinity. The additional height also negatively impacts the landscape character of the ACA through the siting of block B immediately adjacent to Plunkett Avenue.
- The removal of existing mature landscaping is contrary to the ACA which identifies the landscape character as one of its main characteristics.

- Noting the proximity of development to existing dwellings and the overbearing and overlooking impact, it is considered that the development does not make a positive contribution to the urban neighbourhood or ACA due to the inappropriate transition in scale.
- The height justification is also based on the site being screened by existing trees. However 39% are due to be removed. The applicant cannot rely on the long term retention of trees including those along the northern boundary.
- The mix of units is welcomed.
- The daylight factor achieved is acceptable.
- The separation distances between blocks A and B is of concern and will adversely impact on prospective amenities due to overlooking and creating an overbearing appearance.
- The height, coupled with the separation distances between blocks A and B, reflect the overdevelopment of the site.
- The omission of CGIs from Kilteragh Pines is a serious omission.
- A number of areas which are included in the communal open space calculation function as pedestrian thoroughfares.
- The sightline for block C extends beyond lands in the ownership of the applicant.
- Connectivity re Westminster Road and Hainault Park via the site and through Weavers Hall should be pursued.

A refusal of permission for 3 no. reasons recommended.

3.2.2. Other Technical Reports

Conservation Officer in a report dated **22/02/22** states that the removal of existing mature landscaping is contrary to the Foxrock ACA which identifies the landscape character as one of its main characteristics. In addition, the siting of the blocks close to the front of the site is at variance with the established pattern of development in Foxrock which is characterised by large, detached dwellings set back from the site boundaries with mature planting allowing glimpses of the dwellings. The scale,

height and massing is considered incongruous with the established character of the ACA and fails to enhance its architectural character and interest.

Transportation Planning in a report dated **24/02/22** accepts that the scale of the traffic generated by the proposal will not have a significant impact on the operating performance of the local or regional road network. A 2 metre wide footpath should be provided. The layout of the Plunkett Avenue priority junction with Westminster Road should be amended to ensure pedestrian priority. Further information required on traffic calming measures, sightlines from accesses onto Plunkett Avenue, and access/egress from Block C basement carpark. Carparking considered to be acceptable. Further information required on cycle parking and submission of travel plan (mobility management plan).

Housing Department in a report dated **07/02/22** recommends a Part V condition.

Transportation Public Lighting in a report dated **07/02/22** states that the lighting design is not acceptable and requires amendment.

Waste Section in a report dated **17/02/22** states that the documentation submitted is inadequate. Requirements in terms of noise, vibration and dust monitoring during construction, construction waste disposal, preparation of a public liaison plan, an operational waste management plan and pest control plan detailed.

Environmental Health Officer in a report dated **21/02/22** recommends further information on outline construction and demolition waste management plan, dust minimisation plan and noise management plan.

Biodiversity Officer (report by Aster Environmental Consultants Ltd. dated **23/02/22**) states that the AA Screening requires revision to consider the hydrological pathway linking the development to Killiney Bay and potentially to Rockabill Dalkey Island SAC in addition to insertion of a habitat map. Further information required on ecological impact assessment including invertebrate surveys and assessment, bird surveys, invasive species management plan, landscaping, impacts of lighting on bats, habitat management plan and monitoring programme, updated CEMP and design and treatment of the riparian edge of the stream.

Water Services in a report dated **22/02/22** requires further information including details on site drainage with attenuation rate to be recalculated, attenuation storage

systems, details on surface water sewers and further detail on flood risk assessment including replacement bridge over existing stream.

Parks and Landscape Services in a report dated **24/02/22** recommends refusal on grounds of excessive removal of trees damaging the sylvan character of the area. The development will unavoidably damage and significantly shorten tree life span in the area. Usability of open space for all age groups is unclear and open stream risk analysis is absent. The report goes on to set out details for which further information should be sought.

3.3. Prescribed Bodies

An Taisce in a submission dated **22/02/22** notes:

- The scale, height and massing are inappropriate
- It contravenes the Building Height Strategy of the 2016 Development Plan
- It is too car dependent
- Substantial excavation would be required to provide for the basement levels.
- The loss of trees would impact on the sylvan setting.
- No views provided from or to the ACA area, Kilteragh Pines or the attendant grounds of Kilteragh House.
- Insufficient justification for the demolition of Larch Grove.
- The development granted at Weavers Hall under ref. ABP 301809-18 does not set a precedent.

Irish Water in a submission dated **19/01/22** notes that a pre-connection enquiry has been included with the application which sets out Irish Water's requirements in relation to foul storage and pumping. The applicant is requested to confirm that foul sewerage will be maintained in a holding tank on site and discharged at a maximum rate of 2l/s. The applicant should also indicate the proposed outflow rate from Block C. The permissible rate of 2l/s, as set out in the pre-connection enquiry, relates to the entire site. Applicant requested to include details of the proposed tank/tanks and pumps in the further information response.

Department of Housing, Local Government and Heritage in a letter dated **23/02/22** states that due to the large scale of the site an archaeological assessment is required. It recommends that such an assessment be carried out as further information.

3.4. **Third Party Observations**

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the 3rd Party appeal and observations as summarised in section 6 below.

4.0 **Planning History**

ABP-301809-18 (D17A/0486) – permission granted in March 2019 for 50 no. apartments and 1 no. house at Weavers Hall to the south of the site.

ABP 309383-21 (D20A/0830) – permission refused for demolition of dwelling and construction of 11 residential units on a site to the west accessed from Westminster Road. The 3 reasons relate to prematurity pending upgrade of foul drainage network and adverse impact on Foxrock ACA.

5.0 **Policy Context**

5.1. **Development Plan**

Since the assessment and decision of the planning authority on the application the Dun Laoghaire Rathdown County Development 2022 came into effect.

The site is within an area zoned A the objective for which is to provide residential development and improve residential amenity while protecting the existing residential amenities.

The site is outside but immediately adjoins the Foxrock ACA.

The south-western portion of the site comprising the plot occupied by Tiinnahinch has the objective to protect and preserve Trees And Woodlands. 4 no. symbols delineating this objective are positioned along the boundary to Plunkett Avenue with the 5th in south-eastern corner.

In terms of residential development chapter 4 refers. Of note:

Policy Objective PHP18: Residential Density

It is a Policy Objective to:

- Increase housing (houses and apartments) supply and promote compact urban growth through the consolidation and re-intensification of infill/brownfield sites having regard to proximity and accessibility considerations, and development management criteria set out in Chapter 12.
- Encourage higher residential densities provided that proposals provide for high quality design and ensure a balance between the protection of existing residential amenities and the established character of the surrounding area, with the need to provide for high quality sustainable residential development.

The 'Sustainable Residential Development in Urban Areas' Guidelines and the accompanying 'Urban Design Manual' include recommendations regarding appropriate densities for various types of locations. Having regard to the Guidelines and consistent with RPO 3.3 and 4.3 in the RSES:

- Where a site is located within circa 1 kilometre pedestrian catchment / 10 minute walking time of a rail station, Luas line, Core/Quality Bus Corridor and/or 500 metres / 5 minute walking time of a Bus Priority Route, and/or 1 kilometre / 10 minute walking time of a Town or District Centre, higher densities at a minimum of 50 units per hectare (net density) will be encouraged.

Constraints to Higher Density

In some circumstances higher residential density development may be constrained by Architectural Conservation Areas (ACA) and Candidate Architectural Conservation Areas (cACA) designations, Protected Structures and other heritage designations. To enhance and protect ACAs, cACAs, Heritage Sites, Record of Monuments and Places, Protected Structures and their settings, new residential development will be required to minimise any adverse effect in terms of height, scale, massing and proximity.

Policy Objective PHP20: Protection of Existing Residential Amenity.

Ensure the residential amenity of existing homes in the Built Up Area is protected where they are adjacent to proposed higher density and greater height infill developments.

- On all developments with a unit per hectare net density greater than 50, the applicant must provide an assessment of how the density, scale, size and proposed building form does not represent over development of the site. The assessment must address how the transition from low density to a higher density scheme is achieved without it being overbearing, intrusive and without negatively impacting on the amenity value of existing dwellings particularly with regard to the proximity of the structures proposed. The assessment should demonstrate how the proposal respects the form of buildings and landscape around the site's edges and the amenity enjoyed by neighbouring uses.
- On all developments with height proposals greater than 4 storeys the applicant should provide a height compliance report indicating how the proposal conforms to the relevant Building Height Performance Based Criteria "At District/Neighbourhood/Street level" as set out in Table 5.1 in Appendix 5.
- On sites abutting low density residential development (less than 35 units per hectare) and where the proposed development is four storeys or more, an obvious buffer must exist from the rear garden boundary lines of existing private dwellings.
- Where a proposal involves building heights of four storeys or more, a step back design should be considered so as to respect the existing built heights.

Policy Objective PHP27: Housing Mix

Encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided throughout the County in accordance with the provisions of the Housing Strategy and Housing Need Demand Assessment (HNDA) and any future Regional HNDA.

Policy Objective PHP42: Building Design & Height

Encourage high quality design of all new development. Ensure new development complies with the Building Height Strategy for the County as set out in Appendix 5 (consistent with NPO 13 of the NPF).

In accordance with the policies set out in the BHS, where an argument is being made for increased height and/or a taller building and the applicant is putting forward the argument that SPPR 3 of the 'Urban Development and Building Height; Guidelines for Planning Authorities' (2018) applies, the applicant shall submit documentation to show compliance with the criteria as set out in Table 5.1 'Performance Based Criteria' of the BHS (see Appendix 5).

Policy Objective T19: Carparking Standards

Manage carparking as part of the overall strategic transport needs of the County in accordance with the parking standards set out in Section 12.4.5.

Section 9.3.1.3 - The Council will seek to preserve trees, groups of trees and/or woodlands that form significant features in the landscape, and/or are important in setting the character, amenity, or ecology of an area. As part of this Plan, the Council Parks Department carried out a comprehensive review of the tree symbols on the 14 County Development Plan Maps (see also Section 12.8.11 Existing Trees and Hedgerows).

