

Fig. 46: The proposed parcel room for the scheme sited in Block 3

6.7.5 Engineering drawings confirm that Storage World could be integrated into the scheme

The Applicant has re-designed the entrance to the scheme onto South Circular Road in a manner that offers safe entry and exit for cars, vans, and trucks. There is no technical road engineering reason which they can identify as to why Storage World cannot be facilitated on the site.

Our client has reviewed the submitted engineering drawings including:

- Dwg. No. 300726-001 - 'Preliminary Access Junction Layout'.
- Dwg. No. 300726-010 - 'Access Junction Swept Path Analysis'.
- Dwg. No. 300726-002 - 'Car Parking General Arrangement'.
- Dwg. No. 300726-012 - 'Refuse Vehicle Swept Path Analysis'.

These drawings show visibility splays and swept-path analysis details which confirm that vehicles the size of fire tenders and bin lorries can safely enter and exit the site.

Dwg. No. 300726-002 - 'Car Parking General Arrangement' shows how there is an area sited to the northwest of Block B06 which is proposed to contain electric charging spaces and a disabled parking space. There appears to be no reason why this area could not be altered to serve as a loading bay for Storage World's residential drop-offs and collections.

Dwg. No. 300726-012 - 'Refuse Vehicle Swept Path Analysis' shows how a refuse truck would enter the site in a forward direction, turn safely within the site and exit in a forward direction. This arrangement would be acceptable to Storage World.

Dwg. No. 300726-013 - 'Fire Tender Swept Path Analysis' shows how a fire truck would enter the site in a forward direction, turn safely within the site and exit in a forward direction. Storage World would not need such vehicular arrangements; however, the drawing shows how the scheme has been planned to accommodate the movements of a range of vehicles.

General customer parking and staff parking for Storage World could easily be provided at basement level within the scheme's overall basement car park.

Storage World is almost fully accessed by cars and vans. Only occasionally is a truck involved. The Applicant's proposals would require minimal revision such as to include for the traffic movements associated with Storage World.

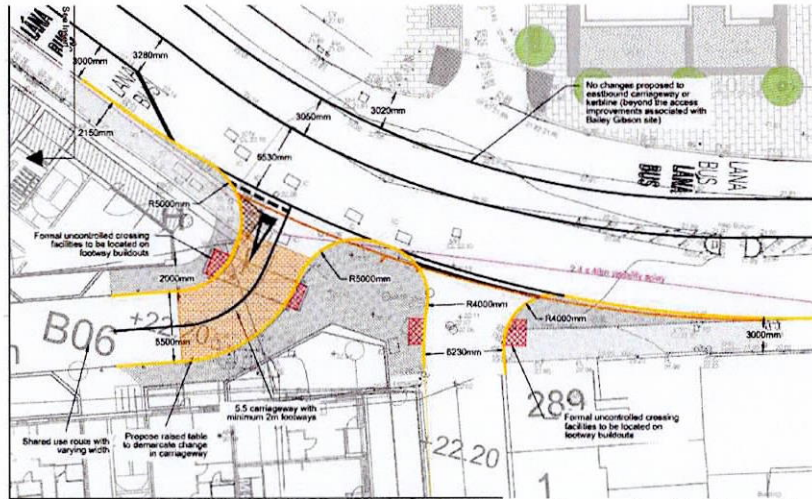


Fig. 47: Excerpt from Dwg. No. 300726-001- 'Preliminary Access Junction Layout'



Fig. 48: Copy of Dwg. No. 300726-010 - 'Access Junction Swept Path Analysis'

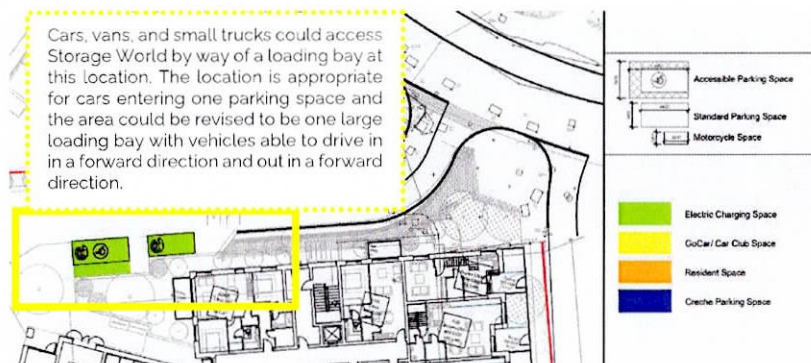


Fig. 49: Copy of Dwg. No. 300726-010 - 'Access Junction Swept Path Analysis'

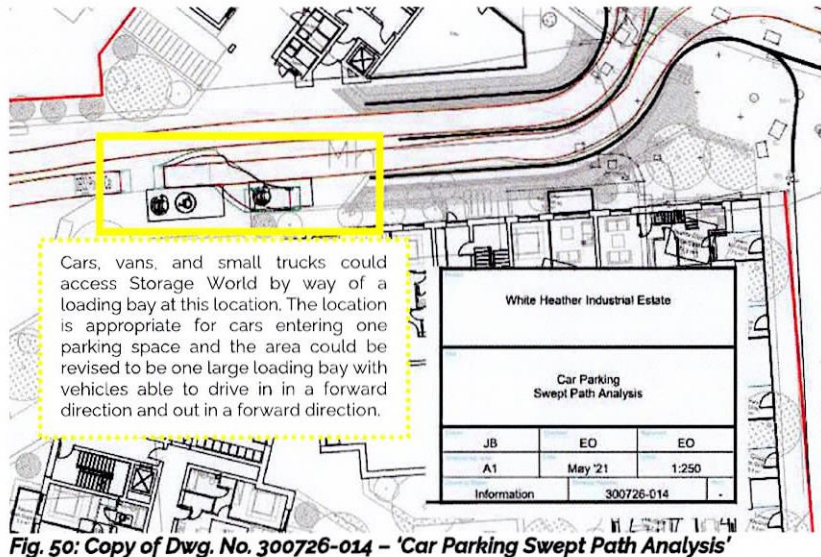


Fig. 50: Copy of Dwg. No. 300726-014 - 'Car Parking Swept Path Analysis'

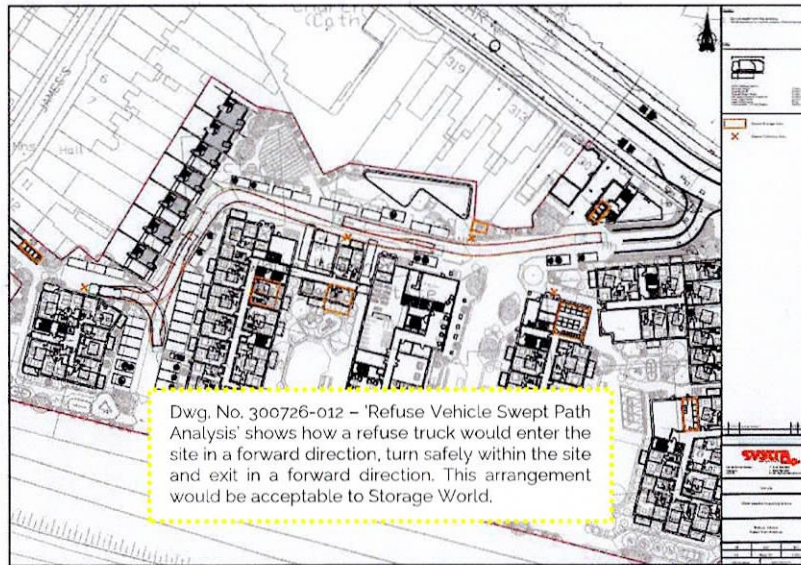


Fig. 51: Copy of Dwg. No. 300726-012 - 'Refuse Vehicle Swept Path Analysis'



Fig. 52: Copy of Dwg. No. 300726-013 - 'Fire Tender Swept Path Analysis'

6.8 **Issue 8: Proposal should not materially contravene the Dublin City Development Plan**

6.8.1 **NOTE: The Player Wills and Bailey Gibson decisions are under Judicial Review**

BPS notes the repeated references made throughout the Applicant planning application documentation and during pre-planning to the Board's decisions on the Player Wills and Bailey Gibson sites. Respectfully, we note how both decisions are under Judicial Review and decisions are awaited. They cannot therefore reasonably be considered precedents for the multiple Material Contraventions which are proposed within this SHD planning application. Based on the most recent statistics available for the Board's success rate in defending its decisions, one must reasonably consider that both may be quashed.

6.8.2 **Plot ratio density scheme at 4.2 vastly materially contravenes the DCDP**

Section 16.5 'Plot Ratio' of the DCDP 2016-2022 provides for an indicative plot ratio of 0.5 – 2.0 for Z1 zoned lands. Plot ratio standards exist to avoid overdevelopment. The CDP states:

Higher plot ratios may be permitted in certain circumstances such as: "Adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed. To facilitate comprehensive redevelopment in areas in need of urban renewal."

The proposed plot ratio of is between 2.1 and 8.4 times the allowable plot ratio density for this site. The Applicant scheme's plot ratio extends vastly beyond the maximum allowable plot ratio.

The Applicant proposals are not sited alongside any major public transport corridor and pertain to an infill site and not to a comprehensive redevelopment of an entire area such as docklands. Further, our client strenuously objects to any claim that the Applicant scheme, which refuses to include Storage World, is mixed use.

The Applicant's 'Planning Report Including Statement of Consistency' argues that:

There are no buildings proposed on the Z9 lands. The gross floor area of the proposed development is c. 30,242 sqm. This amounts to a plot ratio of c. 2.1 for the development site which is slightly above the indicative plot ratio standard of 2.0 for Z1 zoned lands as per the Development Plan.

This is not accepted. The argument that Z9 lands should be included is tantamount to adding a section of the canal and claiming a lower plot ratio. The plot ratio standard pertains to the Z1 zoned lands, and this proposal is a material contravention of the Z1 zoning.

BPS considers that the Applicant is incorrect in arguing that no material contravention is proposed. To allow such a precedent would invite every commercial site owner in Ireland to purchase bits of adjoining open space zoned lands to dilute their actual plot ratio densities.

This site does not adjoin a public transport corridor. The walking distance to the nearest high quality public transport stop is beyond the distance that DCC's Transportation planning Section has stated is allowable for a reduction in car parking provision. It is not therefore reasonably considered to be "adjoining" public transport.

If it decides to, the Board will need to apply the provisions of s.37(2)(b) subsection (i), (iii) and (iv) of the 2000 Act (as amended) if a grant of permission is forthcoming. Our client submits that such a decision would degrade the DCDP 2016-2022 and the sustainable transportation and planning objectives that it is seeking to achieve.

6.8.3 **Material contravention of the DCC CDP's Building Heights policies is not justified**

The Material Contravention Statement at page 7 states incorrectly and inaccurately that the Dublin City Development Plan 2016 to 2022 takes "a blanket approach" to building height. A similar claim is made on pages 43 and 78. While page 39 states that the DCC CDP contains "arbitrary height standards".

In fact, it can be seen from the map provided here in Fig. 53 which is taken from the Dublin City Development Plan 2016 to 2022 (the CDP), the City Council has identified areas which are suitable for mid-rise and high-rise in a city which is predominantly low rise (albeit at a building height of 24 meters which equates to 7/8 storeys). The statement correctly identifies the site as being located in an area that is not designated for high rise or medium rise.

The applicant claims that the CDP is inconsistent with Section 4.5 of the National Planning Framework (NPF) and NPO 13 and 35 as a reason why a material contravention in relation to height should be allowed.

The material contravention statement then proceeds to consider the proposal in light of SP3 of the Urban Development and Building Height Guidelines 2018 where it is claimed that the CDP does not take into account the Guidelines which post date the adoption of the plan, it also repeats the allegation that the CDP does not align with or support the objectives of the NPF or SP3 of the Building Height Guidelines.

There are several issues with this analysis:

First the applicant misinterprets how the 2018 Building Height Guidelines envisage using increased height to give effect to NPF policies. As is apparent from paragraph 1.9 of these guidelines, the policy requires planning authorities to move away from traditional two story suburban development to four-storey as a default in urban areas outside of city and town centres:

Reflecting the National Planning Framework strategic outcomes in relation to compact urban growth, the Government considers that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas. For example, if much of the future development in and around existing urban areas, where two-storey development is currently the norm, was of four-storey form as the default objective, it would be possible to provide substantially more population growth within existing built-up areas where there is more infrastructure already in place, rather than in greenfield locations which would need services. Therefore, these guidelines require that the scope to consider general building heights of at least three to four storeys, coupled with appropriate density, in locations outside what would be defined as city and town centre areas, and which would include suburban areas, must be supported in principle at development plan and development management levels.

The fact that the CDP provides for up to 24m (equivalent to 7/8 storeys) with provision for taller buildings at designated locations shows that the CDP is already in line with the 2018 Guidelines and the NPF contrary to what the applicant asserts in its statement of material contravention.

Second on 2 March 2020, the City Council specifically varied the CDP in Variation No 7 to ensure that the CDP aligned with the NPF and RSES for the East and Midlands Region. Shortly after this, Variation No. 23 was adopted to change the zoning on the subject site. Both of these variations post-date the NPF, the 2018 Height Guidelines and the Design Standards for New Apartments 2018 and therefore the City Council, when it adopted these variations, was subject to a statutory obligation to ensure consistency with the NPF and RSES and to apply SPPRs in the 2018 Height Guidelines and 2018 Apartment Guidelines which were in force at the time.

The Applicant in this case did not judicially review either of these variations on the basis that they were inconsistent with the NPF and RSES or on the basis that the City Council had failed to apply SPPRs in the 2018 Height Guidelines and 2018 Apartment Guidelines. It therefore must accept that the CDP, as varied, is consistent with the NPF and RSES and that the City Council correctly applied the relevant SPPRs. The Board must also accept this position, it lacks the jurisdiction to conclude that the City Council has not complied with its legal obligation and cannot engage in a de facto collateral attack on the CDP.

Therefore, any justification based on an inconsistency between the CDP and the NPF or SPPR1 of the Height Guidelines or SPPRs in the 2018 Apartment Guidelines is ineffective and ultra vires the Board's jurisdiction.

6.8.3.1 Proposal should not materially contravene s. 16.7 'Building Height in a Sustainable City'

Section 4.5.4.1 of the Development Plan sets out the planning authority's policy in relation to Taller Buildings and it is noted that the majority of the Dublin City area is identified in the Development Plan as **not being suitable for midrise or taller buildings and accordingly**, the spatial approach to taller buildings is **'to protect the vast majority of the city as a low-rise city'** [emphasis added].

Section 16.7 of the Development Plan outlines the development standards in relation to building height in a sustainable city. The subject site is not located in an area designated for high rise or medium rise as per Figure No. 39 of the Development Plan (see Fig. 53) and, therefore, the maximum permissible height of up to 24 metres for the 'low rise inner city' area for residential development applies to the proposed scheme.

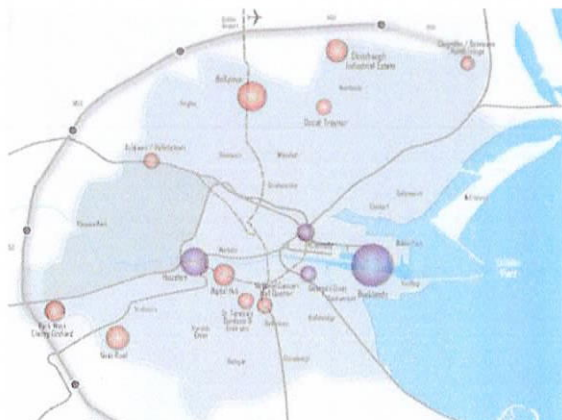


Fig. 53: Fig. 39 'Building Height in Dublin Context' of the DCC CDP 2016-2022'

The proposed development includes 2 no. blocks (Block 03 and Block 04) which range in height from 8- storey to a maximum of 10 storeys (c. 33.025m). These proposed blocks thereby exceed the Development Plan's maximum permissible height of 24m for inner city residential development, and therefore materially contravene the Development Plan in relation to Building Height.

The CDP states that: "Proposals for higher buildings of over three storeys in residential areas should be accompanied by a site analysis (including character appraisal) and statement that addresses the impact of the development" and notes how:

The spatial approach to taller buildings in the city is in essence to protect the vast majority of the city as a low-rise city, including established residential areas and conservation areas within the historic core, while also recognising the potential and the need for taller buildings to deliver the core strategy (emphasis added).

The Applicant scheme substantially and materially contravenes Section 16.7 of the DCC CDP 2016-2022. Our client submits that the proposed development's height is wholly at odds, even in principle, with Section 16.7. Section 16.7 is clear on where taller buildings are and are not acceptable: it is very specific. This planning application would not, were any respect to be shown for Section 16.7, have been lodged.