Policy Objective HER13 - Architectural Conservation Areas

- i. Protect the character and special interest of an area which has been designated as an Architectural Conservation Area (ACA).
- iii. Ensure that any new development or alteration of a building within an ACA or immediately adjoining an ACA is appropriate in terms of the proposed design, including scale, height, mass, density, building lines and materials.
- iv. Seek a high quality, sensitive design for any new development(s) that are complementary and/or sympathetic to their context and scale whilst simultaneously encouraging contemporary design which is in harmony with the area. Direction can also be taken from using traditional forms that are then expressed in a contemporary manner rather than a replica of a historic building style.

Policy Objective HER20: Buildings of Vernacular and Heritage Interest

- i. Retain, where appropriate, and encourage the rehabilitation and suitable reuse of existing older buildings/structures/features which make a positive contribution to the character and appearance of the area and streetscape in preference to their demolition and redevelopment

Policy Objective HER21: Nineteenth and Twentieth Century Buildings, Estates and Features:

- i. Encourage the appropriate development of exemplar nineteenth and twentieth century buildings and estates to ensure their character is not compromised.

Section 12 sets out the Development Management requirements for residential development. Of note:

Table 12.1 - Apartment Mix Requirements

Existing Built up area.	Schemes of 50+ units	Apartment Developments may include up to 80% studio, one and two bed units with no more than 30% of the overall development as a combination of one bed and studios and no more than 20% of the overall development as studios	Minimum 20% 3+ bedroom units
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12.3.5.1 Dual Aspect in Apartments

Specific Planning Policy Requirement (SPPR) 4 of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' (2020), provides guidance with respect to the minimum number of dual aspect apartments that may be provided in any single apartment schemes. In accordance with this guidance, DLR as a County is classified as a suburban or intermediate location and therefore:

- There shall generally be a minimum of 50% dual aspect apartments in a single scheme.

12.3.5.2 - Separation Between Blocks

A minimum clearance distance of circa 22 metres, in general, is required, between opposing windows in the case of apartments up to three storeys in height. In taller blocks, a greater separation distance may be prescribed having regard to the layout, size, and design. In certain instances, depending on orientation and location in built-up areas, reduced separation distances may be acceptable. In all instances where the minimum separation distances are not met, the applicant shall submit a daylight availability analysis for the proposed development.

12.4.5.1 - The site is within Parking Zone 3

Within parking zone 3 maximum standards shall apply to uses other than residential where the parking standard shall apply. In zone 3 additional parking shall be provided for visitors in residential schemes at a rate of 1 per 10.

12.4.5.2 - There is a key distinction between residential parking and destination parking and there is less value in adopting more restrictive residential parking standards for the purposes of encouraging sustainable travel.

Land Use	Zone 3 Remainder of County (non-rural)
1 bed	1*
2 bed	1*
3 bed	2*

*plus 1 in 10 visitor parking for apartments in zone 3

Section 12.8.3

Public Open Space – 15% of site area

Communal Open space

1 bedroom – 5 sq.m.

2 bedroom (3 bed) – 6sq.m.

2 bedroom (4 bed) – 7 sq.m.

3 bedroom – 9 sq.m.

Section 12.8.11 Existing Trees and Hedgerows

New developments shall be designed to incorporate, as far as practicable, the amenities offered by existing trees and hedgerows. New developments shall also have regard to objectives to protect and preserve trees and woodlands (as identified on the County Development Plan Maps). The tree symbols on the maps may represent an individual tree or a cluster of trees and are not an absolute commitment to preservation. Decisions on preservation are made subject to full Arboricultural Assessment and having regard to other objectives of the Plan.

The retention of existing planted site boundaries will be encouraged within new developments, particularly where it is considered that the existing boundary adds positively to the character/visual amenity of the area. New developments should have regard to the location of new buildings/ extensions relative to planted boundaries. Prior to construction, the applicant shall provide details of adequate measures on site to protect all planting/ trees to be retained and this protection shall be maintained throughout the development during the construction period.

Where it proves necessary to remove trees to facilitate development, the Council will require the commensurate planting or replacement trees and other plant material. This will be implemented by way of condition. A financial bond may be required to ensure protection of existing trees and hedgerows during and post construction.

Appendix 5 – Building Height Strategy

Within the built up area of the County increased height can be defined as buildings taller than prevailing building height in the surrounding area. Taller buildings are defined as those that are significantly taller (more than 2 storeys taller) than the prevailing height for the area.

Section 5 of the appendix sets out the performance-based criteria that the Planning Authority will use in assessing applications for increased height in the County. The performance based criteria take into account the protection of residential amenities, the protection of the County's built and natural heritage and the promotion of compact growth in suitable locations throughout the County.

5.2. Natural Heritage Designations

None in the vicinity

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Kilteragh Pines Management Society Ltd.

The grounds of appeal can be summarised as follows:

Whilst the reasons for refusal are welcomed they are not sufficiently comprehensive.

Other reasons for refusal should include:

Removal of trees and hedgerows

- The removal of trees and hedgerows fails to comply with the aims and objectives of the County Development Plan. Policy LHB19 4.1.3.1 refers. The duties and obligations under EU law also refer.
- They are valuable to the character of area. It is an environmentally rich corridor.
- The cumulative impact of the proposed removal of 73 trees with the 60 trees to be removed as part of the permitted development on the adjoining site of Weavers Hall (file ref. D17A/0486) needs to be assessed. It would all but denude an important 2 hectare suburban wooded environment.
- Their removal will impact on the capacity of the stream for surface water disposal. St. Brid's stream and adjoining properties will be overwhelmed as a result of downstream flooding in an area that is already prone to flooding.

Surface Water

- The site is identified in the County Development Plan as prone to flooding.
- The calculated discharge for Block A and part of Block B into the stream at a rate of 3.15 litres per second is well in excess of the normal standards set down by the Drainage Section of Dun Laoghaire Rathdown County Council.

- Large areas of public open space have been omitted from the drainage calculations. Therefore the surface water drainage has been materially underestimated.
- Adverse impact on Kilteragh Pines, in particular house nos. 12 and 13 where the stream runs through their gardens and similarly to the rear of houses on Kilteragh Drive.
- The surface water proposals fail to provide a satisfactory disposal situation. Therefore the development is premature pending the installation of mains surface water drainage and an upgrading of the mains network.
- The use of St. Brid's Stream for surface water drainage fails to respect or comply with the Foxrock ACA Character Appraisal report of the County Council.

Site Services

- The combined sewer network is inadequate and is already at full capacity on Westminster Road.
- The Board refused permission for 14 residential units on an adjoining site at Rusheen (D20A/0830, ABP 309383-21) on grounds of prematurity due to the public sewer on Westminster Road being deficient.

Demolition

- The proposal entails the demolition of Larch Grove which is a historically valuable property designed in the late 1920's Arts and Crafts style.
- It is immediately adjacent to the ACA.
- It would be contrary to development plan policy AR8 for 20th century buildings.
- It would be contrary to the policy on demolition and replacement dwellings at section 8.2.3.4 of the plan.
- It may be in contravention of the Venice Charter and Granada Convention.

Visual Impact

- The scale and extent of the impacts would seriously injure the residential amenities of the area.

- It would have a profound, disruptive impact on the streetscape due to the disparity of scale between the Foxrock ACA, Kilteragh Pines and surrounding residential areas.

Legal Interest

- The applicant has failed to provide evidence of sufficient legal interest in Plunkett Avenue to allow for works along same.
- Without the required ownership there are insufficient sight lines within the curtilage of the site to provide the required vision splay.

Access and Traffic

- Use of Plunkett Avenue, which is a narrow privately owned road, will create a traffic hazard. It is not suitable for the proposal.
- The increased traffic flow will overwhelm both the junction onto the N11 and Foxrock village crossroads at either end. The ancillary roads of Gordon Avenue and Mart Lane are incapable of taking the surplus.
- The original Kilteragh Pines Deeds map clearly indicates the original access into Kilteragh House. This access has been omitted in the documentation and its rights over Plunkett Avenue have not been acknowledged.

Adequacy of Documentation

- The documentation is inaccurate, insufficient and misleading and fails to describe the full nature and extent of the proposal.
- The visual impact assessment is fundamentally flawed and does not provide a reasonable and accurate presentation of the worst case scenario of the impact on the nearest sensitive receptors i.e. residences, protected structures and Foxrock ACA.
- The drawings provided are inaccurate, absent and, in the case of spot levels, unreadable.
- Information sufficient to inform the new and existing architectural relationships is all but given cursory attention.

- Adjoining structures are in some cases wrongly identified. True heights are displayed incorrectly.
- Some CGI images suggest that there is to be a manipulation of the ground levels not shown on other drawings.

6.1.2. **1st Party v. Refusal**

The submission by John Spain Associates on behalf of the applicant, which is accompanied by supporting detail, can be summarised as follows:

1st Reason for Refusal – Design and Impact on Prospective Amenities

- Plunkett Avenue is a privately owned road within the site and its inclusion in calculating net densities is in accordance with the guidelines.
- The density complies with the guidelines. It is close to bus stops. Whilst outside the of 500 metres of the N11 QBC it is within a reasonable walking distance (700 metres).
- The proposal accords with development plan policy PHP18 which promotes compact urban growth through the consolidation and intensification of infill/brownfield sites. It accords with NPO 35 of the National Planning Framework for increased residential density in settlements through a range of measures including infill schemes.
- 1006 sq.m. of public open space is provided with the communal open space of 3,667 sq.m. significantly in excess of the 715 sq.m. required in the guidelines.
- Blocks A and B have been designed so that apartments are staggered; a living room is opposite a bedroom etc. The separation distance at the nearest point is 17 metres. Comparable separations distances have been permitted elsewhere (examples given). The development plan notes that separation distances of less than 22 metres may be acceptable in certain instances having regard to orientation and location. The documentation accompanying the application and appeal address the issue concluding there is minimal potential for overlooking with a sunlight and daylight analysis provided. In terms of the latter there is only a minor deviation from the relevant standards

in two instances. One of the main cause of impacts is the retention of evergreen trees on the site.

- The 2020 Apartment Guidelines recommend that blanket restrictions on matters such as building height and building separation distances should be replaced by performance criteria appropriate to location. This is reflected in NPO 13 of the NPF.
- Providing the development plan separation distances at every location would entail a significant reduction in the developability of the site and would weaken the urban form with a layout that does not respond to the surrounding context. It would also result in a reduction in density.
- Block B is 6 storeys. It is designed so that it pulls away from the public realm. At the corner of the block onto the public realm, the façade is generally broken up by way of balconies.
- Amendment proposed to revise the access road which will improve pedestrian safety along the road and further improve the legibility of the scheme.

2nd Reason for Refusal – Non Compliance with Development Plan Building Height Strategy and Building Heights Guidelines

- No building within the development is within the Foxrock ACA. The layout has been carefully considered to protect the character of the ACA. The downward modifier of the ACA is not applicable.
- A full assessment of the proposed heights relative to the building height performance criteria is provided. It meets all the criteria.
- A clear well defined buffer is in place through the strategic retention of existing mature trees. In addition, a step back design is implemented with the greatest heights located centrally within Block B, where there is a high degree of separation from surrounding existing units. The blocks are stepped back to reduce any impact when proximate to existing dwellings.

3rd Reason for Refusal – Removal of Trees, Impact on ACA and Impact on Streetscape

- The intervention proposed within the ACA is limited and solely relates to providing enhanced site access and improved pedestrian facilities at the junction with Westminster Road.
- The exact location of the new tree objectives effectively sterilises the site. It would be more appropriate to treat the objectives as site wide. This would retain the high quality, mature copse of trees along the boundary within the ACA. This is considered acceptable given the quality and quantity of the trees at these locations.
- The more important and older trees located adjacent to the ACA and which add to its character are retained. The majority of the trees being removed are not prominent in the ACA. The removal of trees does not fundamentally detract from the sylvan aspect of the area.
- The trees fronting Plunkett Avenue are category B trees at best and contribute little to the ACA. The Monterey and Austrian Pines (Nos. 34, 37, 38 and 39) which are category B1-2 trees make a more significant contribution to the ACA. These trees are being retained and do not need to be removed for the proposed development. In contrast awarding the tree protection to the trees fronting Plunkett Avenue would, in effect, thwart the proposed development.
- Documentation accompanying the appeal demonstrates that the trees identified for retention can be adequately protected during construction.
- The retainable tree population represents 49.6% of the site area which is considered to be maximum level feasible given the compact growth goals on the site.

Other Issues

- Where the Board decides that the unit mix constitutes a material contravention it should grant permission under section 37(2)(a) having regard to the SPPRs of the Apartment Guidelines 2020 which supersede same.
- The siting of the blocks on the site is so as to ensure that any impact on adjacent residential developments is minimised.

- Updated verified views demonstrate that the proposal does not impact unduly on Kilteragh Pines.
- The site is located in Flood Zone C. The Flood Risk Assessment report notes that the development is at a low risk of flooding from the adjacent ditch.
- An Outline Construction Management Plan has been prepared and addresses noise and dust.
- The potential impact on bats from lighting has been assessed with mitigation measured detailed. The potential for light spillage can be further addressed through detailed design mitigation measures.
- The distances to site boundaries are correct. A revised layout plan with the extension to No. 12 provided.
- The applicant is willing to accept a condition requiring a high, low maintenance boundary to that shared with 'Glenmor'.
- The consent from the owner of Plunkett Avenue accompanies the application.

6.2. Responses to Appeal

6.2.1. 3rd Party response to 1st Party appeal

The response by Reid Associates on its behalf can be summarised as follows:

Procedural/Legal Issues

- Significant new material has been provided with the appeal. The Board has no jurisdiction to deal with the appeal in the manner submitted.

Appropriate Assessment

- Original AA Screening was fundamentally flawed. The woodland context, the stream on site and the wider area form a green biodiversity network that forms a potential pathway to the Rockabill Dalkey SAC and SPA.
- The applicant fails to consider the habitat and biodiversity value of the streams and the inter linkage with the tree habitats or the impact of construction in terms of achievement of good status in accordance with the Water Framework Directive.

- Otters are identified in the local streams and vicinity. Where there is a potential impact to a designated Annex (iv) species a NIS is required. The localised habitat supporting the annex (iv) species, in effect, becomes a localised SAC for the purpose of protecting the species.
- The 100 year old yew provides habitat for an extensive bat colony. The bat assessment is inadequate. They are annex (iv) protected species. The tree impact plan shows the severance of the green biodiversity route through the site which will materially and adversely impact bats and shows significant loss of foraging area.
- On the basis of the applicant's failure to provide strict protection for annex (iv) species of which there is evidence on site, the Board is precluded from granting permission.
- Sections 9, 15, 16 and 18 of the updated Construction Environment Management Plan incorporate mitigation measures for temporary irrigation of trees, for bats and for the protection of the watercourses. They are not standard measures. Together they are proposed to avoid adverse impacts on protected species and on the stream which is a connected pathway to the Dalkey Rockabill SAC and which feeds the Carrickmines Stream which is an important migratory sea trout habitat. These mitigation measures trigger the need for a NIS.

Tree Removal

- The loss of 73 trees will result in irreparable damage to the sylvan character of the site. The planting plan is inadequate.
- Loss of embodied carbon with the loss of the trees is not considered in the application or the landscape report.
- The destabilisation of the soil from excavation, the proximity of development to the trees and loss of shelter makes the retained trees highly vulnerable to being removed at a later date.
- The failure to integrate hydrology where a double basement excavation close to existing trees is to take place undermines the certainty of the tree retention programme which adds to the potential risk to trees on the site.

- The recommendation in the arborist report for resurveying of trees following initial felling works to assess their changed context, acknowledges the greater risk of further tree loss.
- The removal of mature trees is contrary to the development plan policy to protect the character of the ACA.

Site Services

- The pre-connection enquiry response from Irish Water highlights that the foul network capacity downstream is inadequate. As a consequence the foul flow rate would need to be controlled to 2l/s and there is a need for an on-site private foul pumping station. This is a material change from that originally proposed and should have been detailed in the public notices. Adequate details of the system have not been provided.
- The Greater Dublin Regional Code of Practice for Drainage Works does not envisage foul attenuation. Therefore the proposal is outside the scope of same. It could set an undesirable precedent for future premature development.
- The proposed attenuation of foul sewerage in the basement of the apartment blocks would potentially give rise to a public health hazard either within the development or within the wider network as a result of the risk of surcharging or inadequate storage. No risk assessment was undertaken.
- The refusal under ref. ABP 309383-21 for demolition of Rusheen on Westminster Road and construction of 14 residential units cited prematurity pending upgrade of foul drainage network.

Flood Risk

- The use of the stream for surface water drainage is questionable both in terms of biodiversity risk and risk of downstream flooding. The stream has flooded many times. The gardens of the adjoining properties have absorbed these floodwaters.
- The flood risk modelling fails to address the location within an area adjacent to risk of fluvial flooding. The 2022 Development Plan identifies a specific risk for fluvial flooding at the site.

Access and Traffic

- No letter of consent from the County Council to the accommodation works on Plunkett Avenue and Westminster Road. Improved visibility splays and provision of the footpath and widening of the junction cannot be achieved. The application is invalid on the basis that the Board has no jurisdiction to grant permission for works outside the legal ownership of the applicant. Without these works the proposal would give rise to traffic hazard.

Visual and Residential Amenities

- An Bord Pleanála's opinion on a proposed SHD is irrelevant.
- The amalgamation of the two separate plots and the subsuming of the existing avenue in the application site allied to the mass, scale, height and layout of the apartment blocks is seriously damaging to the special character of the ACA, undermines the urban grain and morphology of the area and is contrary to the policy of the ACA set out in section 3 restricting amalgamation of sites. It would contravene materially policy objectives HER 12 and HER 13.
- It would be visually overbearing dominating both the building form and eroding the landscape form and character of the area.
- The applicant is relying on the building height guidelines to justify monolithic poor quality design with excessive height. There is no basis in national guidance to support poor quality design and excessive height in the ACA.
- The Board set a precedent at Sallynoggin under ref. ABP 312321-21. Having reviewed national height policy it refused permission for failure to integrate with the existing character of the area given the overbearing relationship to residential properties and poor public realm.
- The density is excessive for the area.
- The proposal would adversely impact on the amenities of adjoining property. Overlooking has not been addressed.
- The applicant's VIA approach and viewpoints and framing of views is misleading and reference needs to be had to the site sections. It does not look at the worst case scenario. It does not show the overbearing scale and

excessive height relative to the low-profile single storey dwellings in Kilteragh Pines, Kilteragh House which is a protected structure, or the surrounding ACA. The extent of tree removal and potential risk of further tree loss exacerbates the potential for visual impact.

Archaeology

- No archaeological impact assessment was undertaken. The archaeological report submitted is not sufficient.

6.2.2. **1st Party response to 3rd Party appeal**

The submission by John Spain Associates, which is accompanied by supporting detail can be summarised as follows:

Removal of Trees, Impact on Natural Environment and Flood Risk

- The discharge from the site will be restricted to 3.7l/s for the 1 in 100 year storm event with an additional 10% added to rainfall intensities to account for climate change. This compares to the discharge rate of the undeveloped site at 9.71 l/s.
- The Site Specific Flood Risk Assessment determined that the development is in Flood Zone C. The modelling indicates that the existing ditch conveys the estimated flows without resulting in significant out of channel flows for both the 1 in 100 year and 1 in 1000 year events. The topography of the surrounding ditch remains unchanged by the development ensuring the development does not impact on the hydraulics or flood storage provided by the open ditch.
- The proposal will not provide any increase in flooding risk. The proposal will serve to reduce the overall risk of flooding and runoff compared to current levels.

Adequacy of Combined Sewer Network

- Irish Water did not raise concerns as to the capacity of the wastewater infrastructure. The confirmation of feasibility was issued by Irish Water following a significant body of work by Irish Water analysing the sewer

network serving the surrounding area and PUNCH analysis of the flow rates of discharge from the existing site.

- As per details accompanying the 1st party appeal foul water from Block C will be discharged via gravity to a foul tank at basement -1 which will then discharge to the foul holding tank below Blocks A and B.
- The proposed development will result in increased capacity in Irish Water's combined sewer network on Plunkett Avenue and the wider sewer network. This is to be done by limiting the foul discharge rate from the site to 2 l/s and removing existing storm water connections from the site to the combined sewer.
- Surface runoff from Block C will be collected via gravity pipe network and discharged to a second attenuation tank located adjacent to the structure. Flow will be restricted via a pump. This will then outfall to the open drain. A pump is required to discharge the storm water from Block C to the open ditch to avoid clashes with existing services on Plunkett Avenue.