The Applicant is fully aware of the height limitations applicable to this site. Awareness of this is clear from all parts of the Applicant's planning application preparation, pre-planning consultations and planning application. The Applicant cannot claim that the height limitation is unexpected. It is or was clearly articulated in:

- The DCC CDP 2016-2022,
- Pre-planning discussions with DCC, and
- Pre-planning discussions with ABP.

The Applicant has decided to ignore the DCC building height policy. The DCC policy exists to ensure taller buildings, when proposed, are appropriate to their location. There is no possible justification for the scale and height of the buildings contained in this scheme.

The Applicant has sought to argue that the site meets some criteria whereby increased height should be permitted. Our client submits that for the following reasons, this is not the case:

1. The site would not contribute any urban design benefits to this area. The scheme would not frame local or wider views; instead, it would impact negatively on those views due to its size and scale. The scheme is not, as currently set out, designed to be anything but a standalone scheme which would be very much 'residents only'.
2. The scheme offers no planning gain to the public realm. It offers no new public transport or pedestrian or cycling facilities.
3. The scheme is not of civic, social or cultural importance. It offers no new public space; social facilities; culture, education, leisure or health facilities for existing residents of the area.
4. The scheme would impact negatively on existing businesses in the estate.
5. The scheme would impact negatively on adjoining properties.
6. The built environment and/or topography would **not** permit higher development without damaging the appearance or character of the area. Neither the location nor scale of existing buildings allow the recommended height to be exceeded without negatively impacting on its surroundings.
7. The proposed development is located substantially outside of the 500m walk band to the nearest Luas or Dart Station. There is little indication that this would be a sustainable development from a public transportation perspective.

The overall positive benefits of a development proposal are not of such a significance as to clearly demonstrate that additional height is justified.

It is also critically important to acknowledge that the DCC CDP policy on building height seeks to keep a consistent skyline appearance that allows for the absorption of new schemes into existing areas. The submitted photomontages, even with the use of perspective - raise concerns over the proposed building heights.

Recommendation: The scheme should be refused as non-compliant with Section 16.7 of the DCC CDP 2016-2022. The Applicant should be required to provide a scheme at heights compliant with the CDP that would not cause substantial, negative, and permanent impacts on the visual amenities of the area.

6.8.4 The Building Heights Guidelines do not contradict DCC CDP building height policy

BPS is aware that the Applicant – as with many current SHD schemes – has argued that the DCC CDP's 'Building Heights Strategy' is at odds with the 'Urban Development and Building Heights Guidelines for Planning Authorities' (2018).

As noted above, FP Logue and BPS consider that the Applicant misinterprets how the 2018 Building Height Guidelines envisage using increased height to give effect to NPF policies. The fact that the CDP provides for up to 24m (equivalent to 7/8 storeys) with provision for taller buildings at designated locations shows that the CDP is already in line with the 2018 Guidelines and the NPF contrary to what the applicant asserts in its statement of material contravention.

The Applicant asserts that the Building Height Guidelines post-date the DCC CDP 2016-2022 and that therefore the guidelines should take precedence due to the claimed and purported contradiction between the CDP and the guidelines. This is not a credible argument given how on 2 March 2020, the City Council specifically varied the CDP in Variation No 7 to ensure that the CDP aligned with the NPF and RSES for the East and Midlands Region. Shortly after this, Variation No. 23 was adopted to change the zoning on the subject site. Both of these variations post-date the NPF, the 2018 Height Guidelines and the Design Standards for New Apartments 2018 and therefore the City Council, when it adopted these variations, was subject to a statutory obligation to ensure consistency with the NPF and RSES and to apply SPPRs in the 2018 Height Guidelines and 2018 Apartment Guidelines which were in force at the time.

The guidelines do **not** as the Applicant appears to consider, relax all rules pertaining to building height in existing mature residential areas. The guidelines state that a proposal should be assessed to ensure it: "responds to its overall natural built environment and makes a positive contribution to the urban neighbourhood and streetscape".

The guidelines provide more detail as to how the National Planning Framework is to be implemented. They set out relevant planning criteria for considering increased building height in various locations, but principally (a) urban and city-centre locations and (b) suburban and wider town locations.

SPPR 3 of the 'Urban Development and Building Heights Guidelines for Planning Authorities' (2018) states:

It is a specific planning policy requirement that where; (A) 1. An applicant for planning permission sets out how a development proposal complies with the criteria above; and 2. The assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines; then the planning authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise. (B) In the case of an adopted planning scheme the Development Agency in conjunction with the relevant planning authority (where different) shall, upon the coming into force of these guidelines, undertake a review of the planning scheme, utilising the relevant mechanisms as set out in the Planning and Development Act 2000 (as amended) to ensure that the criteria above are fully reflected in the planning scheme. In particular the Government policy that building heights be generally increased in appropriate urban locations shall be articulated in any amendment(s) to the planning scheme (C) In respect of planning schemes approved after the coming into force of these guidelines these are not required to be reviewed.

In assessing the proposed development under SPPR 3 the same issues as those required to be assessed under the DCC building heights policy arise. The Applicant site is an infill brownfield site surrounded by houses and other low rise development.

Section 3 'Building Height and the Development Management Process' of the 'Urban Development and Building Heights Guidelines for Planning Authorities' (2018) does not encourage abrupt and significant, ad hoc and unplanned, increases in building heights and building sizes in existing mature residential areas and neither does the DCC building heights policy.

The proposed height of this scheme would represent an unjustifiable abrupt and significant increase in development relative to the site's surroundings.

The fact is that this scheme's heights as they materially contravene the CDP are not compatible or consistent with the DCC building height policy or with the 'Urban Development and Building Heights Guidelines for Planning Authorities' (2018). The proposed building heights are excessive at this specific location, with an abrupt change in height, bulk and massing on this site relative to surrounding and adjoining properties. The proposed development does not and would not integrate well with the site or the site's surroundings.

Having reviewed the submitted photomontages/CGI images, the Architectural Design Statement and the Applicant's 'Statement of Consistency', our client submits that the proposed development does not represent an acceptable graduation of height (or scale, bulk and massing) for the site and its location. As proposed, the scheme would impact permanently, negatively, and significantly on the residential and visual metres of adjoining properties, on wider views toward the site from the surrounding areas and would set a poor precedent for the overdevelopment of future infill development sites.

The Applicant has submitted this planning application in the hope and anticipation that the Board will materially contravene the DCC CDP's 'Building Height Strategy'.

The scheme should be refused as a material contravention of Section 16.7 of the DCC CDP 2016-2022 and as being part of the overall cumulatively excessive building heights proposed. The Applicant should be required to provide a scheme at lower more sustainable heights.

6.8.5 Scheme unit mix materially contravenes and degrades quality standards in the CDP

The current SHD proposal has 59% one beds and only 3% 3 beds. It also contains studios. This is a material contravention of Section 16.10.1 of the Dublin City Council Development Plan 2016 – 2022, which sets out the requirements in relation to the mix of dwellings provided as part of new apartment developments. It provides for a maximum of 25-30% one-bedroom units and a minimum of 15% three or more bedroom units. Our client submits that the Applicant scheme materially contravenes the DCDP and its core strategy which seek to create sustainable residential communities by providing an adequate mix of accommodation units within schemes. The proposal also contravenes Policy SC14 of the Development Plan that seeks "To promote a variety of housing and apartment types which will create a distinctive sense of place in particular areas and neighbourhoods, including coherent streets and open spaces".

While it is noted that under SPPR 8 (i) of the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments there is no restriction on dwelling mix for Build-to-Rent development, the proposed development continues to materially contravene the Development Plan in terms of residential unit mix. This is an area where multiple large schemes full of small units have been granted by the Board and a better mix of units is required.

If it decides to, the Board will need to apply the provisions of s.37(2)(b) subsection (i), (iii) and (iv) of the 2000 Act (as amended) if a grant of permission is forthcoming. Our client submits that such a decision would contribute to the degrading of the DCDP 2016-2022 and the sustainable community objectives that it is seeking to achieve.

6.8.6 The scheme materially contravenes CDP private open space policies

Private Open Space As set out within Section 16.10.1 'Residential Quality Standards – Apartments' of the Development Plan, private open space shall be provided at the minimum sizes outlined below, with a minimum depth of 1.5m subject to quality standards relating to boundary treatments, privacy, security, aspect, overshadowing:

Private open space shall be provided in the form of gardens or patios/ terraces for ground floor apartments and balconies at upper levels. Where provided at ground floor level, private amenity space shall incorporate boundary treatments appropriate to ensure privacy and security. Where balconies or terraces are provided, they should be functional, screened with opaque material, have a sunny aspect, and allow all occupants to sit outside, including wheelchair users. They should also minimise overshadowing and overlooking. The primary balcony should be located adjacent to the main living areas to extend the apartments' living space. The minimum depth of private amenity open space (balcony or patio) shall be 1.5 m and the minimum size shall be as follows: Minimum area for Private Open Space: Studio unit: 4 sq. m. 1-bedroom unit: 5 sq.m 2-bedroom unit: 7 sq.m. 3-bedroom unit: 9 sq.m. Balconies with access from multiple rooms may enhance the amenity of an apartment. Secondary or wrap-around balconies should be considered for larger apartments to provide a choice of amenity and, potentially, a screened drying space. Balustrades and other sheltering screens should be designed with a proportion of solid, translucent and transparent materials to allow views and casual surveillance of the street and common areas while providing for security and privacy and safety for children. The floors of balconies should be solid and self-draining.

A total of 28 no. (c. 8.4%) apartment units are not provided with balconies as private amenity space.

These are minimum standards which have been failed. This scheme would degrade minimum amenity standards for future residents and result in a substandard scheme.

Having reviewed the Applicant's private open space provision, drawings, Design Statement and planning reports, BPS submits that the Applicant's public open space proposals materially contravene the DCC CDP 2016-2022 including Section 16.10.1 and Section 16.3.4.

6.8.7 The scheme materially contravenes CDP communal open space policies

The DCC CDP 2016-2022 sets out the following policies which require the provision of an acceptable quantity and quality of communal open space:

there is a material contravention of Policy GI33 read with section 16.10.1 – Communal Open Space which requires, for developments of more than 100 units, in addition to the 85-100sq.m play areas for small children, a larger play area of 200-400 sq., for older children and young teenagers, the development plan therefore requires 285 to 500sq.m of play area for a proposal of this size, serving all ages up to young teenagers. The application materially contravenes this provision since no such areas are identified in the application.

Having reviewed the Applicant's communal open space provision, drawings, Design Statement and Landscape Plan, BPS submits that the Applicant's communal open space proposals materially contravene the DCC CDP 2016-2022 including Policy GI33 read with section 16.10.1.

It is the Policy of Dublin City Council:

GI33: To seek the provision of children's play facilities in new residential developments. To provide playgrounds to an appropriate standard of amenity, safety, and accessibility and to create safe and accessible places for socialising and informal play.

Fig. 54: Policy GI33 of the DCC CDP 2016-2022

Communal Open Space: Development proposals shall demonstrate that the communal open space:

- complies with the minimum standards set out below
- considers the needs of children in particular in terms of safety and supervision. In schemes of 25 or more units small play spaces of 85-100 sq.m are considered suitable for toddlers and children up to the age of six, with suitable play equipment, seating for parents/ guardians, and within sight of the apartment building. For larger schemes of 100 or more apartments, play areas of 200-400 sq. m for older children and young teenagers should be provided.

Fig. 55: Excerpt from section 16.10.1 'Communal Open Space' of the DCC CDP 2016-2022



Fig. 56: Excerpt from Architectural Design Statement – areas of communal open space

6.8.8 The scheme materially contravenes CDP public open space policies

The DCC CDP 2016-2022 sets out the following policies which require the provision of an acceptable quantity and quality of public open space:

- Section 16.10.3 of the Development Plan outlines policies in respect of public open space for new residential developments and advises that **10% of the site area shall be reserved for public open space.**

*The distinction between public and private open space has become less clear with the increasing prevalence of higher density developments containing communal open space. Public open space is genuinely accessible to the general public. **Public open space is open space which makes a contribution to the public domain and is accessible to the public for the purposes of active and passive recreation, including relaxation and children's play. Public open space also provides for visual breaks between and within residential areas and facilitates biodiversity and the***

maintenance of wildlife habitats. In new residential developments, 10% of the site area shall be reserved as public open space. All public open spaces shall be of a high quality in terms of design and layout, be located in such a manner as to ensure informal supervision by residents and be visually and functionally accessible to the maximum number of dwellings. Existing features, such as mature trees, shall be retained and enhanced by the open space provided. A landscaping plan will be required for all developments, identifying all public, communal (semi-private) and private open space. The design and quality of public open space is particularly important in higher density areas. Consideration should be given to the provision of community gardens and/or allotments in new developments ... [emphasis added].

- Section 16.3.4 'Public Open Space – All Development (See also Chapters 10 and 14)' states:

In order to progress the city's green infrastructure network, improve biodiversity, and expand the choice of public spaces available, the provision of meaningful public open space is required in development proposals on all zoned lands. There is a 10% requirement specifically for all residential schemes as set out in Section 16.10.1 ... Depending on the location and open space context, the space provided could contribute towards the city's green network, provide a local park, provide play space or playgrounds, create new civic space/plaza, or improve the amenity of a streetscape. Green spaces can also help with surface water management through integration with sustainable urban drainage systems. Soft landscaping will be preferred to hard landscaping which will be given consideration only in schemes where soft landscaping would not be viable or appropriate. Where adjacent to canals or rivers, proposals must take into account the functions of a riparian corridor and possible flood plain

- A number of objectives pertain to public open space for example (and this list does not preclude other objectives from being considered as materially contravened):

GI13: "To ensure that in new residential developments, public open space is provided which is sufficient in quantity and distribution to meet the requirements of the projected population, including play facilities for children".

GI14: To promote the development of soft landscaping in public open spaces, where feasible, in accordance with the principles of Sustainable Urban Drainage Systems.

GI33: "To seek the provision of children's play facilities in new residential developments. To provide playgrounds to an appropriate standard of amenity, safety, and accessibility and to create safe and accessible places for socialising and informal play".

The Applicant claims to have provided c. 1,300 sqm of open space c. 10% of the Z1 lands. BPS notes the locations of the public open space as shown in Fig. 57 taken from the Design Statement. The public open spaces are:

1. A 320sq.m area in the northwest corner of the site. This area is not central to the scheme, is a perimeter left over area and requires residents to cross the internal access road to get to it.
2. A 980sq.m area which comprises the space between Block B03 (a and b) and Block B04 (a and b). This area comprises of the entire setback between these two buildings and is a transit area whereby people will pass through the scheme. There is no central area of public open space provided therein. The area is 14.65m to 19.59m wide (and balconies are closer still). This is the left over area between buildings. One cannot stand hard up to the buildings so even a setback area from each building would significantly reduce the quantum of public open space claimed.

These areas are not sufficient to comprise quality public open spaces as described by the DCC CDP 2016-2022. These spaces:

1. There is no clear definition between public and communal open spaces such that members of the public would feel entitled to use these areas. Indeed, one cannot imagine local children being allowed to play in these areas which would be managed by the scheme.
2. Are clearly not community gardens, they are not new local parks, they are not new civic spaces/plazas and they do not improve the amenity of any existing streetscape.

These spaces fail to meet the quantitative and qualitative standards for public open space provision required for Z1 zoned lands.

To further emphasise this point, BPS notes how the Sustainable Residential Density Guidelines (2009) and its accompanying Design Manual provide considerable detail and guidance, including illustrations, as to what is and what is not public open space. The Applicant's claimed main area of open space is not public open space.

Section 4.18 of the guidelines refer to 'Recommended qualitative standards' stating:

Development plans have tended in the past to emphasise detailed quantitative standards, but there is now an increasing focus on the quality of public open space, which ensures that the reasonable expectations of users are more likely to be fulfilled.

Qualitative standards include:

Design: The layout and facilities – particularly in larger parks – **should be designed to meet a range of user needs, including both active and passive recreation**, as identified in the city/county strategy referred to above. Users should feel safe at all times within parks; adequate supervision, passive surveillance, boundary treatment and public lighting contribute to creating a sense of security. **Public open spaces should be suitably proportioned; narrow tracts or 'left over spaces' which are difficult to manage should not be acceptable.**

Variety: A range of open space types should be considered having regard to existing facilities in the area and the functions 15 With particular relevance to Section 48 schemes the new spaces are intended to provide. **A balance will be required between the provision of active and passive recreational facilities.**

Shared use: The potential for maximising the use of open space facilities (such as all-weather pitches) should be explored, for example, by sharing them with nearby schools.

Biodiversity: Public open spaces, especially larger ones, **should provide for a range of natural habitats and can facilitate the preservation of flora and fauna**. Sustainable Urban Drainage Systems (see para 4.29) are often used to reduce the impact of urban runoff on the aquatic environment.