Demolition of Larch Grove

- Whilst Larch Grove does contribute to the character of the area it is not a protected structure and is not within the ACA. It is discreetly located at the end of Plunkett Avenue and is not visible from Westminster Avenue.
- It is not included in the National Inventory of Architectural Heritage.
- Its demolition should be considered in the context of the proposal to provide quality new residential accommodation.

Legal Interest

- The consent from the owner of Plunkett Avenue accompanies the application.
- Minor revisions narrowing the road width and increasing the width of the footpath have been included in the 1st Party appeal in line with comments made by the Council's Transportation Department report.
- The previous access from Kilteragh Pines onto Plunkett Avenue is outside the red line site boundary and is not impacted by the proposal.

Visual Impact and Tree Removal

- The majority of the views used for the VIA are located within the ACA.
- The majority of the trees that are being removed are not prominent in the ACA. The photomontages show the limited visual impact of the tree removal.
- The trees proposed to be removed on site are centrally located.
- The boundary treatments and mature, larger trees are set to remain which will maintain the existing boundary with the ACA and minimise any visual impacts.
- Updated verified views from Kilteragh Pines demonstrate that the proposal does not impact unduly upon it.
- A high level of trees and planting are being maintained along the border of the site with the ACA.
- There is no manipulation of ground levels.

6.3. Planning Authority Response

The grounds of appeal do not raise any new issues which would justify a change of attitude to the proposed development.

6.4. Observations

1. Cedric Chau
2. Ivy Chau
3. Stuart & Rhoda Margetson
4. Foxrock Area Community and Enterprise Ltd.
5. Frank & Breda McCabe
6. An Taisce
7. Robin McGhee
8. Derek Montgomery
9. Margaret Clarkin
10. Patricia & Tom Deveney

11. Thomas Greavy
12. Grainne O'Leary & Paul Ryan
13. Cllr John Kennedy
14. Jeannette Mee
15. Eleanor Greavy & Brian Murphy

The submissions can be summarised under the following headings:

Procedural Issues

- In view of the extent of new detail provided with the appeal it is questioned whether this information can be accepted or considered.
- Applicant has not demonstrated that it has the permission to undertake the works to Plunkett Avenue.
- Precedent set for refusal in comparable circumstances.

Density and Design

- A large proportion of the site is undevelopable due to category A trees, an open stream and Plunkett Avenue.
- The density is excessive and represents overdevelopment of the site. It is contrary to the current development plan and apartment guidelines. The net density figure is incorrect as it includes Plunkett Avenue.
- The height is incongruous with the surrounding area.
- The area does not have the capacity to absorb the 99 units when taken in context with the 51 units permitted at Weavers Hall.
- The scheme will change and dominate the skyline and alter the nature of the area. It represents a poor design concept lacking in architectural merit and an inappropriate response to a sensitive and prominent location.
- Locations of CGIs are insufficient.
- Sufficient justification for the demolition of Larch Grove has not been provided.

Access and Traffic

- Will give rise to traffic congestion with infrastructure inadequate in the area.
- The provision of 145 parking spaces is in conflict with the apartment guidelines and is in excess of current development plan requirements. It is, therefore, a material contravention of the plan. The deviations allowed in the plan are not applicable.
- Impact of proposed amendments to Plunkett Avenue and adverse impacts on adjoining property. Road safety issues arising.

Amenities of Adjoining Property

- Will adversely impact adjoining properties by reason of overbearance, overlooking, loss of privacy and overshadowing.
- Will adversely impact on Kilteragh House which is a protected structure contrary to Venice Charter and Granada Convention.
- Tress to be retained are an impermanent feature whose longevity is in doubt and their removal could be necessary at any time.
- The development plan has 4 no. tree symbols presented on the site along the north eastern boundary with Plunkett Avenue. The proposal will result in the destruction of this boundary contrary to the relevant plan objective.
- Location of open space would give rise to noise, disturbance and potential for anti-social behaviour.
- Boundary treatments are unclear.
- Light pollution.

Prospective Amenities

- The separation distances between blocks A and B do not comply with the provisions of the current development plan. There are no reasonable grounds to accept a 17 metre separation distance.

Site Services

- Due to the number of over and underground streams in the area there continues to be a flood risk.

- The proposed surface water discharge to the open drain traversing the site may create problems through obstructing or overloading the existing drainage network servicing the area.
- Sewage capacity continues to be a concern.
- The surface water discharge at the southern end of the site at 3.7l/s to the adjoining stream is in excess of normal standards.
- The stream has flooded many times. It does not have the capacity to accept additional surface water discharge. It would increase flood risk of adjoining properties.
- Comparable proposals for surface water disposal was not accepted by the County Council on the adjoining Weavers Hall site and amended proposals were required.
- As per the 1st party appeal submission the raising of the deck level of the proposal bridge would only increase the volume of water flowing through and thereby exacerbating the existing situation resulting in potential flooding issues further downstream.
- Whether the site is suitable for the excavation of the basements needs to be investigated.
- The potential impact on adjoining properties from flood risk has not been adequately considered.
- There is a discrepancy in the details accompanying the application as to the number of car parking spaces under Blocks A and B.

Biodiversity

- The area with its woodland and stream provides a natural habitat for wildlife and forms part of wildlife corridor within the environs.
- The proposal will have a detrimental and negative impact on wildlife in the area.

6.5. Further Responses

The applicant's response to the 1st Party appeal was circulated for comment.

6.5.1. The planning authority reiterated its response to the grounds of appeal.

6.5.2. Submissions were received from:

- Derek Montgomery
- Eleanor Greavy & Brian Murphy
- An Taisce
- Margaret Clarkin

The submissions can be summarised as follows:

- The statement that the trees to be removed are centrally located is inaccurate. The majority of the trees to be removed are located along the eastern and southern boundary of the site. There is no substantive evidence to provide that the development will be screened from the ACA.
- The current development plan in sections 9.3.1.3 and 12.8.11 is clear in stating that the Council will seek to preserve trees, groups of trees and/or woodlands that form significant features in the landscape and/or are important in setting the character, amenity or ecology of an area.
- The plan is clear in stating that the tree symbols on the plan's maps relate to specific trees or groups of trees.
- In terms of Larch Grove no assessment has been undertaken on its wider heritage importance and whether its demolition is justified having regard to policy objectives HER 20 and HER 21.
- No reason has been given as to why views from the nearest properties have not been provided.
- Section 12.11.4 of the development plan notes that in some instances an assessment of a development adjacent or immediately outside the boundary of an ACA is required as to its impact on the character and appearance.

- Section 12.3.9 of the plan addressing demolition and replacement dwellings is relevant.
- No details are provided to support the assertion that the development will improve surface water runoff from the site. It is queried whether the use of artificial attenuation to address such matters forms the correct approach to surface water drainage and potential flooding.
- The reports pertaining to flood risk and sewage capacity refer to the proposed development, only, and does not refer to cumulative impact with the permission granted on Weavers Hall.

7.0 **Assessment**

I consider that the issues arising in the appeal can be assessed under the following headings:

- Legal and Procedural Issues
- Principle of Development
- Impact on Residential Amenities
- Prospective Residential Amenities
- Impact on the Foxrock ACA.
- Site Services and Flood Risk
- Traffic, Access and Parking
- Other Issues
- Appropriate Assessment.
- EIA Screening.

7.1. Legal and Procedural Issues

Adequacy of Documentation

- 7.1.1. A number of the parties to the appeal make reference to inaccuracies in the planning drawings. I note that the application was validated by the Planning Authority and deemed to be generally in accordance with the requirements of the regulations.
- 7.1.2. The 1st party appeal submission is accompanied by revised plans and details, largely seeking to address the planning authority's reasons for refusal and the issues that arose in the assessment of the case by the relevant local authority departments which are summarised in the planner's report on file. The application before the Board for adjudication is that which was lodged with the planning authority. Whilst there is no legal impediment to the submission of additional detail and revised plans with the appeal it is at the Board's discretion whether to defer to the revised proposals. At this juncture I am of the opinion that the details submitted provides clarity on a number of issues arising and does not materially alter the nature and extent of the development as originally sought.

Legal Interest

- 7.1.3. Parties to the appeal raised concerns that the applicant does not have the necessary legal consent to make the application with no evidence of legal entitlement to include Plunkett Avenue within the site boundary and to carry out works to same. It is considered by the applicant that it has the necessary legal consent to make the application with details in support of this claim provided.
- 7.1.4. In considering this matter, I refer to section 34(13) of the Planning and Development Act 2000, as amended, which states that a person shall not be entitled solely by reason of a permission to carry out any development. This subsection makes it clear that the grant of permission does not relieve the applicant of the necessity of obtaining other permits or licences which statutes or regulations or common law may necessitate.
- 7.1.5. I am satisfied that the applicant has provided sufficient legal interest in the lands to make the application and that any further contention on this matter is more appropriately directed through the appropriate legal channels.

7.2. Principle of Development

- 7.2.1. Since the assessment and adjudication of the application by the planning authority the new Dun Laoghaire Rathdown County Development Plan 2022 came into effect. I note that the plan provisions would have been reviewed by the OPR as to its compliance with national and regional policy.

Zoning Objective

- 7.2.2. The site is within an area zoned A, the objective for same being to protect and/or improve residential amenity. Within such a zone residential is permitted in principle.
- 7.2.3. I note that a number of infill developments have been permitted in the wider Foxrock area on such zoned lands. The site, with a stated area of 0.986 hectares, affords an opportunity in accordance with plan policy, to allow for the provision of a residential development subject to due cognisance of the sensitivities that arise in terms of impacts on the amenities of adjoining properties and the amenities of the area.

Acceptability of Demolition

- 7.2.4. The Board is advised that the application is accompanied by a Heritage Appraisal Report.
- 7.2.5. The site comprises of two house plots that straddle Plunkett Avenue. The larger of the two, Tinnahinch, is to the east of the cul-de-sac. It is a two storey, red brick dwelling of relatively recent construction (c.25 years) set within mature, landscaped grounds. The house is not visible from the cul-de-sac due to the existing high hedge. There is no objection to its demolition.
- 7.2.6. The substantive concern for the parties to the appeal is the proposed demolition of Larch Grove to the other side of the lane. Built on a site formed by the sub-division of the grounds of Kilteragh following its destruction by fire, Larch Grove was not part of the original development of Foxrock. It is a two storey dwelling of the Arts and Crafts idiom constructed in the 1930s and extended in the 1960s/1970s. The dwelling is not a protected structure or proposed protected structure. Although adjoining, it is not within the Foxrock Architectural Conservation Area. I also note that the building is not included in the National Inventory of Architectural Heritage. It is located at the end of Plunkett Avenue and is largely screened from Westminster Avenue.