Provision for allotments and community gardens: Allotments are small plots of land which are let (usually by a local authority) to individuals for the cultivation of vegetables and plants. **They are of particular value in higher density areas.**
[emphasis added]

BPS submits that one cannot view the Applicant's claimed public open spaces and find them compliant with the guidelines or the Urban Design Manual. They are left over spaces. The scheme has not been designed around a central open space which would benefit all residents. Fig. 60 is taken from the Urban Design Manual and shows examples of public open spaces in the centre of scheme or on the edge of a scheme.

The Applicant argues that they should be able to lean on the rest of the site which is not zoned Z1. This is not acceptable and would represent a precedent for materially contravening Z1 public open space requirements by claiming existing and adjoining open spaces should suffice.

Having reviewed the Applicant's public open space provision, drawings, Design Statement and Landscape Plan, BPS submits that the Applicant's public open space proposals materially contravene the DCC CDP 2016-2022 including Sections 16.10.3 and Section 16.3.4. This is further confirmed by reference to the abovementioned guideless and Urban Design Manual.

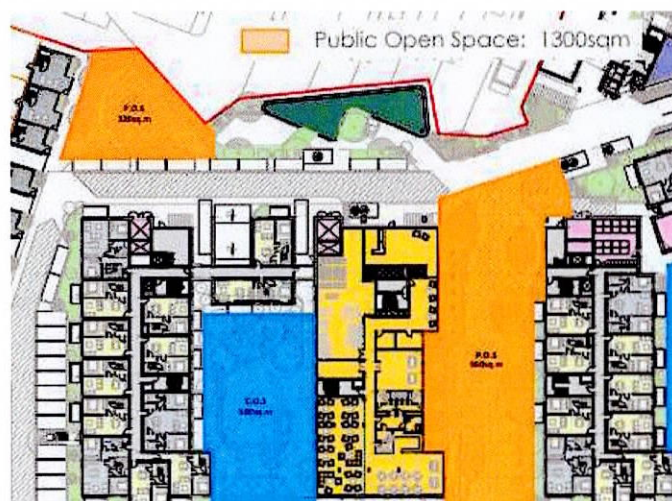


Fig. 57: Excerpt from the Architectural Design Statement (1)

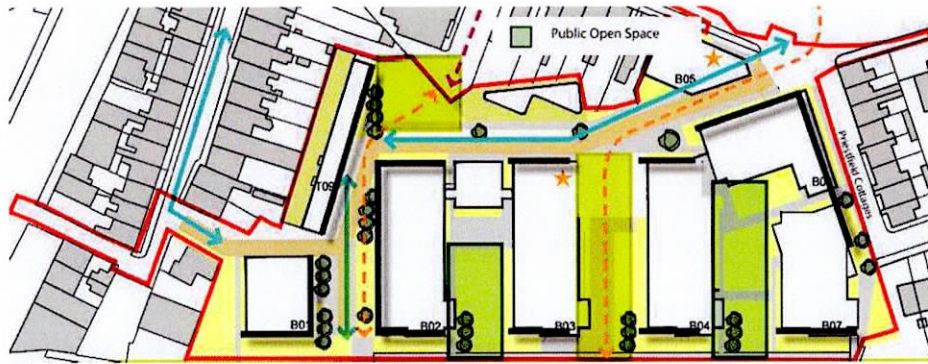


Fig. 58: Excerpt from the Architectural Design Statement (2)



Fig. 59: Excerpt from the Landscape Masterplan



Fig. 60: Excerpt from Page 30 of the Urban Design Manual

6.8.9 This proposal does not justify multiple material contraventions of the DCDP 2016-2022

Our client objects to the Applicant's proposal as it would materially contravene the Dublin City Development Plan 2016-2022. This is clear because:

1. Section 16.5 'Plot Ratio' of the DCDP 2016-2022 provides for an indicative plot ratio of 0.5 – 2.0 for Z1 zoned lands. Plot ratio standards exist to avoid overdevelopment. The proposed plot ratio of is between 2.1 and 8.4 times the allowable plot ratio density for this site. The Applicant scheme's plot ratio extends vastly beyond the maximum allowable plot ratio. The proposals materially contravene the DCC CDP 2016-2022.

2. The scheme's building height proposals materially contravene Section 16.7 of the DCC CDP 2016-2022.
3. The current SHD proposal has 59% one beds and only 3% 3 beds. It also contains studios. This is a material contravention of Section 16.10.1 of the DCC CDP 2016-2022.
4. The communal open space proposals materially contravene the DCC CDP 2016-2022 including Policy GI33 read with section 16.10.1.
5. The scheme's private open space proposals materially contravene the DCC CDP 2016-2022 including Section 16.10.1 'Residential Quality Standards – Apartments'.
6. The scheme's public open space proposals materially contravene the DCC CDP 2016-2022 including Sections 16.10.3 and Section 16.3.4. This is further confirmed by reference to the abovementioned guideless and Urban Design Manual.

The Applicant's 'Statement of Material Contravention' notes that it is ultimately the decision of An Bord Pleanála as to whether the proposed development represents a material contravention of with the DCC CDP 2016-2022. For our client, there can be no doubt that the proposed development would require material contravention regarding the list of areas set out above.

The CDP contains no specific or local objective pertaining to this site which should allow for any of the proposed material contraventions. The claim that a BTR scheme should be unrestrained by DCC CDP standards is not accepted.

Our client finds no justification for the Board to use its powers to decide to materially contravene the CDP in this case. The Board's powers are not unlimited in this regard. Section 9 (6) (b) of the Planning and Development (Housing) and Residential Tenancies Act 2016 states:

*Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned. (b) the Board shall not grant permission under paragraph (a) where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of land. (c) where the proposed strategic housing development would materially contravene the development plan or local area plan as the case may be, other than in relation to the zoning of the land, then **the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2) (b) of the Act of 2000 were to apply, it would grant permission for the proposed development** [emphasis added].*

Section 37(2) (b) of the Act of 2000 states the following:

*Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan. **The Board may only grant permission in accordance with paragraph (a) where it considers that – (i) The proposed development is of strategic or national importance, (ii) There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or (iii) Permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under Section 28, policy directives under Section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or (iv) Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan** [emphasis added].*

Our client submits that the proposed development does not pass the criteria under which the Board may grant in a manner which materially contravenes the CDP.

(i) Is the proposed development of strategic or national importance?

There is no evidence that the proposed development is of strategic or national importance other than this scheme has been presented as a SHD planning application.

This is a private development that aims to massively exceed the existing and established development parameters for this site, for adjoining sites and for this area.

(ii) Are there conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned?

Having read all relevant parts of the CDP and its variations and having read the entirety of all written documentation submitted by the Applicant, BPS can find no evidence of any conflicting objectives in the development plan or anything to suggest the objectives are not clearly stated, insofar as the proposed development is concerned.

There is no basis for such a high plot ratio density to be considered on this site as it can only be achieved by contravening the DCC CDP's various policies aimed at controlling over development.

There is no conflict between DCC's CDP and national and regional planning policy. A high density scheme is acceptable on this site if it does not materially contravene the CDP. The Applicant has deliberately designed a scheme which is at odds with the site despite this despite having only recently been re-zoned by way of variation. No special objectives were sought for the site at that time. BPS submits that the Applicant who has already benefitted from a recent re-zoning of the site was fully aware of the following points in designing this scheme:

1. The zoning of the site, its designations and all relevant planning policies arising for any proposal made on this site are clearly laid out in the CDP.
2. The range of acceptable plot ratio densities.
3. The CDP contains no indication that this site is suitable for taller buildings. The CDP clearly outlines a list of site constraints pertaining to any development proposal for taller buildings. The building height policies set out in the CDP are clear and unequivocal. The proposed development is not close to complying with these building height policies.
4. The range of residential development standards applicable including mix of units, public open space, private open space, etc.

There is nothing in the CDP that could possibly have led the Applicant to believe that a development such as that proposed. The site's zoning aims to protect and improve the amenities of the area; this cannot be achieved while at the same time as allowing this scheme.

The Applicant lists the National Planning Framework, the 'Urban Development and Building Height Guidelines' (2018), the 'Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities' (2018) and the 'Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities' (2008). **But the Applicant does not provide any list of reasons why the DCC CDP 2016-2022 is wrong. Indeed, no objection to the policies and designations applicable to this site were raised when it was re-zoned.**

The DCDP 2022-2028 'Pre-Draft Background Paper Building Height and Density' (see Section 7.2.6 of this Planning Observation Report) makes it clear that DCC needs to regain control of building height policy in the city and in outer suburban areas where such building heights were not previously anticipated.

The Applicant has not set out a detailed explanation of why DCC Planning Department is wrong; they simply ask the Board to ignore DCC and local planning constraints. The onus must be on the Applicant to prove that DCC's interpretation of the NPF and the guidelines is wrong. Our client cannot find any evidence that DCC's position is wrong.

(iii) Should permission for the proposed development be granted having regard to the regional spatial and economic strategy for the area, guidelines under Section 28, policy directives under Section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government?

The Applicant's Material Contravention Statement claims that the proposal can be justified against the current national planning policies which encourage increased heights and densities on appropriate sites in urban areas which are accessible to high quality public transport. Our client responds as follows:

- As noted above, on 2 March 2020, the City Council specifically varied the CDP in Variation No 7 to ensure that the CDP aligned with the NPF and RSES for the East and Midlands Region. Shortly after this, Variation No 23 was adopted to change the zoning on the subject site. Both of these variations post-date the NPF, the 2018 Height Guidelines and the Design Standards for New Apartments 2018 and therefore the City Council, when it adopted these variations, was subject to a statutory obligation to ensure consistency with the NPF and RSES and to apply SPPRs in the 2018 Height Guidelines and 2018 Apartment Guidelines which were in force at the time.

The Applicant in this case did not judicially review either of these variations on the basis that they were inconsistent with the NPF and RSES or on the basis that the City Council had failed to apply SPPRs in the 2018 Height Guidelines and 2018 Apartment Guidelines. It therefore must accept that the CDP, as varied, is consistent with the NPF and RSES and that the City Council correctly applied the relevant SPPRs. The Board must also accept this position, it lacks the jurisdiction to conclude that the City Council has not complied with its legal obligation and cannot engage in a de facto collateral attack on the CDP.

Therefore any justification based on an inconsistency between the CDP and the NPF or SPPR1 of the Height Guidelines or SPPRs in the 2018 Apartment Guidelines is ineffective and ultra vires the Board's jurisdiction.

- There is nothing in 'Project Ireland 2040 – The National Planning Framework' (2018); in the RSES, in the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (2009); in the 'Sustainable Urban Housing: Design Standards for New Apartments' (2018); or in the 'Urban Development and Building Heights Guidelines for Planning Authorities' (2018) that contradicts DCC's

policies on tall buildings, on development densities or the need to provide an acceptable standards of internal amenities and public open spaces. In fact, the opposite is the case, each of these policy documents contains points which make the proposed development untenable from a national, regional, and local planning perspective:

- Each document makes it clear that planning authorities should identify appropriate sites for tall buildings. Having conducted such an exercise, the Applicant site was not included amongst those chosen as suitable for tall buildings in the DCC CDP 2016-2022. The Applicant asks that this fact be disregarded.
- Each policy document requires that sites for tall buildings and very high densities be respectful of their adjoining and surrounding context. Each policy document recognises that some sites are not, due to their sensitive context, suitable for tall buildings. This site immediately adjoins dwellings. It is a highly visible site in an area where the maximum heights have been achieved in a way that fails to protect the area's existing character, pattern of development and skyline
- Each policy document stresses that the protection of established residential and visual amenities in the immediate area needs to be balanced against any proposed development. The proposed development would have a significant, negative, and permanent impact on the established residential amenities of this area by way of each of the concerns raised by other Third Party objectors.

There is, that is, nothing in any of these documents which states that high density BTR proposals all other planning policy requirements. This scheme could only possibly be granted by accepting the Applicant's double-speak which sets out to claim that there is obscure language in the DCC CDP 2016-2022 that is somehow ambiguous and that national policies need to sweep the Development Plan away. This is not the case.

- The Applicant is asking the Board to ignore some statutory guidance documents in favour of others. This scheme is **not** in compliance with the:

The National Planning Framework;
The Regional Spatial & Economic Strategy for the Eastern & Midlands Region;
The Design Standards for New Apartments Guidelines (2018);
The Urban Development and Building Height Guidelines (2018);
'Sustainable Residential Development in Urban Areas' (2009);
'Best Practice Urban Design Manual' (May 2009);
'Development Management Guidelines' (2007); etc.

Our client submits that there is insufficient basis for the Applicant to be permitted having regard to the regional spatial and economic strategy for the area, guidelines under Section 28, policy directives under Section 29, the statutory obligations of any local authority in the area, and relevant policies of the Government or relevant Ministers.

(iv) Should permission for the proposed development be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan?

The proposed development would for the reasons set out in this Planning Observation Report be wholly out of keeping with the established pattern of development in this area and set a poor precedent for future planning permissions.

Our client notes the proposed plot ratio density of 4.2 which is extremely high for any location but excessive for this location. The position of Storage World is that the inclusion of a mix of uses by way of the incorporation of their business into the scheme would reduce the excessive density of the scheme while offering a better mix of uses and more employment.

National Policy Objective 33 of the National Planning Framework prioritises the provision of residential development at appropriate scales within sustainable locations. This scheme, as submitted, is not at an appropriate density, height or scale. The scheme comprises overdevelopment of the site. Up to 10 storeys of over-scaled buildings close to boundaries and in the layout proposed would impact negatively on the surrounding area.

The proposals would detract from the visual amenity of the area by way of an abrupt alteration to what is a relatively low rise environment. Being so over-scaled, the proposals are contrary to the established character and pattern of development of the area.

Our client has read the NPF and is unable to identify any reference therein to the need to disregard the existing CDPs of planning authorities and existing building heights strategies around the country and to require overdevelopment of sites; to impose up to 10 storey buildings onto existing communities at such a high plot ratio.

National Policy Objectives 3a, 3b and 35 seek additional housing via increased residential density on appropriate infill sites to achieve compact growth. There is no reason why a more mixed use scheme of 2 to 6 storeys at a reduced scale could not achieve these objectives without causing negative impacts.

Our client objects to how the Applicant Planning Report refers to this scheme as though the alternative is under-utilised, undeveloped, empty, under-utilised infill site – that this scheme represents the only development option for this site. This is not the case, the Applicant could achieve a more mixed use scheme of 2 to 6 storey buildings on this site at a density of 120 units per hectare – and meet the objectives of the NPF – without overdeveloping this site with excessively tall and over-scaled buildings. .

This scheme needs to be reduced substantially in scale to ensure national planning policy is seen to be being implemented consistently.

The National Planning Framework (NPF) seeks 'Compact Growth'. The NPF states:

All our urban settlements contain many potential development areas, centrally located and frequently publicly owned, that are suitable and capable of re-use to provide housing, jobs, amenities and services, but which need a streamlined and co-ordinated approach to their development, with investment in enabling infrastructure and supporting amenities, to realise their potential. Activating these strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development, is a top priority.

Our client acknowledges that this site is suitable for a mixed use primarily residential scheme. Our client does not object to the principle of residential development, but to the scale of this scheme, been viewed by the Applicant as possibly suitable for a scheme such as that proposed?

For this scheme to be credible – at the density, scale, height, and massing proposed – it would need to be located in a town or city centre location or in an area designated for building height.

It is reasonable to point out that this scheme, while it would provide housing (with impacts on adjoining properties – see Section 8.3 of this Planning Observation Report), fails to comply with planning policies that are not out of date but whose implementation during planning assessments such as this one is critical to ensuring that the public finds the planning framework and planning process credible. The Applicant scheme is not credible when assessed against planning policies on any basis except the need for housing. This planning application does not "perform". Chapter 6 of the NPF entitled 'People, Homes and Communities' sets out that place is intrinsic to achieving good quality of life – our client submits that this scheme would impact negatively on the community into which it is proposed to be located. The loss of their existing business from the site contributes to the sense that this is an alien scheme to this area.

National Policy Objective 11 states: "In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and **generate more jobs** and activity within existing cities, towns and villages, **subject to development meeting appropriate planning standards** and achieving targeted growth" (emphasis added). Our client is concerned at how the Applicant appears to have been able to pick and choose which planning policies to comply with and which not. They should deliver housing and jobs but are only delivering housing and are removing jobs from the site.

What then are "appropriate planning standards"?

National Policy Objective 33 seeks to "**prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location**" (emphasis added). Our client considers that the Applicant scheme as submitted is not **at an appropriate scale of provision relative to location and does not provide a mix of uses**. The scheme is, as submitted, excessively tall, over-scaled and inappropriately sited and designed for this location.