7.2.7. Whilst I note the provisions of policy objectives HER20 and HER21 pertaining to retention of buildings of vernacular and heritage interest including 19th and 20th century buildings, demolition is not prohibited. The merits of demolishing the dwelling must be considered in the context of the redevelopment proposal which will provide for a greater intensification of the lands and a more sustainable use of the infill site. In this context, the demolition of the existing dwellings is considered justifiable and in accordance with the proper planning and sustainable development of the area.

Density

7.2.8. As noted previously the site straddles Plunkett Avenue and is within an area characterised by detached dwellings on relatively large plots with mature planting throughout resulting in a low density environment. The site is in proximity to Foxrock village and is c.700 metres to the south-west of the N11 along which there is a Quality Bus Corridor. The site is also located within the Section 49 Development Contribution Scheme for Luas Line B1.

7.2.9. Policy Objective PHP18 seeks to increase housing supply and promote compact urban growth through the consolidation and re-intensification of infill/brownfield sites having regard to proximity and accessibility considerations, and the development management criteria set out in Chapter 12. The fundamental requirement is to balance the protection of existing residential amenities and the established character of the surrounding area with the need to provide for high quality sustainable residential development.

7.2.10. The development plan details locations where increased densities would be considered. As noted above the site is c.700 metres from the N11 along which there is a Quality Bus Corridor and along which the Bray to Dublin City Centre Core Bus Corridor under the BusConnects project is proposed. In locations within 1km of such quality public transport densities at a minimum of 50 units per hectare are to be encouraged. No upper limit is stipulated.

7.2.11. In calculating the density of the scheme the applicant has included Plunkett Avenue in the site area giving a net density of in the region of 100 units per hectare. The appropriateness of the cul de sac's inclusion is disputed by parties to the appeal. Having regard to Appendix A of the Guidelines on Sustainable Residential

Development in Urban Areas it is debatable whether the cul-de-sac can be considered as solely an access road serving the development in view of the other dwellings which it serves. Its omission would result in a higher density however this, of itself, is not fatal. As noted above no upper limit is set for such located sites.

7.2.12. I acknowledge that the quantum of development proposed is significantly greater than the established scale of development in the area. As required by policy objective PHP20 the onus is on the applicant to justify how the density, scale, size and proposed building form does not represent over development of the site and does not impact negatively on the amenity value of existing dwellings. Accordingly, the suitability of the proposed quantum requires further assessment on the basis of the various issues discussed throughout this report, including visual amenity, built heritage, residential amenity, and traffic/transport impacts.

7.2.13. At this juncture The Board is advised that the proposed development has a plot ratio of 1.45 and a site coverage of 23%.

Unit Mix

7.2.14. The proposal provides for 99 units in three blocks in the following mix:

- 29 no. 1 bedroom (29.3%)
- 53 no. 2 bedroom (53.5%)
- 17 no. 3 bedroom (17.2%)

7.2.15. In the context of the area in which the proposal is located the apartment scheme will provide for a greater mix of housing types in an area dominated by large, family sized dwellings and would accord with policy objective PHP27 seeking to encourage a mix of housing types.

7.2.16. In terms of development management requirements as set out in Section 12 of the 2022 development plan Table 12.1 details the unit mix required within schemes of 50+ in existing built up areas. The scheme falls short of the 20% + minimum requirement of 3+ bedroom units. Whilst it could reasonably be considered to be a contravention of the development plan I submit that in view of the marginal shortfall it is not a material contravention. As the planning authority did not refuse permission on the basis of material contravention of this unit mix requirement the provisions of section 37(2)(a) are not applicable.

Height

- 7.2.17. Significant objections are raised regarding the height of the proposed development. I note that the Building Height Strategy set out in Appendix 5 of the current plan differs substantively from the previous development plan provisions on a number of points. Of note, is the removal of the upward and downward modifiers in the context of consideration of taller buildings and their replacement with policy objectives reflecting the requirements of national planning policies, in particular the Building Height Guidelines 2018.
- 7.2.18. From a local planning policy perspective, Policy Objective PHP42 requires adherence to the recommendations and guidance within the Building Height Strategy for the county. The strategy, more specifically Policy Objective BHS 1, supports the consideration of increased heights and also consideration of taller buildings where appropriate, in suitable areas well served by public transport links, provided that proposals ensure a balance between the reasonable protection of existing amenities and environmental sensitivities, protection of residential amenity and the established character of the area. As noted above the site is within 1km of the QBC on the N11 and proposed BusConnects Bray to Dublin City Core Bus Corridor.
- 7.2.19. In this regard, increased height is defined as buildings taller than the prevailing building height in the surrounding area with taller buildings defined as those that are significantly taller (more than 2 storeys taller) than the prevailing height for the area. The scheme, providing for three blocks ranging from 3 to 6 storeys, comes within these definitions. On this basis the proposal must be assessed in accordance with the performance based criteria set out in table 5.1 of the height strategy. The matters arising will be addressed throughout this assessment.

Tree Removal

- 7.2.20. The site, made up of two plots, is notable for the level of mature trees and planting with specific regard had to the grounds of Tinnahinch. I accept that the site is constrained by the existing vegetation and that its development for an apartment scheme will require the removal of trees.
- 7.2.21. The substantive change between the previous development plan and that now in force is the extent of tree symbols delineated on the relevant map for the area. The full extent of the boundary of Tinnahinch to Plunkett Avenue is now delineated by

such symbols in addition to one being located in the south-eastern corner. As per section 9.3.1.3 this follows a comprehensive review of the symbols by the Council Parks Department. The plan states that whilst new developments should have regard to objectives to protect and preserve trees and woodlands as delineated by the said symbols, they are not an absolute commitment to preservation. Decisions on preservation are made subject to full Arboricultural Assessment and having regard to other objectives of the Plan. I note that no tree preservation orders pertain to the site.

- 7.2.22. As per the Arboricultural Report accompanying the application of the 192 trees and hedges on the site none are classified as category 'A' trees. 73 no. trees and 2 no. hedges are proposed to be removed to facilitate the development. Of particular note is the hedge along Plunkett Avenue and a number (but not all) of the trees backing onto same. I refer the Board to the Tree Constraints Plan, Tree Impact Plan and Tree Protection Plan which also accompany the application. I also note the Arboricultural Method Statement (and Tree Protection Plan) in Appendix 1 of the report.
- 7.2.23. The Arboricultural report, in acknowledging that much of the site would be disturbed, states that the design ethos of shifting the development further south on the site provides a scenario whereby tree retention can be maximised to the north and north-west of the site thereby retaining a level of screening when viewed from the ACA along Westminster Road. Design features such as the adoption of a secant-pile retaining wall foundation type that avoids battered or benched excavation for basements and serves to concentrate the excavation zone to the build footprint to limit the impact are also proposed. The 1st Party, in response to concerns expressed that construction works, particularly basement excavations, may have hydrological effects on the root protection area of some trees, considers such a threat to be minimal and that the provision of temporary irrigation about the upper edge of any excavation would avoid any risk of unexpected soil drying. The arboricultural report also recognises the need to provide for a long term management system for the retained trees.
- 7.2.24. Whilst concern is expressed as to the potential loss of trees arising from impact during construction and their long term viability, such juxtaposition of built form and tree cover is not uncommon and best practice methods to ensure, as best as

possible, their protection during construction would be required. I note the construction exclusion zones delineated on the Tree Protection Plan.

7.2.25. I concur with the view expressed that the loss of the trees is regrettable, however it is necessary to facilitate the development of the infill site on a residentially zoned site in proximity to quality public transport. The justification for the approach adopted is, in my opinion robust and, having regard to the development plan provisions as referenced above in terms of the tree symbols and the fact that they are not an absolute commitment to preservation, I do not consider that the proposal materially contravenes the plan. It is my opinion that the proposed tree felling is acceptable in this instance subject to the retention of an arboricultural consultant to oversee work during the construction works and the lodgement of a bond or comparable security for the protection of the trees to be retained. I also recommend that a landscape consultant be employed with a completion certificate to be submitted as verification that the approved landscape plans have been implemented.

7.3. Residential Amenities

Existing Residential Amenities

7.3.1. As noted above due to the locational context of the site and its infill nature, the site is surrounded by low density residential development. To the north, west and south are detached dwellings on relatively large plots with Kilteragh Pines which comprises a series of low scale dwellings set in the grounds of Kilteragh House (a protected structure) to the south-east.

7.3.2. The apartments are to be provided in 3 no. Blocks. Blocks A and B are to be located in a roughly linear arrangement on the plot to the west of Plunkett Avenue. The design is contemporary in execution and provides for a muted palette of materials which are acceptable.

7.3.3. Block A is to be setback c.18 metres from the western boundary, with a minimum separation distance of 22.439 metres from the two storey dwelling 'Four Seasons' immediately to the west and c. 15 metres from the nearest point of the single storey dwelling 'Silverstream' to the south. It ranges in height from 3 to 5 storeys stepping up from south to north from c.10 metres to 16.950 metres. Presenting as 3 storey at its southern elevation a distance of 17 metres is to be retained to Silverstream at

its closet point. In view of the planting to be retained and augmented along the site boundary I consider that the proposal will not result in overbearing or overlooking impacts on the said dwelling. As noted the building steps up to four storeys maintaining separation distances of between 22.439 and 25.679 metres to 'Four Seasons'. Coupled with the existing mature boundary planting to be retained and augmented the building will be screened and will not result in overbearing or overlooking impacts on the dwelling. With a separation distance of over 30 metres to the two storey dwelling 'Coolgrenagh' to the north, and the retention and augmentation of the boundary planting, no adverse impact on amenities is anticipated.