National Policy Objective 35 seeks "to increase residential density in settlements, through a range of measures including restrictions in vacancy, **re-use of existing buildings**, infill development schemes, area or site-based regeneration and increased building heights". The Applicant site is sited in an existing business estate where Storage World an existing business is operational each day. **The proposal fails to re-use the existing buildings and/or to retain the existing uses.**

There is an existing relationship between **the site and** adjoining developments protects their established residential and visual amenities. Storage World has always operated in a manner which has been fully in keeping with its context. The Applicant scheme seeks to alter this and to introduce a scheme whose scale, height, bulk, and massing and mix of uses would alter this relationship in a substantially negative manner.

This proposal does not fully comply with the relevant guidelines issued by the Minister under Section 28 of the Planning and Development Act 2000 (as amended). It is also considered that the proposals would not, as submitted, be in compliance with the relevant objectives of the DCC Development Plan 2016-2022.

Our client submits that ABP should substantially revise and/or refuse planning permission on the basis that the Applicant scheme would set a poor precedent for similar schemes to be developed at excessive densities and scales at similar locations whereby existing businesses are forced out of communities. The scheme would also set a poor precedent for tall buildings to be developed where this would cause substantial impacts on adjoining residential properties.

The Applicant has provided no acceptable basis or rationale for increasing the height of buildings on this site to above the DCC CDP 2016-2022 maximum standards, for a plot ratio of 4.2, for a poor unit mix and for poor public and private open space provision. For the above reasons, our client submits that the Board should not be permitted to materially contravene the DCC CDP 2016-2022. This planning application should be refused as the Applicant was given multiple opportunities at pre-planning to address these concerns and did not. A refusal would allow the scheme to be revised and re-submitted.

6.9 **Issue 9: Infrastructural concerns pertaining to the planning application**

BPS notes how a scheme of the size of the Applicant proposal places considerable demands on infrastructure. It is critical that there is infrastructure in place and sufficient capacity in that infrastructure to meet the demands of this scheme.

FP Logue, advising our client, notes in their accompanying submission how, for the following reasons, the scheme fails to comply with Article 297(2)(d) of the Planning and Development Regulations 2001 (as amended). BPS has reviewed these points and we concur that:

Therefore the applicant has failed to demonstrate that there is capacity in both the water or waste water networks and insofar as Irish Water has purported to confirm capacity, those confirmations are manifestly incorrect. In addition to this, section 20(D) of the application form has been inaccurately completed by the applicant since it incorrectly indicates compliance with Regulation 297(2)(d).

6.9.1 **The water network requires upgrades and it may not currently support this scheme**

The Engineering Services Report includes a letter from Irish Water dated 7 April 2021 which indicates that upgrades are required to the water networks at the premises it is implicit that Irish Water does not have plans to extend its network in this area since the applicant is required to find and obtain consents for the upgrade works.

There is a second letter dated 2 March 2022 which indicates that Irish Water has no objection to the proposals. This letter, however, appears to be a confirmation that Irish Water has no objection to the proposed internal design of the water and wastewater infrastructure within the red line but says nothing about capacity of relevant networks.

The water network therefore lacks capacity to service the proposed development.

6.9.2 **Ringsend WWTW cannot currently support this scheme**

This scheme is wholly reliant on the Ringsend WWTW to treat its foul waste:

- Section 6.6.2.1 'Designated Conservation Areas' states: "Wastewater will be generated during the construction phase and operation phase of the project. **Wastewater generated during both phases of the project will be directed to the existing combined sewerage network that services the project site and will convey wastewater to the municipal wastewater treatment plant at Ringsend**" [emphasis added].
- Section 6.6.1.3 'Impacts to Aquatic Habitats' of the EIAR states: "It is proposed that all wastewater generated during the operation phase will be directed to the Irish Water sewer network and will be conveyed to the Ringsend wastewater treatment plant where it will be treated prior to release to the receiving environment" [emphasis added].
- Section 5.0 'EUROPEAN SITES OCCURRING WITHIN THE ZONE OF INFLUENCE OF THE PROJECT' of the Screening Report for Appropriate Assessment states: "Wastewater will be generated during the construction phase and operation phase of the project. **Wastewater generated during both phases of the project will be directed to the existing combined sewerage network that services the project site and will convey wastewater to the municipal wastewater treatment plant at Ringsend**" [emphasis added].
- Table 5.5-1: 'Identification of European Sites connected to Project via Pathways', 'Wastewater Pathway' of the Screening Report for Appropriate Assessment states: "Wastewater from the construction phase and operation phase of the project **will be conveyed to the Ringsend Wastewater treatment plant for treatment. Treated effluent will be discharged to Dublin Bay. As such, the potential for a wastewater impact pathway between the project and this SAC requires further examination**" [emphasis added].

In terms of wastewater capacity, there have been emerging capacity problems with the Ringsend TTWP for some years.⁴ This is accepted by Section 8.4.1.3 'Water Infrastructure Services' of the EIAR which states:

⁴ See: Dowly, A. & Bedri, Z. (2007) Modelling of Ringsend Discharge. Report commissioned by EPA in association with IPPC licencing for Ringsend WwTW. Available online at: http://www.epa.ie/licences/lic_eDMS/090151b28026gef8.pdf DHI (2018), Ringsend WwTW – EIAR Modelling Services: Water Quality Modelling. Report prepared for the Ringsend WWTW Upgrade Project, EPA (2021), and Ringsend Wastewater Treatment Plant Site Visit Report. See: http://www.epa.ie/licences/lic_eDMS/090151b2807a0a61.pdf.

Ringsend Wastewater Treatment Plant serves Dublin City and the City environs in the neighbouring counties. Its contributing residential population is in the order of 1.1 million. Together with the non-domestic contribution, the existing treatment works is currently operating at its full capacity of 1.65 million population equivalent (P.E.)

Section 6.1.2 'Wastewater Pathway' of the Screening Report for Appropriate Assessment refers to the Ringsend WWTP, which it states:

... will receive wastewater from the project site has historically operated at or above capacity, with a total load of 2.19 million P.E. on average, with significant fluctuations from day to day. Loading has increased in recent years with the rise in population recorded in the Dublin local authorities between 2011 and 2016 of approximately 4-6%. The latest information from Irish Water indicates that the plant is currently operating above its capacity of 1.64 million P.E. with a current operational loading of approximately 2.0 million P.E. with up to 2.4 million P.E. during busier times of high loads (EPA, 2021). In 2021, the plant was non-compliant with several parameters as set under the EPA discharge licence.⁵

In terms of the current SHD planning application, FP Logue's accompanying submission notes how:

... the AA Screening Statement confirms that waste water will be treated at the Ringsend WWTP. According to the latest AER⁶ for this facility it is currently operating at 50% over its capacity and is failing to comply with the ELVs specified in its wastewater discharge licence due to overloading and no P removal on site. Table 2.1.4.2 indicates that the capacity exceedance in 2020 was 678,887 PE and there was 0 capacity remaining and that the capacity would be exceeded in the next three years (i.e. 2021 to 2023).

The 2021 AER, which is required to be sent to the EPA by 28 February 2022, appears not to be available as of the date of this report.

Based on the above there is no capacity in the waste water network. It is also notable that the Ringsend WWTP is in breach of the Urban Wastewater Treatment Directive (Directive 91/271/EEC – Commission v Ireland, Case C-427/17)

BPS further notes how no assessment and/or adequate assessment of the cumulative impact that other SHD schemes will place on the Ringsend WWTP is included within the submitted EIAR, EIAR Non-Technical Summary or the EIAR Appendices. The only reference to cumulative impacts is Section 6.6.1.3 'Impacts to Aquatic Habitats' of the EIAR which notes how: **'The combined sewerage network flows to the Ringsend Wastewater Treatment Works'** [emphasis added].

6.10 Issue 10: The scheme offers nothing but impacts to the surrounding community

6.10.1 The BTR nature of the scheme prices local people out and offers few family units

Our client shares the concerns of the local community that a BTR scheme is the wrong type of scheme for this site. The scheme:

- Offers no units for local people to purchase.
- Offers only units which are overpriced relative to what local people can afford.
- Offers units which are too small and there are insufficient family sized units.
- Offers too few parking spaces resulting in over-flow parking into adjoining and surrounding areas.
- Offers accommodation primarily to transient individuals and households who have no intention living in this community permanently.
- Offers an insufficient mix of uses.
- Offers an exclusionary and closely managed internal environment which will not encourage community permeability into and through the scheme.

This BTR proposal should be refused such that a mixed use scheme which includes a better mix of standard apartment types which are available to local people can be provided.

6.10.2 The scheme offers nothing for older children and teenagers – they will need play areas

This is a scheme which is to be BTR. The Applicant appears to think this means that there will be no older children and teenagers. This is an area of Dublin that does not provide good facilities for older children and teenagers. This is not covered in the Applicant's audit of community and social facilities.

Where are all the scheme's older children and teenagers to play. The scheme's spaces are small and inadequate to kick a ball around. Under Policy GI33 read with section 16.10.1 'Communal Open Space' sets out how developments of more than 100 units, in addition to providing the 85-100sq.m play areas for small

⁵ See: EPA (2021). Ringsend Wastewater Treatment Plant Site Visit Report. See:

http://www.epa.ie/licences/lic_eDMS/090151b2807a0a61.pdf

⁶ https://www.water.ie/_media/1ae17afd-74e2-4a5a-92c9-508552bfe129/D0034-01_2020_AER.pdf

children, must provide a larger play area of 200-400sq.m for older children and young teenagers, the development plan therefore requires 285 to 500sq.m of play area for a proposal of this size, serving all ages up to young teenagers. The application materially contravenes this provision since no such areas are identified in the application.

In the absence of open space and facilities for older children and teenagers this scheme cannot be considered to provide any attempt at creating a well-served neighbourhood community. It is a scheme of overdevelopment.

6.10.3 The scheme offers no large area of public open space which would be used

Despite all the public open space planning policies contained in the DCC CDP 2016-2022, in the Sustainable Residential Density Guidelines, in the Urban Design Guide, etc. this scheme, which re-develops an existing business park/industrial estate which offers services and employment to local people, offers no acceptable and identifiable area of public open space within the Z1 zoned area. The area along the canal is not a single area of public open space which the local community would exclusively use – it is a transitory area already protected by the zoning. It is the Z1 area that needs to be integrated better into the community by way of providing an attraction.

What is needed is a pocket park civic open space area. This is not provided. The scheme, as designed, reads as a standalone scheme which would be cut off from the community and discourage anyone from lingering within it.

6.10.4 Residential and visual amenity concerns for adjoining & surrounding properties

Our client has discussed this scheme's likely impacts on adjoining and surrounding residents with their fellow community members and with their customers. Concerns arise in the area over the negative residential and visual amenity impacts this scheme would cause.

BPS was approached by surrounding residents, but we advised using another planning consultant as we were already representing Storage World.

Our client fully endorses all Third Party objections as they pertain to the scheme's overlooking, overbearing and overshadowing impacts on adjoining and surrounding properties, especially arising from Block 03 and Block 04 which range in height from 8- storey to a maximum of 10 storeys (c. 33.025m). These proposed blocks exceed the Development Plan's maximum permissible height of 24m for inner city residential development, and therefore materially contravene the Development Plan in relation to Building Height.



Fig. 61: Excerpt from the Photomontage Proposed View 08



Fig. 62: Excerpt from the Photomontage Proposed View 10



Fig. 63: Excerpt from the Photomontage Proposed View 18

6.11 Issue 11: Dublin does not need any further BTR units – they cannot be justified

6.11.1 This area of Dublin does not need any further Build to Rent units

Our client considers that there is a need to the cumulative impact across Dublin of BTR. The Applicant planning application identifies two BTRs in close proximity as though these schemes, current on Judicial Review, offer some precedent for the current scheme. They do the opposite. They confirm the extent of over-supply that is proposed to arise in this area regarding BTR units and the extent to which the local housing market in years to come is likely to be overwhelmingly rental only with local people priced out of what is high rent accommodation. This area of Dublin needs Built to Buy apartment schemes.

6.11.2 The Draft Dublin Development Plan expresses concerns over the concentration of BTR

Chapter 5: 'Quality housing and sustainable neighbourhoods' of the Draft DCC CDP 2022-2028 expresses concerns about over concentration of BTR within areas of the city. Planning policies are now sited in this section of the Draft Plan which raise significant concerns over whether this scheme which is proposed to be 100% BTR in an area already conspicuous in having high levels of BTR SHD permissions is sustainable.

The Chapter 5 of the Draft CDP contains a section titled 'Build to Rent (BTR) and Shared Accommodation' which states:

Recent emerging trends however, would indicate that the dominance of BTR in large schemes can be to the detriment of build to sell units. Whilst such development has its place in the hierarchy of provision of homes across the city, the Planning Authority will seek to avoid over proliferation of such use in certain areas and encourage such development as part of a healthy mix of tenure in order to create sustainable communities and neighbourhoods [emphasis added].

Furthermore, applications for BTR schemes should be required to demonstrate that there is not an over-concentration of Build to Rent Accommodation within an area, including a map showing all such facilities within 3km of a proposal. Such housing will be controlled in the interest of providing a mix of tenure and unit types [emphasis added].

Response: The proposed BTR scheme represents further proliferation of BTR units in this area. The proposal fails to offer a healthy mix of tenure that could create a sustainable community and neighbourhood at this location. There are two other extremely large BTR schemes sited within 3km of this site. The Applicant has

failed to assess the matter of overconcentration, by providing details of the number and scale of other permitted BTR development in the vicinity (3km) of the site and the likely implication of these for the proposed development.

Chapter 5 of the Draft CDP further states:

BTR should be concentrated in prime inner city areas and also in areas of high intensity employment use such as within 500 metres walking distance of a high employment area i.e. more than 500 employees per hectare, within 500m of major public transport interchanges (e.g. Connolly Station, Tara Street Station and Heuston Station) and within identified Strategic Development Regenerations Zones [emphasis added].

Response: The proposed BTR scheme is not located in a prime inner city area which contains high intensity employment uses within 500m. It is not located within 500m of a major public transport interchange.

Chapter 5 of the Draft CDP further states:

***In assessing the matter of overconcentration, the Planning Authority will have regard to factors such as:
the number and scale of other permitted BTR development in the vicinity (3km) of the site
the household tenure and housing type of existing housing stock in the approximate vicinity (3km) of the site and
the proximity of the proposal to high capacity urban public transport stops and interchange (such as DART, Luas and BusConnects).***

Response: The Applicant has failed to assess the matter of overconcentration, by providing details of the number and scale of other permitted BTR development in the vicinity (3km) of the site and the likely implication of these for the proposed development. The Applicant has failed to provide any acceptable analysis of conditions in the local housing market which suggest that this BTR scheme is affordable to local people and will meet local demand. The Applicant's submissions as they pertain to public transport claim that existing bus services are sufficient to serve this scheme which is sited some distance from a high quality public transport corridor.

Chapter 5 of the Draft CDP further states:

There will be a general presumption against large scale residential developments (in excess of 100 units) which comprise of 100% BTR typology. To ensure a sustainable mix of tenure and long term sustainable communities, a minimum of 40% of standard build to sell apartments will be required in such instances.

Response: The Applicant BTR scheme is 100% BTR with some minimal social housing. This is not sustainable. At least 40% should be build to sell units.

Our client therefore concludes that the proposed BTR development is contrary to Policy Objective QHSN38 'Build to Rent Accommodation of the Draft CDP which aims:

*To facilitate the provision of Build to Rent (BTR) Accommodation in the following specific locations:
Within the Inner City (i.e. within the canal ring).
Within 500 metre walking distance of a high employment area i.e. more than 500 employees per hectare.
Within 500 metres of major public transport interchanges (e.g. Connolly Station, Tara Street Station and Heuston Station), and
Within identified Strategic Development Regenerations Areas.
There will be a general presumption against large scale residential developments (in excess of 100 units) which comprise of 100% BTR typology. To ensure a sustainable mix of tenure and long term sustainable communities, a minimum of 40% of standard build to sell apartments will be required in such instances.
There will be a presumption against the proliferation and over concentration of BTR development in any one area. In this regard, applications for BTR developments should be accompanied by an assessment of other permitted BTR developments in the vicinity (3km) of the site to demonstrate that the development would not result in the over-concentration of one housing tenure in a particular area and take into regard the geographical area of the BTR'*

And, to Policy Objective QHSN40 'Build to Rent Accommodation' of the Draft CDP which aims:

To foster community both within a BTR scheme and to encourage its integration into the existing community, the applicant will be requested to provide an evidenced based analysis that the proposed resident support facilities are appropriate to the intended rental market having regard to the scale and location of the proposal. The applicant must also demonstrate how the BTR scheme must contribute to the sustainable development of the broader community and neighbourhood.

And, to Policy Objective QHSN42 'Build to Rent/Student Accommodation/Co-living Development' of the Draft CDP which states: **"It is the policy of DCC to avoid the proliferation and concentration of clusters of build to rent/student accommodation/co-living development in any area of the city"** [emphasis added].

For the above reasons, our client submits that the Applicant BTR scheme is wholly at odds with the Draft Dublin CDP 2022-2028 as it pertains to BTR planning policy. The proposals are sited in an area where there is already an over-proliferation of SHD permissions for BTR which is contrary to the creation of a sustainable community and will damage the local housing market.

6.11.3 Reflection on SHD BTR schemes arising from discussions with client & FP Logue

There are now tens of thousands of Build-to-Rent (BTR) units permitted across Dublin City. They now comprise over 80% of all residential schemes applied for or granted since 2020 — a situation which Dublin City Council's CEO, Eoin Keegan, has described as totally "unsustainable" and with the potential to have, "significant long-term adverse impacts on the housing needs of the city".

These permissions may have some benefit if they were being built. But as of February 2022, figures compiled by the Dublin Democratic Planning Alliance show that, of the approximately 70,000 SHD units permitted to date, commencement notices had been submitted for just 13,000.

Our client submits that there is no justification for the current SHD BTR scheme. It should be refused and a better scheme proposed in its place.

6.12 Issue 12: Proposal would set poor precedents for developments in the DCC area

Our client is concerned that the proposed development would set poor precedents for future development in the DCC area including:

1. Allowing primarily single use residential schemes to force out existing business which offer a local service and local employment.
2. Allowing the few pockets of employment and enterprise lands left in the city to be fully re-developed without any respect for or gesture towards existing uses, etc
3. Allowing plot ratio densities of as high as 4.2 without regard for the consequences of overdevelopment on existing areas and communities.
4. Allowing building heights which materially contravene the CDP.
5. Allowing public, private and communal open spaces which materially contravene the CDP.
6. Allowing a poor mix of units and too many small units which materially contravenes the CDP.
7. Allowing large scale schemes which offer little by way of planning gain on Z1 zoned lands.
8. Allowing large scale scheme to proceed when Ringsend WWTP continues to operate at and/or far beyond its existing capacity.

The proposed development should be refused planning permission and re-submitted to DCC as a standard planning application whereby our client can be combusted at all stages, etc

6.13 Issue 13: Proposal would depreciate the value of client's leases

Our client is concerned that the proposed development would seriously depreciate the value of their business.

The potential impact that a proposed development can have is recognised by the Planning Acts which include a reason for refusal reason 10, (c) of the Fourth Schedule 'Reasons for the Refusal of Permission which Exclude Compensation' of the Planning Acts 2000-2015:

In the case of development including any structure or any addition to or extension of a structure, the structure, addition or extension would— (c) seriously injure the amenities, or depreciate the value, of property in the vicinity.

The only basis for this revised SHD scheme to proceed is that the interests of the developer are placed above the needs of our client to remain in business at this location.

7.0 Conclusion

Our client owns and manages Storage World which is a successful business located in the existing business park/industrial estate within which the submitted SHD planning application is proposed.

No permission has been given by our client for this planning application to be made despite their ownership of two leases within the estate which include Rights of Way, etc.

As DCC is aware, in March 2020, Variation No. 23 of the Dublin City Development Plan 2016-2022 was adopted under which the White Heather Industrial Estate was rezoned from Zoning Objective Z6 to Zoning Objective Z1 and Zoning Objective Z9.

Our client opposed the re-zoning which they anticipated would impact negatively on their local business. Following the re-zoning, it became clear the estate would be the subject of a large re-development scheme. Despite formal requests from our client for Storage World to be included in this scheme such requests were refused on the basis that this would be contrary to the site's new zoning.

BPS and FP Logue Solicitors have reviewed this, and we consider that our client's repository self-storage business could have been incorporated into this site under the Z1 zoning. Our client's neighbourhood business, its local storage service and its jobs were simply not wanted.

The exclusion of Storage World has partly resulted in the submitted scheme being 99% residential, offering a poor mix of uses and being designed such that it is a standalone rather than a community focused development which integrates with existing uses, etc.

Such an approach would not have arisen if our client operated another business such as a supermarket. This would have been relocated in the scheme (as other SHDs such as Dundrum Village have done).

This Planning Observation Report confirms how the Applicant has gone to great lengths to try to make it appear that the estate contains only some old industrial units which will be "unused" if the scheme does not proceed. This could not be further from the truth.

Indeed, this scheme cannot progress while our client maintains their leases and as FP Logue puts it in the accompanying legal submission, this proposal could be viewed as frivolous given any planning permission arising cannot be implemented.

Our client was very disappointed that the pre-planning stage did not raise the possibility of incorporating Storage World into this scheme though they acknowledge how the Applicant carefully managed the process such that this option was never considered and/or presented. This arises from the SHD process which prevents Third Party involvement at an early stage. That the Applicant's various design reports show no attempt to respect the existing and established business and/or industrial context is no surprise. This has been always the Applicant's intention. That is, to remove all existing uses from the site.

This Planning Observation has set out how it would not be unduly difficult to incorporate our client's business into Block 6 of this scheme. It can be achieved in Phase 2 and no revisions are required to the internal road designs, etc. Only a loading bay needs to be installed instead of on road parking in one small area. It is acknowledged how these proposals are outside of the public notices for this scheme however they go to show how easily the Applicant could have incorporated our client's business thereby improving the mix of uses proposed on the site and offering future residents of what are very small units (whose overall mix is a material contravention of the CDP) on-site storage and the possibility of employment. Storage World's entrance could also enliven the street frontage at the entrance to the site and provide visual continuity between the existing Storage World signage and location and the proposed development.

This Planning Observation Report shows how our client has carefully reviewed every page of the Applicant planning application and has set out grounds for:

1. Why it should be invalidated.
2. Why it should be refused.
3. Why its proposals to materially contravene the CDP despite how on 2 March 2020, the City Council specifically varied the CDP in Variation No 7 to ensure that the CDP aligned with the NPF and RSES for the East and Midlands Region and shortly after this, Variation No. 23 was adopted to change the zoning on the subject site. Both of these variations post-date the NPF, the 2018 Height Guidelines and the Design Standards for New Apartments 2018 and therefore the City Council, when it adopted these variations, was subject to a statutory obligation to ensure consistency with the NPF and RSES and to apply SPGRs in the 2018 Height Guidelines and 2018 Apartment Guidelines which were in force at the time.

The Applicant proposals arise at a time when public faith in the planning system is faltering. The Player Wills and Bailey Gibson projects are both awaiting Judicial Review decisions because the schemes failed to offer proposals acceptable to local people and the Board made decisions which local people cannot understand and find unjustifiable.

The current proposals not only disrespect an existing locally successful landmark business which offers a local self-storage service (it is a community amenity) and employment in the heart of this community but they seek to disregard the DCC CDP 2016-2022 in multiple ways. This proposed cumulative stripping away at the CDP in ways that impact on local people and local businesses has no winner. It is bad for our client, bad for the adjoining and nearby environment, bad for adjoining and nearby properties and bad for future residents of the scheme.

The proposals cannot be argued to be in any way in line with the emerging planning policy as the proposals are wholly at odds with Chapter 5: 'Quality housing and sustainable neighbourhoods' of the Draft DCC CDP 2022-2028 which expresses concerns about over concentration of BTR within areas of the city. Planning policies are now sited in this section of the Draft Plan which raise significant concerns over whether this scheme which is proposed to be 100% BTR in an area already conspicuous in having high levels of BTR SHD

permissions is sustainable. The proposals are contrary to Policy Objective QHSN38 'Build to Rent Accommodation', to Policy Objective QHSN40 'Build to Rent Accommodation' and to Policy Objective QHSN42 'Build to Rent/Student Accommodation/Co-living Development' of the Draft CDP. The Applicant BTR scheme is wholly at odds with the Draft Dublin CDP 2022-2028 as it pertains to BTR planning policy. The proposals are sited in an area where there is already an over-proliferation of SHD permissions for BTR which is contrary to the creation of a sustainable community and will damage the local housing market.

This is a scheme which despite only being re-zoned in 2020 in controversial circumstances now basks in further controversy as it asks to be permitted to provide:

1. A plot ratio for this site of 4.2 which is 2.1 and 8.4 times the allowable plot ratio density for this site. Plot ratio is designed to provide a quick quantitative measure of the quantum of development. In this case it shows overdevelopment. The proposals are a material contravention of and are contrary to Section 16.5 'Plot Ratio' of the DCDP 2016-2022 which provides for an indicative plot ratio of 0.5 – 2.0 for Z1 zoned lands.
2. The proposals for building heights materially contravene Section 16.7 of the DCC CDP 2016-2022.
3. The scheme's private open space proposals materially contravene the DCC CDP 2016-2022 including Section 16.10.1 'Residential Quality Standards – Apartments'.
4. The current SHD proposal has 59% one beds and only 3% 3 beds. It also contains studios. This is a material contravention of Section 16.10.1 of the DCC CDP 2016-2022.
5. The scheme's public open space proposals materially contravene the DCC CDP 2016-2022 including Sections 16.10.3 and Section 16.3.4. This is further confirmed by reference to the abovementioned guideless and Urban Design Manual.

The Applicant has provided no acceptable basis or rationale for increasing the height of buildings on this site to above the DCC CDP 2016-2022 maximum standards, for a plot ratio of 4.2, for a poor unit mix and for poor public and private open space provision. For the above reasons, our client submits that the Board should not be permitted to materially contravene the DCC CDP 2016-2022. This planning application should be refused as the Applicant was given multiple opportunities at pre-planning to address these concerns and did not. A refusal would allow the scheme to be revised and re-submitted.

The refusal of this planning application would allow the Applicant to revise the scheme to include Storage World. The Storage World business is fully compatible with this scheme – more compatible than would be a supermarket, etc. The retention of Storage World's local jobs would be in line with all national, regional and local planning policies aimed at retaining existing business and jobs within communities including to address social exclusion issues.

7.1 Performance-based planning risk assessment conclusions

In this era of 'performance-based' standards in respect of the assessment of a proposed scheme's density, scale, height, massing, bulk, and parking, it is necessary to carry out a planning risk assessment in light of the likely performance of this scheme. BPS has carried out this assessment by assessing the scheme in light of its locational and planning context. The conclusions of this exercise are:

- There is a **substantial planning risk** that this scheme would impact negatively on an existing enterprise within the estate which offers a local self-storage service and local employment. This would be contrary to DCC CDP 2016-2022 policies – and national, regional and local planning policies – as they pertain to enterprise, jobs and social inclusion.
- There is a **substantial planning risk** that this scheme's proposed plot ratio density of 4.2 represents and is indicative of overdevelopment of the site which is manifested in poor open space provision within the Z1 zoned lands, a poor mix of units and excessive building heights. The scheme's density is excessive.
- There is a **substantial planning risk** that this scheme's proposed heights, scale, bulk and massing and close proximity of buildings to one another would be incompatible with the established character and pattern of development of adjoining residential developments which are of a substantially lower density. The abrupt increase in density has resulted in equally abrupt increases in scale, height and massing of the proposed apartment blocks.
- There is a **substantial planning risk** that this planning application proposes the excessive overdevelopment and over-scaling of a site suitable under the 'Building Height Strategy' for this area to accommodate buildings at substantially lower heights and scales.
- There is a **substantial planning risk** that this planning application proposes the excessive overdevelopment and over-scaling of the site that would significantly, negatively, and permanently impact on the visual amenities and visual environment of areas adjoining this site.
- There is a **substantial planning risk** that this planning application will create a congested residential scheme that maintains a cumulative height, scale, massing, and bulk that is monolithic in scale and wholly at odds with this backland site.

- There is a **significant planning risk** that the height, scale, massing and bulk of the proposed apartment block buildings will cause substantial and negative visual and visual overbearing impacts and overlooking impacts on adjoining and nearby residential properties.
- When the CGI images are viewed objectively, there is a **substantial planning risk** that the adjoining and surrounding properties will experience a substantial negative and permanent reduction in their existing residential and visual amenities.

Our client submits that following their assessment, the Applicant BTR planning application being a 100% BTR scheme in an area already suffering a proliferation of such SHD planning permissions represents too high a risk of causing significant and negative impacts on the area and the surrounding environment and would also risk providing only insufficient amenity to its proposed future residents, for ABP to consider granting planning permission.

8.0 Recommendation

In light of the above, BPS recommends that ABP either:

1. Refuse planning permission for the reasons given in Section 10.1 of this Planning Observation Report; Or
2. Condition substantial revisions to the scheme in line with the list set out in Section 10.2 of this Planning Observation Report.

Both options would provide for the scheme to be revised to comply with DCC CDP 2016-2022 planning policies and to allow the scheme to consider the inclusion of Storage World which would improve its mix of uses, provide a self-storage facility for residents in what are small units and to benefit from its jobs.

8.1 Recommended reasons for refusal

Our client submits that the proposed development should be refused for the following reasons:

1. The proposed development is located on a site for which the Dublin City Development Plan 2016-2022 contains density objectives. The plot ratio density proposals materially contravene the Development Plan, Section 16.5 'Plot Ratio' of the DCDP 2016-2022 which provides for an indicative plot ratio of 0.5 – 2.0 for Z1 zoned lands. The proposed plot ratio for this site of 4.2 is 2.1 and 8.4 times the allowable plot ratio density for this site. As such, the proposal would militate against the successful achievement of the objectives for the site as outlined in the County Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposal in its current form, by virtue of its density, design and layout would be contrary to and a material contravention of the Dublin City Development Plan 2016-2022. The following material contravention matters arise: (i) The scheme's private open space proposals materially contravene the DCC CDP 2016-2022 including Section 16.10.1 'Residential Quality Standards – Apartments'; (ii) The proposal has 59% one beds and only 3% 3 beds. It also contains studios. This is a material contravention of Section 16.10.1 of the DCC CDP 2016-2022; (iii) The communal open space proposals materially contravene the DCC CDP 2016-2022 including Policy GI33 read with section 16.10.1; (iii) The scheme's private open space proposals materially contravene the DCC CDP 2016-2022 including Section 16.10.1 'Residential Quality Standards – Apartments'; and (v) The scheme's public open space proposals materially contravene the DCC CDP 2016-2022 including Sections 16.10.3 and Section 16.3.4. This is further confirmed by reference to the abovementioned guideless and Urban Design Manual. It is considered that, by reason of the layout proposed, particularly the location and design of the public/communal/useable open spaces, the proposed development would result in a substandard form of development and would provide a poor level of amenity for future residential occupants. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The proposed development is located on a site for which the Dublin City Development Plan 2016-2022 contains 'Building Height Strategy' objectives. The proposals for building heights materially contravene the Development Plan. It is considered that the design, scale, height and massing of the proposed development is contrary to the objectives of the City Development Plan and the 'Building Heights Strategy' contained therein, including with Section 16.7. Having regard in particular to the scale, design, height, length and massing of the scheme which is up to 10 storeys and which would be the tallest landmark buildings in the immediate area, the development as proposed fails to incorporate design and layout elements which could help to absorb and mitigate the high landmark elements envisaged for this site, thereby militating against the successful integration of what are landmark high buildings. The development as proposed would, therefore, adversely impact on the amenity of the local area, the skylines enjoyed by adjoining properties and residential areas. As such, the proposal would militate against the successful achievement of the objectives for the site as outlined in the County Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
4. The proposals for a 100% Build to Rent scheme in an area with two existing planning permission for large Built to Rent Schemes within 3km are contrary to Chapter 5: 'Quality housing and sustainable neighbourhoods' of the Draft Dublin City Council Development Plan 2022-2028 including to Policy Objective QHSN38 'Build to Rent Accommodation', to Policy Objective QHSN40 'Build to Rent

Accommodation' and to Policy Objective QHSN42 'Build to Rent/Student Accommodation/Co-living Development'. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

5. The proposed development by reason of its height, design, scale, bulk, and massing and being located adjoining to a lower density and height residential areas, would comprise a dominant and visually incongruous scheme which would have a profound negative effect on the appearance and visual amenity of the local and wider area. The development as proposed would be inconsistent with and would adversely impact on the existing scale and established character of the local area and the existing scale and established character of this area. The proposal would contravene Section 16.7 of the Dublin City Development Plan 2016-2022 which seeks to ensure that all proposals for taller buildings make a positive contribution to the urban character of the county. The 'Building Heights Strategy' also requires that proposals demonstrate sensitivity to areas including to local residents. Furthermore, the proposal of itself would have an adversely overbearing visual impact on neighbouring residential properties in the vicinity of the site. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
6. The proposed development in its current form, by virtue of its density, proximity, scale, height and massing relative to adjoining and nearby residential dwellings, would be injurious to the residential amenities of these established properties. The impacts would include visual impact, visual overbearing, overlooking and loss of privacy. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
7. It is considered that the proposed development, by reason of the monolithic nature of its design, and by reason of its height orientation, scale, and massing on a constrained site, would constitute significant overdevelopment of a site of particular heritage sensitivity. The proposed development would, therefore, conflict with the provisions of the development plan, would adversely impact on residential amenity, would provide a poor quality of residential amenity for future residents, would seriously injure the residential and other amenity of the area and would be contrary to the proper planning and sustainable development of the area.
8. It is a policy of the planning authority as set out in the Dublin City Development Plan 2016-2022 to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas. In promoting more compact, good quality, higher density forms of residential development, it is the policy to have regard to the policies and objectives contained in 'Sustainable Residential Development in Urban Areas' and the 'Urban Design Manual - A Best Practice Guide'. Furthermore, it is a requirement of the Plan that new residential development minimises any adverse effect on protected structures in terms of height, scale, massing and proximity in order to enhance and protect these structures and their settings. It is considered that the proposed development, by reason of the design, height orientation, scale, and massing, would cause unacceptable overbearing impacts on nearby properties, would constitute significant overdevelopment of the site. The proposed development would, therefore, conflict with the provisions of the development plan, would adversely impact on adjoining residential amenity and would, thereby, be contrary to the proper planning and sustainable development of the area.
9. Having regard to advice in the Sustainable Urban Housing Design Standards for New Apartments Guidelines and the car parking standards in the Dublin City Development Plan 2016 - 2022, the proposal would fail to provide at least one car parking space per room or any adequate parking provision, would be sub-standard in terms of car-parking provision and be likely to lead to overspill car parking in the surrounding area. The proposed development would endanger public safety by reason of a traffic hazard and would, therefore, be contrary to the proper planning and sustainable development of the area.