- 7.3.4. Block B with frontage onto Plunkett Avenue is 5 - 6 storeys stepping up from south to north ranging in height from 15.950 to 20.450 metres. With a separation distance of over 40 metres to Weavers Hall to the south, on which a 50 unit apartment scheme in addition to a dwelling has secured permission under re ABP-301809-18 (D17A/0486), no issues arise in terms of adverse impact on amenities arising from overlooking or loss of privacy. The positioning of the block on the site will result in it facing onto Block C proposed to the other side of Plunkett Avenue and would be at an oblique angle to the front of the two storey dwelling 'Kewarra' to the north-east.
- 7.3.5. Block C is 3-4 storeys, stepping down from west to east and ranging in height from 9.950 to 12.950 metres. It is to maintain a minimum setback of 14.3 metres to the single storey dwelling at No. 11 Kilteragh Pines to the north-east. Coupled with the boundary planting to be retained and augmented issues of overlooking and overbearance will not be material. It is to have a minimum setback of 10.523 metres to Kewarra to the north and 21.276 metres to No.12 Kilteragh Pines to the south-east. Subject to the window serving the living rooms in the north elevation which face onto the windows in the side elevation of Kewarra being replaced by high level windows, I consider the proposal to be acceptable.
- 7.3.6. I consider that the site by reason of its size can accommodate an increase in height over that prevailing although there is no question that the scheme as proposed represents a material deviation from that on adjoining sites. I consider that Blocks A and C are relatively successful in terms of assimilation, availing of extensive mature boundary planting precluding adverse impacts on the amenities of adjoining property. However I consider that the height of Block B onto Plunkett Avenue is

problematic. The bulk and massing of the building is somewhat compounded by its proximity to the roadside and absence of any planting to soften its impact. At a height of 15.950 up to 20.450 metres I consider that it presents as an abrupt transition that would not be satisfactorily assimilated into the area. A reduction of one floor resulting in the omission of 9 no. apartments (2 no. 3 bed, 4 no. 2 bed, 3 no. 1 bed) is recommended. This would result in a reduction in height of approx. 3 metres to approx. 17.45 metres. I note that the relevant floor plans for Block B give details for 5 floors only. The 1st to 4th floors have the same layout.

Prospective Residential Amenities

7.3.7. As proposed the scheme provides for 99 no. apartment units

- 29 no. 1 bedroom (29.3%)
- 53 no. 2 bedroom (53.5%)
- 17 no. 3 bedroom (17.2%)

7.3.8. Should the Board concur with my recommendation to omit a floor in Block B so as to reduce its height and bulk this would be reduced to 90 apartments in the following arrangement

- 26 no 1 bedroom (28.9)
- 49 no. 2 bedroom (54.4%)
- 15 no. 3 bedroom (16.7%)

7.3.9. As outlined in the Residential Quality Audits for each block and the accompanying drawings, the proposed development is compliant with the Apartment Guidelines which have been incorporated into the 2022 County Development Plan in terms of minimum floor area requirements, bedroom sizes, living/dining/kitchen room sizes, storage, floor-to-ceiling heights, lift and stair cores and waste facilities. In the region of 65% of the units are dual aspect which exceeds the 50% requirement. All the units are served by balconies which exceed the minimum requirements. The planning application includes a Building Lifecycle Report, Nearly Zero Energy Building (NZEB) Compliance Report and a Sustainability Report/Energy Statement, all of which set out details of how the proposed development has been designed to

incorporate sustainable design solutions whilst minimising operation and energy costs.

7.3.10. I consider that the proposed public and communal open spaces including the play area comply with the development plan requirements for same in terms of area and provide for an acceptable level of amenity, all of which benefit from passive surveillance. The stream which is located within the southern portion of the subject site will be incorporated into the landscape plan for the site. Issues in terms of safety in proximity to the water feature to the south-east of the scheme is addressed in the 1st party appeal submission, with a fence to be erected around the perimeter. Revised plans with the alterations shown thereon have been provided.

7.3.11. The issue of the separation distance between Blocks A and B is of concern for parties to the appeal with the distance falling below the 22 metre standard at the centre of the site. The pinch point at the centre of the site is 17.201 metres. In view of the internal layout and desire to setback Block A from the western site boundary allowing for tree retention, coupled with the internal arrangement where bedrooms and living rooms have been staggered with the cranked design providing for sufficient privacy this setback is considered acceptable in this case.

Daylighting and Sunlighting

7.3.12. The application is accompanied by a Daylight and Sunlight Assessment Report and assesses the daylight, sunlight and overshadowing of both neighbouring properties and the scheme itself.

7.3.13. In terms of neighbouring properties the study assesses Vertical Sky Component (VSC), Annual Probable Sunlight Hours (APSH) and sunlighting. The effects were assessed in the baseline state versus the proposed state. In terms of impact on daylight (VSC) Tables 5.1.1 to 5.1.6 demonstrate that the scheme complies with the BRE guidelines and that an acceptable level of skylight access will be retained by existing dwellings surrounding the site with the proposed development in place. Three windows on Kewarra, identified as Kb#3, Kb#4 and Ke#2, do not meet the criteria as set out in the BRE Guidelines for impact to VSC. These windows form part of a dual aspect rooms. The other windows serving the rooms are not impacted and, in fact, the VSC to same is increased. Therefore the overall impact to the rooms is categorised as imperceptible.

- 7.3.14. Similarly Tables 5.2.1 to 5.2.6 demonstrate that acceptable levels of sunlight access would be retained by existing dwellings surrounding the site with the proposed development in place whilst Table 5.3 sets out the effect on sunlighting in existing gardens. The submitted details show that the garden areas would all receive materially in excess of 2 hours sunlight on the 21st March and, indeed, the majority would experience an increase with the development in place. This is due to the planned removal of trees
- 7.3.15. Having regard to the height of the proposed apartment blocks (of which I am recommending the reduction in Block B), the separation distances between proposed development and surrounding existing development, I am satisfied that the proposal will not cause undue loss of light for neighbouring residents.
- 7.3.16. In terms of the proposed scheme the 3 no. open space areas will all meet the criteria for sunlight as set out in the BRE Guidelines.
- 7.3.17. In terms of the prospective amenities within the scheme the ADF of 119 no. windows were assessed on the ground and 1st floors which I consider to be a reasonable worst-case scenario given that values would be expected to be higher for the upper floors. Where individual rooms have fallen short of the recommended minimum target value the equivalent room on the floor above was assessed. A 2% ADF was applied to the combined kitchen/living/dining area (LKD) in line with BRE Guidance. The only LKD in the proposed development that does not achieve this ADF is in Unit B-09. This room has recorded an ADF of 1.94%. The unit is 1st floor with a single, westerly aspect onto Block A. It has a large amount of glazing allowing for good levels of daylight in proximity to the windows with the rear of the room likely to require supplementary lighting for parts of the day. The ADF as calculated is not considered to be a material infraction of the 2% requirement. The other room that did not achieve the recommended minimum ADF is Bedroom 2 in Unit AI-01. The room recorded an ADF of 0.75%. This is due to the retention of evergreen trees to the north. The position of this bedroom had been moved into the current position to allow for the LKD of the same unit to be located in a less constrained part of the site. The apartment unit is dual aspect.
- 7.3.18. As per section 6.7 in the planning guidelines on Design Standards for New Apartments where a proposal may not be able to fully meet all the requirements of

the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives.

- 7.3.19. The retention of a large number of established trees on the proposed site can be seen as a positive in many aspects of the proposed development although their impact on daylight to some of the internal spaces is a compromise. I consider that an appropriate balance has been struck between their retention which adds to the sylvan character of the area and very limited number of infractions of the recommended numerical guidelines. I would also highlight the absence of any single-aspect north-facing units and the high proportion of dual aspect units proposed (65%). The scheme also includes a communal open space area which significantly exceeds the normal requirements.
- 7.3.20. Having regard to the above I consider that the proposal contributes to wider planning aims in terms of the delivery of housing on an infill site. I consider that the shortfalls would not be significant in number or magnitude. The ADF for rooms is only one measure of residential amenity and I am satisfied that the units as proposed would provide a satisfactory level of amenity for occupiers.

Conclusion – Residential Amenities

- 7.3.21. I have acknowledged that the proposed development will result in significant changes to the existing environment, but I consider that the proposed development would be of a scale and at a distance from existing properties that would avoid any unacceptable overlooking or overbearing impacts. And while it would involve an intensification of activity and development at both construction and operational stages, I consider that the impacts would be acceptable having regard to the established character of the area and the need to facilitate the redevelopment of the site in accordance with national and local planning policies.

7.4. Impact on the Foxrock ACA

- 7.4.1. It is contended by parties to the appeal that the development will have a significant adverse impact on the character and integrity of the Foxrock ACA. Save for the

junction of Plunkett Avenue with Westminster Road the site is outside the ACA boundary. The application is accompanied by photomontages which are supplemented further at appeal stage. Whilst the adequacy of the images has been queried by parties to the appeal I consider that the photomontages are representative of the main views available towards the site from public viewpoints within the ACA. Such photomontages are only a tool, albeit a useful tool, in assisting and informing an assessment of the potential effects of the proposal.

- 7.4.2. The Character Appraisal for the Foxrock Conservation Area notes that the overall visual character of the area is sylvan in nature characterised by low density residential development with well enclosed road corridors which are almost rural in character. The well-defined road edges are enclosed by mature planting and property boundaries. In urban design terms this type of development is described as 'Arcadian'.
- 7.4.3. There are four sub areas within the ACA, and the lands to the north and north west of the site are located within the Westminster Road area. Westminster Road is noted to be an area of mid to late nineteenth century residential developments, displaying two distinct periods of building each with its own architectural style. It has a distinct spatial quality associated with the nineteenth century suburban nature of the environment. The houses sit comfortably on their plots and most still retain their landscaped front gardens creating private front zones, which add to the sense of seclusion and privacy. The residential scheme of Kilteragh Pines within the Westminster Road area is noted to be a good example of a sensitive development within the grounds of an historic building (Kilteragh House, a protected structure) enabling the original house to retain a large setting befitting its grandeur. They are not protected structures.
- 7.4.4. It is clearly stated in the Appraisal Document that those areas excluded from the ACA are considered not to contribute to the special character of Foxrock and, therefore, do not warrant inclusion. As detailed above, the proposed development is not within the boundary of the ACA save for the section at the junction of Plunkett Avenue and Westminster Road. The proposed junction improvements are minor and would not impact on the character of the road.