8.2 Revisions required by condition in the event of a grant of planning permission

In light of the above, BPS notes that the following revisions to the scheme would be needed to address our client's concerns:

1. Block 6 needs to incorporate Storage World. This would improve the mix of uses on the site and offer a self-storage service for future residents of the scheme.
2. The scheme's plot ratio needs to be reduced and the scheme's communal open space, public open space and private open space need to be increased and improved in quality, layout and facilities provision. This would require the removal of a building from the scheme and a reduction in heights.
3. The scheme's building heights need to be reduced to align with the CDP.
4. The unit mix needs to be improved to align with the CDP.

8.3 No option to request further information

BPS notes that the Board has no option to request Further Information and clear and significant planning concerns remain. It is not clear to BPS how the extent of changes required could be addressed by way of condition. We note that this situation was recently encountered under ABP's refusal decision, reg. ref. PL29N.307257, in respect of a proposal for the construction of 438 no. apartments, childcare facility and

associated site works at Saint Columban's and No. 25 Hole in the Wall Road, Donaghmede, Dublin 13. The Planning Inspector's Report⁷ states in recommending refusal:

*I have serious concerns regarding the proximity of the proposed blocks to the south eastern boundary, the elevational treatments, the amenity value of the courtyards (Podium gardens), residential amenities of proposed units within the scheme due to the cramped nature of the layout. **While it may be possible to address these issues by amending the scheme there is no facility for FI under SHD.** Furthermore the required amendments to the scheme to address the issues outlined above would have implications for unit mix and dual aspect etc. **Therefore based on the above I am recommending that permission be refused** [emphasis added].*

The Applicant was offered the opportunity after pre-planning to adequately reduce the scale of this scheme and they have not done so. It is not the Board's job to accept compromised schemes arising from the intransigence of Applicants. Refusal followed by the re-submission of a revised scheme is the proper way forward.

BPS Planning Consultants LTD

Members of the Irish Planning Institute

16 May 2022

⁷ <http://www.pleanala.ie/documents/reports/307/R307257.pdf>

Appendix 1: Copies of two leases held by DTW Capital at Unit Nos. 295 and 297, Whiteheather Industrial Estate, South Circular Road, Dublin 8, Do8 WR9T



Stamp Certificate

Document ID:	140069030U	Date Issued:	26/08/2014
Stamp Certificate ID:	14-0371731-0FBF-300714-D	Notice Number:	61795441-523890
Duty:	€ 612.50		
Interest:	€ 0.00		
Total:	€ 612.50		
Date of Execution of Instrument:	30/07/2014		
Parties From:	HILTON PASLEY & CO. LTD		
Parties To:	DTW CAPITAL LIMITED		
Property	295 Whiteheather Industrial Estate, South Circular Road		
	Non Residential: Rent: € 60,000.00	Duty: € 600.00	
	Rent Review: € 12.50		

Revenue 

DATED THIS 30th DAY OF July 2014

(1) HILTON PASLEY & COMPANY LIMITED

("the Landlord")

(2) DTW CAPITAL LIMITED trading as Storage World Dublin

("the Tenant")

LEASE

OF

Unit 295, White Heather Industrial Estate, South Circular Road,
Dublin 8.

WHITNEYMOORE

Solicitors
Wilton Park House
Wilton Place
Dublin 2

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THIS LEASE made the 7th day of July Two Thousand and Fourteen BETWEEN

HILTON PASLEY & COMPANY LIMITED having its registered office at 307a South Circular Road, Dublin 8. (hereinafter called "the Landlord") of the first part and **DTW CAPITAL LIMITED, trading as STORAGE WORLD, Dublin** having its registered office at 37 Blackburne Square, Rathfarnham Gate, Rathfarnham, Dublin 14 (hereinafter called "the Tenant") of the second part.

WITNESSES AS FOLLOWS:-

1. INTERPRETATION AND CONSTRUCTION

1.1 Interpretation

In this Lease save where the context otherwise requires the following definitions apply:-

"Additional Sums" means the contribution to insurance premiums to be paid by the Tenant to the Landlord in accordance with Clause 3.2.1 and 3.2.2 and service charge in accordance with Clause 3.2.3 and any other payments due by the Tenant in accordance the terms of this Lease.

"Building Regulations" means the Building Control Act 1990 and any statutory extension modification amendment or re-enactment of such Act for the time being in force and any statutory instruments regulations or orders made or issued under any such Act or Acts

"Common Areas" means the roadways, pathways, car parks, the Utilities, the Conduits, Plant and Equipment and any other parts of White Heather Industrial Estate ("the Estate") used in common by the Landlord, the Tenant and other occupiers and unit within the Estate.

"Conduits" means all sewers drains pipes gutters gullies ducts conduits watercourses channels flues wires cables and other forms of conducting media

"Demised Premises" means the hereditaments and premises described in the First Schedule to this Lease

"Gale Day" means any day on which the rent reserved by this Lease becomes payable

"Insured Risks" means loss or damage by fire lightning explosion aircraft (or other aerial device) or articles dropped from them storm earthquake tempest flood bursting and overflowing of water or sewage pipes tanks and other media and apparatus strikes lock-out impact from road vehicles riot civil commotion damage by malicious persons and three years loss of rent in respect of the Demised Premises and such other risks (including engineering, public liability and/or property owners liability) as the Landlord may from time to time consider prudent or desirable

"the Landlord" includes the person for the time being entitled to the reversion immediately expectant upon the term granted by this Lease and any provisions requiring the consent of the Landlord are deemed to require also the consent of the Superior Landlord when necessary

"Landlord's Surveyor" means the person or persons appointed from time to time by the Landlord for the purposes specified in this Lease

"Nearby Premises" means all the lands and premises or any part of them adjoining opposite or near the Demised Premises and any buildings or structures or any part of any buildings or structures now or become erected on such lands and premises.

"Permitted Use" means as use as a warehouse for commercial and domestic self storage and offices.

"Planning Acts" means the local government (Planning & Development) Acts, 1963 to 1998 and the Planning and Development Acts 2000 to 2007 and any statutory extension modification amendment or re-enactment of any such Act or Acts for the time being in force and any statutory instruments, regulations or orders made or issued under any such Act or Acts

"Prescribed Rate" means the rate per centum per month which shall exceed by one eight per centum per month the monthly rate of interest for the time being chargeable under Section 1080 of the Taxes Consolidation Act 1997 (or such other monthly rate of interest as may from time to time be chargeable upon arrears of tax)

"Superior Landlord" includes any person or persons who now have or who may acquire a title to the Demised Premises mediately or immediately expectant upon the termination of the Landlord's term and any mortgagee of such persons or of the Landlord

"the Tenant" includes the successors in title and permitted assigns of the Tenant and in the case of an individual his personal representatives and if the tenant for the time being is more than one person then it includes each of them and the covenants expressed to be made by the Tenant shall then be deemed to be made by such persons jointly and severally

"Utilities" means water, water-tanks, soils and waste of all kinds, gas electricity internal telephone and other communication systems radio television fire fighting and fire prevention systems and equipment connected to the Demised Premises (including any plant machinery apparatus and equipment to operate or required for the Utilities).

"VAT" Value Added Tax as applied under the Value Added Tax Act 1972 as amended or any similar tax substituted therefore.

1.2 **Construction**

In this Lease references:

- 1.2.1 to a specific statute include (in the absence of any provision to the contrary in this Lease) any statutory extension modification amendment or re-enactment of that statute and any statutory instruments regulations or orders made under it and any general reference to "statute" or "statutes" includes any derivative statutory instruments regulations or orders
- 1.2.2 to the expiry of the term of this Lease or to the last year of the term of this Lease are to the end of the term granted by this Lease and the last year of the term of this Lease however the term comes to an end whether by effluxion of time or in any other way
- 1.2.3 to Conduits being "in" or "on" certain property include Conduits in on under over or through that property
- 1.2.4 to "damage" or "damaged" includes destruction or destroyed

- 1.2.5 to a clause or to a sub-clause or to a Schedule or part of a Schedule are unless the context otherwise requires to a clause sub-clause Schedule or part of a Schedule to this Lease as the case may be and the Schedules are deemed to form part of this Lease
- 1.2.6 to "Institute of Chartered Accountants in Ireland", "Society of Chartered Surveyors in the Republic of Ireland", "Irish Auctioneers' and Valuers' Institute" or "Law Society of Ireland" includes any other bodies established from time to time in succession or substitution for each of the said bodies or carrying out the functions currently carried out by each of them
- 1.2.7 to "this Lease" means these presents and any document which is made supplemental to these presents or which is entered into pursuant to or in accordance with these presents
- 1.3 Any right of the Landlord may (in the absence of any provision to the contrary in this Lease) also be exercised by any person expressly or by implication authorised by the Landlord or who is or becomes entitled to exercise it including without limitation the Superior Landlord
- 1.4 Any consent approval or authorisation to be given by the Landlord must be in writing and signed by the Landlord or on its behalf if it is to be effective under this Lease
- 1.5 Save where the context otherwise requires words importing one gender include all other genders and references to the singular include the plural and vice-versa and words importing persons include firms corporations and companies and vice-versa
- 1.6 Any covenant by the Tenant not to do any act or thing includes an obligation not to permit or allow that act or thing to be done by another person
- 1.7 The headings in this Lease are for convenience of reference only and are not to be taken into account in the construction or interpretation of this Lease
2. **DEMISE**

2.1 In consideration of the rent covenants and conditions to be paid performed or observed by the Tenant the Landlord hereby demises unto the Tenant **ALL THAT** the Demised Premises and the Landlords fixtures and fittings in the Demised Premises **TOGETHER WITH** the easements and rights specified in the Second Schedule **EXCEPTING AND RESERVING** at all times to the Landlord the exceptions reservations easements and rights specified in the Third Schedule

2.2 **Habendum**

TO HOLD the same (excepting and reserving as aforesaid) unto the Tenant for the term of 15 years from and including the 30th day of July Two Thousand and Fourteen.

2.3 **Reddendum**

YIELDING AND PAYING from the 30th day of July Two Thousand and Fourteen unto the Landlord during the first five years of the term the yearly rent of €60,000.00 (Sixty Thousand Euro) plus VAT and thereafter during each of the successive periods of five years of which the first shall begin on the 30th day of July 2019 a yearly rent equal to:

- (a) the yearly rent payable under this Lease during the preceding year, or
- (b) such revised yearly rent as may from time to time be ascertained in accordance with the provisions of the Fourth Schedule hereto

AND the rent is to be paid by equal quarterly payments in advance by Standing Order on the 1st day of January, the 1st day of April, the 1st day of July and the 1st day of October in each year (hereinafter called "the quarter days") the first payment in respect of the period from the 30th July 2014 to 30th September 2014 to be made on the execution hereof

AND ALSO YIELDING AND PAYING to the Landlord by way of additional rent on demand the Additional Sums.

3. **TENANT COVENANTS**

The Tenant hereby covenants with the Landlord as follows:-

3.1 **Rent**

To pay the reserved yearly rent or such revised yearly rent as may from time to time be ascertained in accordance with the provisions of the Fourth Schedule (whichever shall

be greater) in the manner and at the times specified in this Lease and without any deduction or exercise of any right or claim of set-off

3.2 Additional Sums

To pay to the Landlord by way of additional rent:-

3.2.1 The amount expended by the Landlord in insuring the Demised Premises in the full reinstatement value thereof fixed by the Landlord against the Insured Risks such payment to be made on demand.

3.2.2 The amount expended by the Landlord in insuring against three years loss of rent in respect of the Demised Premises such payment to be made on demand.

3.2.3 Service charge in the amount of €4,115.00 plus VAT per annum by equal quarterly payments in advance for the first five years and thereafter during each of the successive periods of 5 years, of which the first shall begin on the 201 a yearly service charge equal to the higher of:-

- (a) the yearly service charge payable under the Lease during the preceding year.
- (b) such revised yearly service charge as may be ascertained based on the General Consumer Price Index.

3.3 Outgoings and Taxes

To pay discharge and indemnify the Landlord against:

3.3.1 All rates taxes assessments impositions duties charges obligations and outgoings whatsoever (whether statutory parochial local or of any other description) which are now or may at any time during the term granted by this Lease be charged assessed imposed or payable in respect of all or any part of the Demised Premises or upon the owner or occupier of it except those which the owner is bound to pay notwithstanding any contract to the contrary and an apportioned part as determined by the Landlords Surveyor of any rates taxes assessments impositions duties charges obligations and outgoings which are now or may at any time during the term granted by this Lease be charged assessed imposed or

payable in respect of the Demised Premises together with other property or on the owners and occupiers of the Demised Premises and other property

- 3.3.2 Any Value Added Tax chargeable (including penalties and interest) or payable or exigible on the grant or delivery of this Lease or chargeable on any rents or payment made or due by the Tenant under the Lease and on any payment where the Tenant agrees or is liable to reimburse the Landlord for such payment.

In the event that VAT legislation in force at the relevant time provides the Landlord with an option to charge VAT on the grant of the Lease or on the rents or other sums payable thereunder the Landlord hereby notifies the Tenant that they are opting to tax the Lease and that VAT shall be chargeable on any rents or other sums payable under this Lease. The Tenant agrees to pay any VAT properly chargeable on such amounts in accordance with the VAT Act 1972, as amended.

- 3.3.3 Any value added tax chargeable on any rents or payment made or due by the Tenant under this Lease and on any payment made by the Landlord where the Tenant agrees or is liable to reimburse the Landlord for such payment

3.4 Supplies

To pay to the suppliers and to indemnify the Landlord against all charges for water electricity gas oil telephone and other supplies consumed or used on or in relation to the Demised Premises and in particular the Tenant Utilities including any connection charges hiring charges and meter rents and at the Tenant expense to perform and observe all present and future regulations and requirements of the electricity gas and water supply authorities or boards and to keep the Landlord indemnified against any breach non-performance and non-observance thereof.

3.5 Stamp Duty and Registration

To pay and indemnify the Landlord against stamp duty payable on this Lease and the counterpart and any extension or renewal of this Lease including any penalties interest and fines and to pay and indemnify the Landlord against the cost of registration (if any) of this Lease and the counterpart

3.6 Interest

Without prejudice or limitation in any way to any of the Landlord's other rights powers and remedies whether under this Lease or otherwise to pay interest on the rents (including the Additional Sums) whether formally demanded or not and on any other sum reserved or made payable under this Lease that is or are not paid within fourteen days of the day and in the manner prescribed in this Lease for payment of same at the Prescribed Rate or if there is no such rate the corresponding or nearest appropriate rate at the date upon which any such sum falls due or becomes payable or if there is no such rate ten (10) per cent per annum; such interest to be paid (both before and after any judgement) from and including the day immediately following the day on which such unpaid rent or sum becomes due or payable to the date of actual payment to the Landlord calculated on a daily basis

3.7 Repairs

3.7.1 To repair and to put and keep in good and substantial order repair and condition and renew where appropriate the Demised Premises and every part of it (including without limitation) all additions and improvements to the Demised Premises and the fixtures and fittings in and appurtenances to the Demised Premises PROVIDED ALWAYS that nothing in this Lease shall oblige the Tenant to put the Demised Premises into any better state of condition than that specified in the Schedule of Condition attached at the Fifth Schedule hereto.

3.7.2 To keep all water pipes in the Demised Premises reasonably protected from frost and to pay and to be responsible for and to indemnify the Landlord against all loss or damage arising from or in connection with the bursting overflow leaking or stopping up of Conduits occasioned by any act neglect omission or default of or by the Tenant or of or by any person at the Demised Premises expressly or by implication with the authority of the Tenant

3.8 Cleaning and Decoration

3.8.1 To clean the Demised Premises and to keep it clean neat and tidy at all times

3.8.2 Not to allow any refuse or rubbish on all or any part of the Demised Premises which is or may become unclean unsightly noise some or offensive or may detract from the quality or amenity of the Demised Premises or of the Nearby Premises

and so often as is necessary or in the opinion of the Landlord desirable to remove all refuse and rubbish from the Demised Premises

3.8.2 To clean both sides of the windows and window frames in the Demised Premises as often as shall be necessary

3.8.4 To put and keep the Demised Premises in first class decorative order repair and condition throughout and to maintain a clean attractive appearance at all times in the interior and exterior of the Demised Premises

3.8.5 During the fifth year and thereafter in every succeeding fifth year of the term granted by this Lease and in the last year of the said term (whether determined by effluxion of time or otherwise howsoever) to redecorate the interior of the Demised Premises in a good and workmanlike manner and with suitable materials of high quality (and in the case of those parts of the Demised Premises previously or usually painted with three coats of high quality paint based on oil) to the satisfaction of the Landlord acting reasonably and to clean wash down and polish all tiles glazed bricks and washable surfaces of the Demised Premises to the satisfaction of the Landlord and subject to clause 3.8.6 below in every succeeding fifth year of the term granted by this Lease and in the last year of the said term (whether determined by effluxion of time or otherwise howsoever) to redecorate the exterior of the Demised Premises and the shop front in a good and workmanlike manner and with suitable materials of high quality (and in the case of those parts of the exterior of the Demised Premises and the shop front previously or usually painted with three coats of high quality paint based on oil) to the satisfaction of the Landlord and as to external work to the approval of the Landlord as to colour and appearance

3.8.6 Not to alter the external appearance of the Demised Premises without the prior written consent of the Landlord which consent shall not be unreasonably withheld.

3.9 Alterations

3.9.1 Not to make any addition improvement or alteration to the Demised Premises that affects the structure, any load bearing part or the foundations of the Demised Premises

3.9.2 Not to erect any new building or structure on the Demised Premises nor unite the Demised Premises with any adjoining property

3.9.3 Not to make any addition improvement or alteration to the Demised Premises (including without prejudice to the generality of the foregoing the internal layout of the Demised Premises) or to the Landlords fixtures and fittings or to any of the Conduits that is not prohibited by the absolute prohibitions contained in clauses 3.9.1 and 3.9.2 unless:

- (a) the consent of the Landlord has been obtained such consent not to be unreasonably withheld or delayed
- (b) all necessary permissions consents and certificates (including without limitation fire safety certificates) from any public statutory local or other authority have been obtained and all necessary notices have been properly served on any such authority
- (c) the Landlord has been supplied with drawings (including without limitation a complete copy of the application for any fire safety certificate) and where appropriate a specification in duplicate prepared by a qualified Architect or Engineer who must regularly inspect the work to completion
- (d) the proper fees of the Landlord and any Superior Landlord and their respective professional advisers have been paid in relation to the application for consent
- (e) such covenants and undertakings as the Landlord may require in connection with the carrying out and completion of the addition improvement or alteration being entered into

3.9.4 To pay any increased insurance premiums arising from or in connection with any addition improvement or alteration to the Demised Premises

3.9.5 At the expiry or sooner determination of the term granted by this Lease or in the

case of a breach of the foregoing covenants of this Clause 3.9 to remove any addition improvement or alteration made to the Demised Premises if requested by the Landlord to do so and to reinstate and make good any part of the Demised Premises damaged by the removal and if the Tenant fails or refuses to comply with the foregoing within 21 days after such request by the Landlord then the Landlord and its servants contractors agents and workmen may enter the Demised Premises and remove such additions improvements or alterations and reinstate and make good any part of the Demised Premises damaged by the removal and all fees charges costs and expenses of so doing (including without limitation any legal fees and costs and surveyors' fees incurred) shall be a debt due from the Tenant to the Landlord repayable to the Landlord by the Tenant on demand and failing such payment recoverable by action or by distress as rent in arrears

3.9.6 Not to commit any waste of the Demised Premises unless it is permitted by virtue of a consent under sub-clause 3.9.3 (a)

3.9.7 Not to install place or erect any sunblind canopy shade window-box or awning on the exterior of the Demised Premises

3.10 Access for Landlord and notice to repair

3.10.1 To permit the Landlord and all persons authorised by the Landlord at all reasonable times and on reasonable notice in writing and at any time without notice in the case of emergency to enter the Demised Premises (with or without plant equipment and materials) to ascertain whether the provisions of this Lease have been observed and performed or to take inventories of the Landlord's fixtures and fittings in the Demised Premises or to view and examine the state of repair and condition of the Demised Premises

3.10.2 To repair clean decorate and make good the Demised Premises to the satisfaction of the Landlord (and in accordance with the covenants and obligations on the part of the Tenant contained in this Lease) as required by written notice given to the Tenant or left at the Demised Premises specifying any repairs maintenance or decoration that the Tenant has failed to carry out or defects or breaches of covenant which the Tenant has failed to remedy within 60 days after such notice

is given or left or sooner if required in such notice

3.10.3 Without prejudice to the right of re-entry contained in this Lease or any other rights powers and remedies of the Landlord to allow the Landlord and all persons authorised by the Landlord to enter the Demised Premises to carry out the work needed to comply with such notice and to pay on demand to the Landlord all fees charges costs and expenses of doing so (including without limitation any legal fees and costs and surveyors' fees incurred) if:

- (a) within twenty one (21) days of service of the written notice (or as soon as possible in the case of emergency) the Tenant has not begun or are not diligently continuing to complete the work referred to in the notice or
- (b) the Tenant fails to complete the work within sixty (60) days of service of the written notice or such shorter period specified in the written notice or
- (c) in the Landlord's opinion the Tenant is unlikely to complete the work within sixty (60) days of the service of the notice or such shorter period specified in the written notice

AND the said fees charges costs and expenses shall be a debt due from the Tenant to the Landlord repayable to the Landlord by the Tenant on demand and failing such payment recoverable by action or by distress as rent in arrears

3.11 Access for Necessary Works.

To permit the Landlord and all persons authorised by the Landlord at all reasonable times and on reasonable notice in writing and at any time without notice in the case of emergency (with or without plant equipment and materials) to enter the Demised Premises to carry out work to any part of or for the benefit of the Nearby Premises which cannot reasonably be carried out without access to the Demised Premises or to exercise any right granted to or excepted or reserved by the Landlord in this Lease or for any other necessary or reasonable purpose as often as occasion may require in each case causing as little damage to the Demised Premises as reasonably practicable and making good all damage occasioned to the Demised Premises but without compensation for loss damage or inconvenience to the Tenant or its business.

3.12 Use

3.12.1 Not without the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed) to use the Demised Premises or any part of the Demised Premises for any purpose except for the Permitted Use and at all times to carry on the Permitted Use to the highest quality business standards and tone

3.13 Nuisance

Not to do in or about or allow to remain upon the Demised Premises anything which may constitute or become a nuisance or which may cause inconvenience disturbance or annoyance to the Landlord or owners Tenant or occupiers of Nearby Premises which may cause damage to any Nearby Premises

3.14 Pollution

3.14.1 Not to discharge into any Conduits any oil or grease or any deleterious or objectionable matter or substance or any effluent or other substance that may obstruct them or cause damage corrosion danger harm or injury to any person or property

3.14.2 To comply at all times with all statutory requirements of the Waste Management Regulations

3.15 Alienation

3.15.1 Not to part with or share the possession or occupation of the Demised Premises or any part of it nor to permit another to occupy the Demised Premises or any part of it as licensee or otherwise nor to hold the Demised Premises or any part of it in trust for another

3.15.2 Not to assign underlet mortgage or charge part only of the Demised Premises

3.15.3 Not to assign or underlet the whole of the Demised Premises without the prior consent of the Landlord (such consent not to be unreasonably withheld) and if required by the Landlord subject to the proposed assignee or underlessee providing all relevant information requested and subject to the following

provisions:

3.15.4 In the case of an assignment to a limited liability company it shall be reasonable for the Landlord to require that two directors or other sureties of standing satisfactory to the Landlord shall join in such consent as aforesaid as sureties for such company in order jointly and severally to covenant with the Landlord in such manner as the Landlord may in its reasonable discretion determine

3.15.5 In the case of an underlease the same shall be of the entire of the Demised Premises at the then current market rent or the rent payable under this Lease at the time of the granting of such underlease (whichever is the higher) without any deduction whatsoever and without a fine or premium and before any permitted underletting the Tenant shall ensure that the underlessee enters into a direct covenant with the Landlord to perform and observe all the covenants (other than that for the payment of the rent reserved by this Lease) and conditions contained in this Lease and every underlease shall (without prejudice to the generality of the foregoing) specifically contain the following:-

- (a) an unqualified covenant prohibiting the underlessee from parting with possession or permitting another to share or occupy or hold on trust for another the underlet premises or any part of them
- (b) a covenant on the part of the underlessee not to assign or underlet the whole of the underlet premises without the prior consent of the Landlord
- (c) a covenant imposing in relation to any permitted assignment or underlease the same obligations for consent and registration with the Landlord as are in this Lease in relation to dispositions by the Tenant
- (d) a covenant condition or proviso under which the rent reserved by the underlease shall be reviewed on an upwards only basis at least every five years and if every five years the Review Date as defined in the Fourth Schedule to this Lease shall be the date which is six months after the Review Dates in this Lease but otherwise in the same terms as provided in this Lease

- (e) a covenant or provision that the rent from time to time payable under the underlease shall not be less than the rent from time to time payable under this Lease save for the six monthly period between the Review Dates of this and the underlease as provided above
- (f) covenants and conditions in the same terms as nearly as circumstances admit to those contained in this Lease and a covenant by the underlessee (which the underlessor hereby covenants to enforce) prohibiting the underlessee from doing or allowing any act or thing upon or in relation to the underlet premises inconsistent with or in breach of the provisions of this Lease
- (g) a covenant condition or proviso for re-entry by the Landlord and/or by the underlessor on breach of any covenant by the underlessee

3.15.6 In relation to any permitted underlease to enforce at the Tenant's own expense the observance and performance by every underlessee of the provisions of the underlease and not at any time to waive any breach of the covenants or conditions on the part of any underlessee or assignee of any underlease nor without the consent of the Landlord (such consent not to be unreasonably withheld) to vary the terms of any permitted underlease

3.15.7 Within 14 days of any assignment mortgage charge underlease or any transmission or other devolution or disposition mediate or immediate of or relating to the Demised Premises to produce for registration and leave with the Landlord's solicitor a certified copy of any relevant document and to pay to the Landlord's solicitor and the Landlord's Surveyor their reasonable costs in connection with such assignment mortgage charge underlease transmission or other devolution or disposition together with value added tax thereon

3.15.8 The Landlord may withhold its consent under any provision of this clause 3.15 if the Tenant is in breach of any of the covenants and conditions contained in this Lease and on the Tenant's part to be observed and performed

3.15.9 The parties hereby agree that the Landlord shall be considered to reasonably withhold consent if the Tenant proposes to assign, sub-let or otherwise alienate the Demised Premises howsoever arising where such assignment, sub-let or other alienation would give rise to an irrecoverable VAT cost for the Landlord (including but not limited to any claw-back of VAT previously reclaimed by the Landlord or a VAT liability in relation to the Demised Premises). The Landlord shall not withhold consent to any alienation where the Tenant compensates the landlord for any VAT cost that arises from such alienation of the property.

3.15.10 The Tenant agrees to indemnify the Landlord against any irrecoverable VAT or any claw-back of VAT arising to the Landlord together with interest or penalties arising as a result of any breach of clause 3.15.

3.16 Restrictions in use

3.16.1 Not to play or use at the Demised Premises any apparatus that produces sound audible outside it nor to display any flashing lights at the Demised Premises visible outside it

3.16.2 Not to trade or to place or hang goods or articles on the areas outside or nearby the Demised Premises

3.16.3 Not to sleep on the Demised Premises nor use it as a residence nor keep any animal on it nor to use the Demised Premises for any dangerous noisy noxious or offensive trade business or occupation nor for any illegal or immoral purpose nor to permit any sale by auction or any "fire sale" "bankruptcy sale" "closing down sale" or any similar sale to be held on the Demised Premises nor to use it as a fast food or take-away outlet nor as a fish and chip shop or as a bookmakers office

3.16.4 Not at any time to sell or permit to be sold intoxicating liquor whether for consumption on or off the Demised Premises or as a club

3.17 Aerials Signs and Advertisements

3.17.1 Not to erect or affix any aerial pole mast disk or wire on the exterior of the Demised Premises without the Landlord's prior consent

3.17.2 Not to display any sign poster writing or advertisement of any kind on the Demised Premises without the prior approval of the Landlord such approval not to be unreasonably withheld in the case of signs and advertisements relating to the trade or business carried on at the Demised Premises **PROVIDED THAT** all necessary permissions certificates and approvals under the Planning Acts and Building Regulations have been obtained and complied with

3.18 Statutory Requirements

At all times during the term granted by this Lease at the Tenant own expense to observe and comply with the provisions and requirements of any and every statute and enactment for the time being in force whether already or in the future and any and every order regulation statutory instrument and bye-law already made or in the future to be made under or in pursuance of any such statute or enactment so far as they relate to or affect the Demised Premises or the user thereof for any purpose or the employment therein of any person or persons or any fixtures plant machinery equipment or chattels for the time being in on or affixed to the Demised Premises or used by the Tenant and whether such observance or compliance shall be properly directed or necessary to be done or executed by the owner landlord tenant or occupier of the Demised Premises and at all times to indemnify the Landlord against all costs charges expenses claims demands and liabilities in respect thereof

3.19 Statutory Notices

3.19.1 To produce to the Landlord a copy of any notice permission certificate order or proposal issued to the Tenant or served upon the Demised Premises by any government department local public or other authority or court of competent jurisdiction within seven (7) days of receipt and if required by the Landlord to produce the original document to the Landlord.

3.19.2 Without delay and at the cost of the Tenant to take all steps to comply with such notice permission order or proposal and at the request of the Landlord to make or join with the Landlord in making any reasonable representations that the Landlord requires at the Landlord's cost (if they do not affect the Tenant's business) against or in respect of the notice order permission or proposal

3.20 Planning

In relation to the Planning Acts and the Building Regulations:

- 3.20.1 Not to do or to omit anything on or in connection with the Demised Premises the doing or omission of which is a contravention of the Planning Acts or of the Building Regulations or of any notices orders licences consents permissions fire safety certificates and conditions (if any) served made granted or imposed under or by virtue of the Planning Acts or the Building Regulations and at all times to indemnify and keep indemnified the Landlord against all actions proceedings liabilities costs charges expenses claims and demands whatsoever arising directly or indirectly from any breach non-performance or non-observance of this covenant
- 3.20.2 To comply at all times during the term granted by this Lease at the expense of the Tenant with the provisions and requirements of the Planning Acts and of the Building Regulations and of all licences consents permissions approvals certificates and fire safety certificates (if any) granted issued or imposed under the Planning Acts or in connection with the Building Regulations in so far as the same respectively relate to or affect the Demised Premises or any part thereof or the user of the Demised Premises or any operations works acts or things already or in the future to be carried out executed or done on or to the Demised Premises or any part thereof
- 3.20.3 To serve all such notices and obtain and comply with all necessary licences consents permissions approvals certificates and fire safety certificates as may be required (in each case at the expense of the Tenant) for the carrying out or making of any alterations improvements additions in or to the Demised Premises or the user or any change of user of the Demised Premises **PROVIDED** that no application for planning permission shall be made or implemented without the previous consent in each case of the Landlord
- 3.20.4 To produce to the Landlord or its surveyor all plans documents certificates and other evidence (including without limitation proper certificates of compliance from a qualified architect or engineer) reasonably required by the Landlord in order to satisfy itself that the provisions of this clause 3.20 have been complied with in all

material respects within fourteen (14) days of a request by the Landlord or its surveyor

3.21 Equipment

Not to install or use on the Demised Premises any equipment which causes noise or vibration or smells detectable outside the Demised Premises or which causes any damage to the Demised Premises or any Nearby Premises

3.22 Vending Machines

Not to install outside or adjacent to the Demised Premises any coin operated vending machine or similar device whether for providing merchandise entertainment or amusement or for weighing or communicating or otherwise

3.23 Landlord's Costs

To pay to the Landlord all reasonable fees costs charges and expenses (including without limitation those payable to solicitors and architects) incurred or payable by the Landlord (and/or the Superior Landlord) arising out of or in connection with or incidental to:-

3.23.1 every application or request made by the Tenant for consent or approval whether it is granted refused offered subject to any qualification or withdrawn

3.23.2 in relation to or in contemplation of the preparation and service of any notice or of any proceedings under Section 14 of the Conveyancing and Law of Property Act, 1881 (whether or not any right of re-entry or forfeiture has been waived by the Landlord or the Tenant have been relieved under the provisions of that Act)

3.23.3 any steps taken in conjunction with the preparation and service of all notices and Schedules relating to any breach of the Tenant covenants in this Lease whether as to repair decoration or otherwise and whether served during or after the expiration or sooner determination of the term granted by this Lease

3.23.4 the recovery or attempted recovery of arrears of rents or other sums properly due from the Tenant and notwithstanding the generality of the foregoing the enforcement of any of the Tenant's covenants in this Lease

3.24 Encroachments

Not to stop up darken or obstruct any doors entrances windows or openings of or on or light belonging to the Demised Premises and to take all reasonable steps to prevent any encroachments being made or any easement or other right being acquired on under or over the Demised Premises or any part of it and to notify the Landlord immediately if any is attempted or threatened

3.25 No obstructions

3.25.1 Not to store or to leave goods or refuse in or otherwise to obstruct any of the roads footpaths access ways or fire escape routes abutting adjoining nearby or serving the Demised Premises

3.25.2 Not to obstruct or interfere with access to or the use of any Conduits or Utilities

3.25.3 Not to do or permit any act or thing to be done whereby any road car-park forecourt yard staircase passageway or other areas nearby or appurtenant to or for use in conjunction with the Demised Premises and any Nearby Premises may be damaged or obstructed or whereby the fair use thereof by others may be hindered or obstructed in any manner whatsoever

3.26 Dangerous Materials

To observe all statutory provisions and all provisions contained in any regulations made by any competent authority or by the Landlord or in any policy of insurance with regard to the storage and use of petrol gas and other explosive inflammable or dangerous oils substances or matters by the Tenant or its sub-tenants/licensees, invitees and customers.