- 7.4.5. Although the existing houses on Westminster Road are generally two storeys in height, it is noted that the proposed development is set back from Westminster Road. The retention of the mature planting and trees, many of which are themselves over 25m in height, means that the proposed development will not be immediately obvious from Westminster Road, or from other vantage points within the ACA. Views from Kilteragh Pines would also benefit from the screening afforded the boundary planting to be retained and augmented.
- 7.4.6. In conclusion, therefore, although the proposed development represents a large intervention into the existing suburb, the size of the site, its discrete location set back from Westminster Road and the retention of the significant mature planting and trees, all contribute to ensuring that the visual impact on the Foxrock ACA will be minimal. The context views prepared by the architects show that the proposed development will be screened from view in nearly all instances by existing buildings, trees and hedgerows.

7.5. Site Services and Flood Risk

- 7.5.1. Following on from the contents of the internal council reports as summarised above the 1st party appeal and 1st party response to the 3rd party appeal are accompanied by revised details including an updated Site Specific Flood Risk Assessment.
- 7.5.2. As per Flood Zone Map 6 of the current County Development the symbol 'F' is noted in the southern section of the site delineating an areas of flood risk concern (fluvial – surface water). The site is not included within either Flood Zones A or B.
- 7.5.3. Due to the lack of flood risk data a hydraulic model of the watercourse that traverses the southern part of the site was developed and assessed in order to model the flood levels that may be experienced at the site following an extreme rainfall flow event. The report concludes that the site is within Flood Zone C. Any out of channel flow for the Q1000 event would be contained in the area around the ditch. The proposed finished floor levels are set above the Q1000 flood level of 70.54 mAOD with a minimum freeboard of 454mm which provides resilience against flooding when climate change is accounted for.
- 7.5.4. Concerns have been raised about the surface water drainage proposals have the potential to exacerbate flood risk to properties downstream. Revised calculations

have been provided with the appeal including an updated QBar and attenuation volumes. Surface water drainage is to discharge to two attenuation tanks within the site and to be pumped to a QBar rate of 3.7l/s to the watercourse that traverses the site. This is in accordance with the requirements of the drainage division which requires that the discharge rate for the site be limited to QBar or 2l/s/ha whichever is greater. Whilst the development will generate a greater volume of surface water run off than the current land use, the detailed measures proposed by the applicant restrict outflow in accordance with the Greater Dublin Strategic Drainage Study. The development will thus reduce the impact on the receiving environment compared to the current discharge rate of the undeveloped site which is calculated at 9.71 l/s.

- 7.5.5. I consider that the applicant has provided sufficient information to support the view that the development, subject to the detailed attenuation measures, can adequately dispose of surface water without giving rise to increased flood risk downstream.
- 7.5.6. The applicant received a Confirmation of Feasibility letter from Irish Water stating that the proposed wastewater connection to the public sewer network is possible subject to existing storm water connections from the existing site being disconnected from Irish Water's combined sewer and foul flows from the development being restricted to 2l/s. Irish Water in its submission on the application dated 19/01/22 refers to the said correspondence setting out its requirements in relation to foul storage and pumping due to capacity issues in the network. The said correspondence does not object to the development but requires the applicant to confirm that foul sewerage will be maintained on site via a holding tank and discharged at a maximum rate of 2l/s with details of the proposed tank and pumps to be provided. The Engineering Planning Report accompanying the 1st party appeal provides the relevant details and confirms the above requirements. The drainage system proposes that all foul sewerage from the three blocks will collect in a foul storage tank at basement level -2 beneath Blocks A and B. The holding tank will allow for 24 hour storage. The pump will then discharge at a rate of 2l/s to a manhole where it will outfall via gravity to the public foul network. On the basis of the information provided in line with Irish Water's requirements it is reasonable to conclude that the proposal can be accommodated within the public system without giving rise to public health concerns.

7.6. Traffic, Access and Parking

- 7.6.1. Plunkett Avenue is a private road currently serving 5 no. dwellings. I note that the permitted development at Weavers Hall would use the road solely for pedestrian and cyclist accessibility with occasional use for taxi drop off and emergency access.
- 7.6.2. The application is accompanied by a Traffic and Transport Assessment. Following the report from the Transportation Planning Section in its adjudication of the application plans accompanying the 1st party appeal showing the carriageway reduced to 5.5 metres with a 2 metre wide footpath. A carriageway of 6 metres is retained where there is surface parking between blocks B and C. The Transportation Planning Section acknowledged that, overall, the scale of traffic generated by the proposal would not have a significant impact on the operating performance of the road network and had no objection in principle to the access arrangements. Modifications to the junction of Plunkett Avenue and Westminster Road are recommended to allow for pedestrian priority. I consider that these requirements can be addressed by way of condition.
- 7.6.3. Plans accompany the appeal showing that required visibility can be achieved from Kewarra onto Plunkett Avenue and vice versa.
- 7.6.4. The feasibility of a two way ramp to Block C basement has been discounted due to site constraints. Lights are proposed with a default red setting. The car park providing for 18 spaces will be used by residents, only, with no visitor parking proposed. I consider that the proposed arrangement to be acceptable.
- 7.6.5. As noted previously the 2022 County Development Plan came into effect since the planning authority's assessment of the development with the parking requirements for residential units revised downwards for 2 bedroom units. A total of 141 car parking spaces are to be provided, 114 at upper and lower basement levels of Blocks A and B, 18 at basement level of Block C and 9 at surface level. Under the current development plan provisions in the region of 126 is required. Taking into consideration my recommendation to omit a floor in Block B resulting in the reduction in apartment numbers to 90 the provision requirement would be reduced to 115 spaces. To allow for 30 spaces over what is required in the plan would run contrary to the principles of fostering sustainable transport patterns. Its reduction is recommended. I consider that this can be addressed by way of condition.

7.6.6. As confirmed by the agent for the applicant in the appeal response the right of access from Kilteragh Pines onto Plunkett Avenue (currently delineated by a fence with no access) is not affected by the proposed development.

7.7. **Other Issues**

Archaeology

7.7.1. There are no Recorded Monuments within or in the vicinity of the site. An archaeological assessment was submitted with the 1st party appeal which recommends that despite the level of disturbance within the site it is possible unrecorded features remain below ground. Archaeological monitoring is recommended. It is contested by an observer that this is insufficient and that the impact assessment as required by the Department should be undertaken prior to a grant of permission. I submit that the necessary requirements of the Department can be met by way of condition should the Board be disposed to a favourable decision.

Biodiversity

7.7.2. I note the objections raised by parties to the appeal with respect to the potential negative impacts of the development on ecology. An Ecological Impact Assessment and a Bat Fauna Assessment accompany the application. I note the site is not subject to any specific environmental designations and the lands comprises of individual houses and their associated suburban gardens.

7.7.3. The Ecological Impact Assessment details that no significant effects are predicted to result from the construction and operation of the proposed development. The retention of trees along the boundaries of the site and proposed landscaping will not result in any significant effects on key ecological receptors. Bat species were recorded passing through the area with bats observed emerging from a tree on the site. Due regard is had to the lighting plan to ensure that the foraging area and the identified tree are not impacted. A pre-construction bat roosting assessment is to be carried out on trees to be removed. A derogation licence will be required if roosts are identified. Bat boxes are also proposed.

7.7.4. Whilst it is contended by parties to the appeal that otter is present in the vicinity no suitable habitat was identified as the small stream on the site is culverted either end.

- 7.7.5. The site is not within or in the vicinity of a designated European Site. Bat and otter are not qualifying interests of the nearest sites. Appropriate assessment is triggered where significant effects on a European Site cannot be excluded, only. The presence of an Annex IV species does not, of itself, trigger the requirement for appropriate assessment.
- 7.7.6. Having regard to the detailed surveys undertaken, I am satisfied that the proposed development will have no material adverse impacts on the ecology or biodiversity of the area.

7.8. **Appropriate Assessment**

Compliance with Article 6(3) of the Habitats Directive

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

Background on the Application

- 7.8.2. The application is accompanied by AA Screening Report prepared by Openfield Ecological Services dated January 2022.. It was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development.
- 7.8.3. The report concludes that the development would not give rise to any significant effects to designated sites.
- 7.8.4. Having reviewed the documents and submissions I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Screening for Appropriate Assessment- Test of likely significant effects

- 7.8.5. The project is not directly connected with or necessary to the management of a European Site and, therefore, it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.8.6. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

- 7.8.7. The applicant provides a description of the project in the screening report. In summary, the development comprises demolition of existing buildings and construction of 99 apartments in 3 blocks. The scheme is to connect into public sewerage and water supply. The site comprises of two dwellings on large, landscaped plots within the suburban setting of Foxrock.

Submissions and Observations

- 7.8.8. Parties to the appeal consider that the hydrological pathway linking the development to Killiney Bay and, potentially to Rockabill Dalkey Island SAC, needs to be assessed.

European Sites

- 7.8.9. The development site is not located in or immediately adjacent to a European site. Table 1 of the AA Screening Report sets out the 23 sites within a 15km radius of the site. The qualifying interests for all 23 sites are set out in the report and are available on npws.ie. Whilst detailed conservation objectives have been drawn up for some sites, generic conservation objectives apply to others. The overall aim is to maintain or restore the favourable conservation condition of the identified qualifying interests.
- 7.8.10. In view of (a) the stream traversing the site which flows into the Loughlinstown River North which then joins the Shanganagh River which, itself, discharges to the sea at Killiney and (b) the proposed connection to the Shanganagh WWTP with its outfall location also at Killiney, a number of sites in the vicinity could reasonably be considered to be within the downstream receiving environment of the proposed development. On this basis these sites are subject to a more detailed Screening Assessment.

South Dublin Bay SAC (site code 000210) - c. 3.9 km from the subject site.

Conservation Objectives - To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.

Qualifying Interests/Species of Conservation Interest: Mudflats and sandflats not covered by seawater at low tide / Annual vegetation of drift lines / Salicornia and other annuals colonising mud and sand / Embryonic shifting dunes.

Rockabill to Dalkey Island SAC (003000) - c. 5.7km to the east of the site.

Conservation Objectives - To maintain the favourable conservation condition of the species for which the SAC has been selected.

Qualifying Interests/Species of Conservation Interest: Reefs and Harbour Porpoise

Dalkey Island SPA (site code (004172) – c.5.7km to the east of the site

Conservation Objectives - To maintain or restore the favourable conservation condition of the species of conservation interest for which the SPA has been selected.

Qualifying Interests/Species of Conservation Interest: Roseate Tern / Common Tern / Arctic Tern

7.8.11. I am satisfied that the potential for impacts on all other Natura 2000 Sites can be excluded at the preliminary stage due to the separation distances between the European sites and the proposed development site, the nature and scale of the proposed development, the absence of relevant qualifying interests in the vicinity, the absence of ecological and hydrological pathways and having regard to the conservation objectives of the designated sites.

7.8.12. *Identification of Likely Effects*

- There is nothing unique or particularly challenging about the proposed urban development, either at construction phase or operational phase.
- During the construction phase, standard pollution control measures would be put in place. These measures are standard practices for urban sites and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites. In the event that the pollution control and surface water treatment measures were not implemented or failed I am satisfied that the potential for likely significant effects on the qualifying interests of the Natura 2000 sites from surface water runoff 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 Natura 2000 sites (dilution factor).
- The watercourse that runs through the site forms a garden feature and is culverted at either end. The scheme includes attenuation measures including discharge to the watercourse at a controlled rate which would have a positive impact on drainage from the subject site. SUDS are standard measures which are included in all projects and are not included to reduce or avoid any effect on a designated site. The inclusion of SUDS is considered to be in accordance with the Greater Dublin Strategic Drainage Study (GDSDS) and are not mitigation measures in the context of Appropriate Assessment.
- The site is to connect to the existing public sewer and water supply. The foul discharge from the proposed development would drain, via the public network, to the Shanganagh WWTP. It is my view that the foul discharge from the site would be insignificant in the context of the overall licenced discharge at Shanganagh WWTP, and thus its impact on the overall discharge would be negligible. The WWTP was subject to AA which concluded no potential adverse effects on Natura 2000 sites were identified.
- The subject site is identified for development through the land use policies of the Dun Laoghaire County Development Plan adopted in 2022 and which was subject to AA by the planning authority, which concluded that its

implementation would not result in significant adverse effects to the integrity of any Natura 2000 areas.

- Whilst the subject lands are connected to the European sites by the foul and surface water networks which discharge to the sea there is a significant open marine water buffer between the outfalls and the European sites within which any potential pollutants/inputs would become diluted.
- The site is within an existing urban area, is developed and does not support habitats of ex-situ ecological value for the qualifying interest species of the SPAs. On the basis of the foregoing and the separation distance, the potential for significant impacts on waterbirds that are qualifying species of the European Sites due to disturbance / displacement can be screened out.
- The measures to protect the trees to be retained on site would be required for a development on any urban site in order to protect the trees worthy of retention, irrespective of any potential connection to Natura 2000 sites.

AA Screening Conclusion

7.8.13. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on European Sites 000210, 004172 and 003000, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and the submission of a NIS) is not, therefore, required.

7.9. EIA Screening

7.9.1. The development subject of this application falls within the class of development described in 10(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended. EIA is mandatory for developments comprising over 500 dwelling units or over 10 hectares in size or 2 hectares if the site is regarded as being within a business district.

7.9.2. The number of dwelling units proposed at 99 is well below the threshold of 500 dwelling units noted above. With a site area of 0.986 hectares, located in the

southern suburbs of Dublin City, it is materially below the applicable threshold of 10 hectares.

7.9.3. The site is within an area zoned A in which residential is permitted in principle. The site comprises of two dwellings and landscaped gardens within a mature low density residential area. The buildings to be demolished are not protected structures and the site, whilst adjoining, is not within the Foxrock ACA. The proposed development will not have an adverse impact in environmental terms on surrounding land uses. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. The site is not within a European site. The application is accompanied by a significant volume of documentation including an Architectural Design Statement, Heritage Impact Appraisal, Landscape and Visual Impact Assessment, Engineering Planning Report, Site Specific Flood Risk Assessment and Traffic and Transport Assessment. These address the issues arising in terms of the sensitivities in the area.

7.9.4. Having regard to –

- the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, - the location of the site on lands within the southern suburbs of Dublin City on lands zoned for residential purposes under the provisions of the Dun Laoghaire Rathdown County Development Plan, 2022 and the results of the strategic environmental assessment of the said plan, undertaken in accordance with the SEA Directive (2001/42/EC).
- the location of the site which is served by public infrastructure, and the existing pattern of development in the area.
- the location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended),
- 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 (as amended),

7.9.5. I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report was not necessary.

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022, in particular policy objective PHP18 which seeks to promote infill residential development and increased residential densities, and having regard to the pattern of existing development in the area and the design, scale and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area in terms of visual impact, overlooking or overbearing impacts, would not have a detrimental impact on the Foxrock Architectural Conservation Area, would be acceptable in terms of pedestrian and traffic safety, would not lead to a risk of flooding of the subject site or adjacent properties and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to An Bord Pleanála on the 11th day of April, 2022 and 16th day of May, 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The third floor of Block B as delineated on DWG No. 435-PI-02-07 Rev. A lodged with the application shall be omitted. Revised plans and drawings with the relevant alterations shown thereon shall be submitted to the planning authority for written agreement prior to commencement of development.

Reason: In the interest of protecting the visual amenities of the area.

3. The windows in the northern elevation serving the living room and kitchen areas of apartment numbers Apt. C-04 and Apt C-08 in Block C as delineated on drawing no. 435-PI0-02-08 submitted with the application shall be replaced by high level windows. Revised plans with the necessary alterations shown thereon shall be submitted to the planning authority for written agreement prior to commencement of development.

Reason: In the interest of protecting the amenities of adjoining property.

4. A maximum of 116 car parking spaces shall be provided within the proposed development. Revised plans and drawings with the relevant

alterations shown thereon shall be submitted to the planning authority for written agreement prior to commencement of development.

Reason: In the interests of sustainable transportation.

5. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Prior to commencement of construction the applicant shall submit full details of the proposed green roofs and formal maintenance of same to be agreed in writing with the planning authority.

Reason: In the interest of public health.

7. The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to the commencement of this development.

Reason: In the interest of orderly development.

8. The site access arrangements, the junction of Plunkett Avenue and Westminster Road and the internal road network serving the proposed development, including turning bays, junctions, parking areas, traffic management signage, footpaths and kerbs, and the basement car park shall be in accordance with the detailed requirements of the planning authority for such works and design standards outlined in DMURS. Plans and particulars showing compliance with these requirements shall be

submitted to, and agreed in writing with, the planning authority prior to commencement of development

Reason: In the interests of amenity and of pedestrian and traffic safety.

9. A minimum of 10% of all communal car parking spaces shall be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of EV charging points/stations at a later date. Such proposal shall be submitted to, and agreed in writing with the planning authority prior to the occupation of the development.

Reason: To provide for and/or future proof the development such as would facilitate the use of electric vehicles, in the interests of sustainable transportation.

10. Electrical charging facilities shall be provided for cycle parking and proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development.

Reason: In the interest of orderly development and to provide for and future proof the development as would facilitate the use of electric cycles in the interest of sustainable transportation.

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

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

12. (a) The landscaping scheme, as submitted to An Bord Pleanála on the 11th day of April, 2002, shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.
- (b) Prior to commencement of development the developer shall retain the services of a suitably qualified landscape architect as landscape consultant throughout the life of the site development works and shall notify the planning authority of that appointment in writing.
- (c) When all landscape works are inspected and completed to the satisfaction of the landscape consultant, a Practical Completion Certificate shall be submitted for the written agreement of the planning authority, as verification that the approved landscape plans and specifications have been fully implemented.

Reason: In the interest of residential and visual amenity.

13. Prior to commencement of any permitted development, the developer shall engage the services of a qualified arborist as an arboricultural consultant, for the entire period of construction activity. The developer shall inform the planning authority in writing of the appointment and name of the consultant, prior to commencement of development. The consultant shall visit the site at a minimum on a monthly basis, to ensure the implementation of all of the recommendations in the tree reports and plans. To ensure the protection of trees to be retained within the site, the developer shall implement all the recommendations pertaining to tree retention, tree protection and tree works, as detailed in the in the submitted Tree Survey Report. All tree felling, surgery and remedial works shall be completed upon completion of the works. All works on retained trees shall comply with proper

arboricultural techniques conforming to BS 3998: 2010 Tree Work – Recommendations. The clearance of any vegetation including trees and shrub shall be carried out outside the bird-breeding season (1st day of March to the 31st day of August inclusive) or as stipulated under the Wildlife Acts 1976 and 2000. The arborist shall carry out a post construction tree survey and assessment on the condition of the retained trees. A completion certificate is to be signed off by the arborist when all permitted development works are completed and in line with the recommendations of the tree report. The certificate shall be submitted to the planning authority upon completion of the works.

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

14. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To secure the protection of the trees on the site.

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

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

The assessment shall address the following issues:

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

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

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

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

16. The mitigation measures outline in the Bat Assessment lodged with the application shall be carried out in full, except as may otherwise be required in order to comply with conditions attached to this permission.

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

17. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

18. Proposals for an estate/development name, apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate/development signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

Reason: In the interests of urban legibility, and to ensure the use of locally appropriate place names for new residential developments.

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

Reason: In the interest of visual and residential amenity, and of sustainable development.

20. Site development and building works shall be carried only out between the hours of 0800 and 1800 from Mondays to Fridays inclusive, between the hours of 0800 and 1300 on Saturdays and not at all on Sundays or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of protecting the residential amenities of adjoining properties.

21. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of clarity, orderly development and amenity.

22. A Construction Traffic Management Plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery (which shall not be within

the areas designated for tree protection) and for storage of deliveries to the site.

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

23. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, including potential contaminated soil, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

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

Reason: In the interests of residential amenity and proper waste management.

25. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to, and agreed in writing with, the planning authority, prior to the commencement of development. The agreed lighting system shall be implemented and operational before the proposed development is made available for occupation and shall comply with the requirements of the Bat Fauna Assessment lodged with the application.

Reason: In the interests of amenity and public safety.

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

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

27. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, communal open spaces and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority

and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development.

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

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

29. The developer shall pay to the planning authority a financial contribution in respect of the extension of Luas Line B1 – ('Sandyford to Cherrywood') in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the

application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Pauline Fitzpatrick
Senior Planning Inspector

December, 2022