3.27 Indemnity

To take out and maintain at all times during the term a policy of insurance covering public liability and employers liability, in respect of and covering the liability of the Landlord or its Agents and the Tenant in respect of the Demised Premises in an amount of not less than the amount to be adjusted from time to time as the Landlord deems necessary and to produce the policy and the receipt for payment of the last premium thereon to the

Landlord on demand.

To be responsible for and to indemnify and keep the Landlord indemnified from and against all and any losses actions proceedings expenses costs claims damage and liabilities whatsoever or howsoever arising which may be incurred or suffered by the Landlord or recovered claimed or made by any person against the Landlord in respect of or in consequence (whether direct or indirect) of any injury to or the death of any person or any loss or damage to any property moveable or immoveable or otherwise directly or indirectly arising out of or in connection with or incidental to:-

3.27.1 Any act negligence omission or default of the Tenant or of its sub-tenants, licensees/customers or invitees or their respective employees agents invitees or licensees

3.27.2 Any breach non-performance or non-observance by the Tenant of any of the covenants and conditions or other provisions contained in this Lease

3.27.3 The user of the Demised Premises

3.27.4 The state of repair or condition of the Demised Premises including any additions improvements or alterations to it or any other cause arising out of the Demised Premises

3.27.5 Anything now or to be attached to or projecting from the Demised Premises or

3.27.6 Any person being in or about the Demised Premises or using any plant appliances or equipment in the Demised Premises

3.27.7 The Storage by the Tenant or its sub-tenants, licensees/customers, invitees of any dangerous materials as referred to in Clause 3.26 herein.

3.28 Landlords Rights

Not to object to or interfere with the right of the Landlord to develop redevelop alter improve or add to any Nearby Premises in respect of which the Landlord has or obtains a freehold or leasehold interest and to permit the Landlord at all times during the term granted by this Lease to exercise without interruption or interference any of the rights granted excepted or reserved to it by virtue of the provisions of this Lease

3.29 Overloading

3.29.1 Not to overload in any way whatsoever the Demised Premises or any part of it or any of the Utilities services or supplies serving servicing or supplying the Demised Premises

3.29.2 Not to have on the Demised Premises any plant machinery equipment safes goods or articles which shall or may strain or damage the Demised Premises or any part thereof

3.30 Reletting

To permit the Landlord or its agent at any time during the six months immediately prior to the expiration or sooner determination of the term of this Lease to fix upon any part of the Demised Premises a notice for reletting or selling and during that period to permit persons with the authority of the Landlord or its agent to view the Demised Premises at all reasonable times upon reasonable notice

3.31 Yield Up

At the expiry or sooner determination of the term granted by this Lease:-

3.31.1 Quietly to yield up the Demised Premises and subject to Clause 3.9.5 all additions alterations and improvements made to it and all fixtures and fittings (other than trade or tenant's fixtures affixed by the Tenant) which during the said term may be affixed or fastened to or on the Demised Premises in every case in good and substantial order repair and condition (fair wear and tear excepted) and in accordance with the covenants on the part of the Tenant and the terms and conditions contained in this Lease and in any licence or consent granted by the Tenant in accordance with the provisions of this Lease

3.31.2 To give up all keys of the Demised Premises to the Landlord and

3.31.3 To remove the Tenant's or trade fixtures (if requested by the Landlord) and all signs and advertisements erected by the Tenant on or near the Demised Premises and immediately to make good any damage caused to the Demised Premises by the removal to the satisfaction of the Landlord

3.32 Alarm and Fire Safety

- (a) To ensure that a burglary alarm/security system is installed and correctly operated for all (internal and external) entrances to and egresses from the Demised Premises.
- (b) To comply with the requirements and recommendations of the Fire Officer, the Fire Authority and the Landlord's insurers in relation to Fire Safety in the Demised Premises.

3.33 Gate

To ensure that the gate is locked outside normal business hours and to observe the reasonable rules and regulations made by the Landlord in relation to the gate.

3.34 Company

To comply with all statutory requirements necessary to ensure that the Tenant remains on the Register of Companies

4. LANDLORD'S COVENANTS

The Landlord **HEREBY COVENANTS** with the Tenant as follows:-

4.1 Quiet Enjoyment

That so long as the Tenant pays the rent reserved by this Lease and the Additional Sums and performs and observes the covenants conditions and agreements on its part contained in this Lease to permit the Tenant to hold and enjoy the Demised Premises peaceably during this demise (subject to the rights granted to or excepted and reserved by the Landlord in respect of same) without any lawful interruption by the Landlord or any person rightfully claiming under or in trust for the Landlord

5. INSURANCE

5.1 Landlord's Insurance Covenants

The Landlord hereby covenants with the Tenant:-

- 5.1.1 Subject to the Tenant paying the Additional Sums to insure and keep insured in the name of the Landlord the Demised Premises and all the Landlord's (and any Superior Landlords if any) fixtures and fittings in or on the Demised Premises (but not plate glass) and the Conduits serving the Demised Premises against the

Insured Risks with a reputable insurance office or underwriter through any agency the Landlord may from time to time decide for the full reinstatement cost (to be determined from time to time by the Landlord or the Landlord's Surveyor) plus an inflationary factor (to be determined from time to time by the Landlord or the Landlord's Surveyor) including without limitation architects quantity surveyors and all other professional fees value added tax stamp duties cost of debris removal demolition site clearance and all costs and expenses of and incidental to rebuilding and reinstating the Demised Premises or any part thereof **PROVIDED THAT** the obligation to insure against any particular Insured Risk is subject to insurance for that risk being ordinarily available with a reputable insurer for premises such as the Demised Premises subject to any reasonable limitations and at a premium which the Landlord at his discretion considers is not excessive (and such risks may be covered by any policy or policies of insurance as the Landlord may consider appropriate)

5.1.2 To produce to the Tenant on request evidence of the terms of such policy and of payment of the last premium

5.1.3 To ensure that all monies received under or by virtue of any policy of insurance effected under Clause 5.1.1 above (other than monies in respect of loss of rents) are applied as soon as practicable (subject to the Landlord obtaining any necessary planning permission without onerous or unreasonable conditions and all other necessary certificates consents approvals and licences) in re-building repairing or reinstating the Demised Premises in a good and substantial manner unless the relevant policy or policies of insurance has or have been rendered void or voidable or payment of all or any part of the insurance monies have been refused or are irrecoverable partly or wholly in consequence of any act neglect omission or default of or suffered by the Tenant or its sub-tenants or its respective servants agents invitees or licensees **PROVIDED THAT:**

- (a) if the Landlord is unable to reinstate substantially in accordance with its existing plans and specifications due to the refusal of planning permission or other certificates approvals consents or licences or if the grant of any permission is subject to a condition which the Landlord considers is unreasonable or if any circumstance beyond the reasonable control of the

Landlord prevents reinstatement within a period of three years from the date of the destruction or damage then the Tenant agrees to surrender this Lease when called upon by the Landlord so to do

- (b) for the purposes of this Lease the Tenant waive and abandon their rights (if any) to surrender this Lease under the provisions of Section 40 of the Landlord and Tenant Law, Amendment, Act 1860 or otherwise, save as specifically set out in sub clause (c)
- (c) if the Landlord fails to restore or reinstate the Demised Premises so as to be again fit for use within a period of three years from the date of the destruction or damage the Tenant may on giving three calendar months notice in writing to the Landlord determine this demise and the term granted by this Lease shall then cease and determine

5.2 Tenant Insurance Covenants

The Tenant hereby covenants with the Landlord:-

5.2.1 To pay as additional rent to the Landlord on demand the entire sum or sums certified from time to time by the Landlord or the Landlord's Surveyor as the premiums paid or to be paid by the Landlord for insuring the Demised Premises in accordance with clause 5.1.1, the said sum or sums certified from time to time by the Landlord or by the Landlord's Surveyor as the premiums paid or to be paid by the Landlord for insuring the Demised Premises and in addition including any increased premiums required as a result of the Tenant use of the Demised Premises or anything brought onto the Demised Premises and also including the premiums paid or to be paid for insuring for three years loss of rents under the Lease **PROVIDED THAT:**

- (a) the Landlord may at its sole option require payment of the sums referred to in Clause 5.2.1 in advance based upon the reasonable estimate of the Landlord or the Landlord's Surveyor as to the premiums applicable to the Demised Premises for the year in question and the Landlord may recover on demand as rent from the Tenant or shall allow to the Tenant (as the case may be) the amount of any underpayment or overpayment (as the

case may be) by the Tenant for the year in question

- (b) the Tenant shall pay on the execution of this Lease the sums referred to in clause 5.2.1 for the period beginning on the date of commencement of the term granted by this Lease.

5.2.2 At all times to comply at the expense of the Tenant with all requirements and recommendations of any insurer and the fire or other competent authority whether notified or directed to the Landlord or the Tenant in relation to fire precautions and to comply with all regulations from time to time made by the Landlord in relation to fire precautions

5.2.3 To pay to the Landlord on demand and indemnify the Landlord against the cost of supplying and installing fire fighting equipment and apparatus recommended or required by any insurer or by the fire or other competent authority or by the Landlord for safety purposes or at the Landlord's option to supply and install such equipment and apparatus at the Landlord's direction and at the Tenant's expense

5.2.4 Not to do or omit anything that could cause the insurance effected under Clause 5.1.1 or the insurance any Nearby Premises to become void or voidable wholly or in part or that could cause any additional or increased premiums to become payable in respect of any such insurance

5.2.5 To give notice to the Landlord immediately any event happens which might affect any insurance policy relating to the Demised Premises or any Nearby Premises or any event happening against which the Landlord may have insured under this Lease

5.2.6 Not to obstruct the access to any fire equipment or the means of escape from the Demised Premises nor to lock any fire-door or fire-exit while the Demised Premises is occupied

Glass

5.3 The Tenant covenants with the Landlord to insure and keep insured in the joint names of the Landlord and the Tenant all the windows glass and doors on the Demised Premises with a reputable insurance company against breakage or damage for its full reinstatement

cost (to be determined by the Landlord or the Landlord's Surveyor) and to pay all premiums necessary for that purpose and when required to produce to the Landlord the policy for insurance and the receipt for the current premium and to reinstate any windows glass or doors that are broken or damaged with glass of no less quality or thickness and to make up any deficiency out of the Tenant's own monies

Public Liability

- 5.4 The Tenant covenants with the Landlord to take out and maintain during the term granted by this Lease proper and appropriate public liability insurance in the amount of €6,500,000.00 (Six million five hundred thousand euro) with a reputable insurance company or reputable underwriter in respect of the liability to any person the Landlord and/or the Tenant for loss damage personal injury or death in or about the Demised Premises or any part of it or any appliances apparatus or equipment in the Demised Premises or the state of repair condition occupation or use of it and to pay all premiums necessary for that purpose and when required to produce to the Landlord the policy for insurance and the receipt for the current premium; such policy to contain a provision that the policy cannot be cancelled without giving 30 days notice to the Landlord

5.5 Suspension of Rent

If the Demised Premises is destroyed or damaged by any of the Insured Risks so as to be unfit for use and if the policy or policies of insurance effected by the Landlord have not been rendered void or voidable or payment of the insurance monies withheld or refused in whole or in part in consequence of any act neglect omission or default of or suffered by the Tenant or its sub-tenants or their respective servants agents invitees or licensees the rent and additional sums hereby reserved (or a fair proportion of it according to the nature and extent of the damage) will be suspended until the Demised Premises is again fit for use or until three years from the date of destruction or damage whichever is the shorter period

6. The Services

Subject to the payment by the Tenant of the Service Charge the Landlord covenants to maintain and keep maintained, replaced and renewed the Common Areas provided that the Landlord shall not be liable for any loss to the Tenant arising directly or indirectly from the failure to provide such services as a result of industrial dispute, force majeure or other cause outside the control of the Landlord.

7. **PROVISOS**

7.1 **Re-entry**

Notwithstanding and without prejudice to any other rights remedies and powers contained in this Lease or otherwise available to the Landlord if:-

7.1.1 the rent reserved by this Lease or any of the Additional Sums or any interest on arrears of rent or on any Additional Sums is wholly or partly outstanding for twenty one (21) days after they or any of them become due whether formally demanded or not

7.1.2 the Tenant is in breach of any of the provisions of this Lease

7.1.3 where the Tenant is an individual or a firm the Tenant is unable to pay its debts as they fall due (within the meaning of the Bankruptcy Act, 1988) or a bankruptcy petition is presented or the Tenant compounds or enters into an arrangement with its creditors

7.1.4 where the Tenant is a company the Tenant is unable to pay its debts as they fall due within the meaning of the Companies Acts, 1963 to 1990 ("Companies Acts") or it goes into liquidation (whether compulsory or voluntary) or a receiver manager examiner interim examiner administrative receiver or provisional liquidator is appointed or if it convenes any meeting of creditors or class of creditors under or in accordance with the Companies Acts or if it compounds with creditors or enters a voluntary arrangement or a scheme of arrangement with creditors or

7.1.5 the Tenant has any distress or execution levied on its at the Demised Premises

THEN and in any such event the Landlord or any person or persons authorised by the Landlord may enter the Demised Premises or any part of it in the name of the whole at any time even if a previous right of re-entry has been waived and re-possess the Demised Premises and enjoy the same as if this Lease had not been executed and upon such re-entry the term granted by this Lease shall end but without prejudice to any rights

powers or remedies in respect of any antecedent breach of any of the provisions of this Lease including the breach under which the re-entry is made

7.2 Representations

The Tenant acknowledges that it has not entered into this Lease in reliance wholly or partly on any representation or warranty made by or on behalf of the Landlord except any representation or warranty that is expressly set out in this Lease

7.3 Effect of Waiver

The Tenant's covenants will remain in full force (both at law and in equity) even if the Landlord has waived or temporarily released that covenant or waived or released (temporarily or permanently) a similar covenant.

7.4 Notices

7.4.1 A notice under this Lease must be in writing and unless the receiving party acknowledges receipt is valid if (and only if) it complies with the provisions of this Clause

7.4.2 The provisions are that:

- (a) the notice must be given or delivered by hand or sent by registered post
- (b) the notice must be served:
 - where the receiving party is a company at its registered office or
 - where the receiving party is the Tenant at the Demised Premises or
 - where the receiving party is the Landlord, the Guarantors or other party to this Lease except the Tenant and that party is not a company at that party's address shown in this Lease or at any alternative address that is specified in a notice given by that party to the other party or parties
- (c) A notice sent by registered post is to be treated as served on the third day after posting whenever and whether or not it was received
- (d) If the receiving party is more than one person a notice to one is notice to

all

7.5 No Warranty

Nothing in this Lease contained shall be deemed to constitute any warranty by the Landlord that the Demised Premises or any part thereof are authorised under the Planning Acts or otherwise for use for any specific purpose

7.6 No Waiver

The demand for or acceptance of rent by the Landlord or its agents with or without knowledge of a breach of any of the covenants and conditions on the part of the Tenant contained in this Lease shall not be construed as a waiver of any such covenants or conditions and all of the Landlords rights powers and remedies under or by virtue of this Lease arising from or in connection with any such breach shall remain in full force

7.7 Exclusion of Landlord's liability

So far as permitted by law the Landlord shall not be responsible to the Tenant or any subtenants or any servant agent licensee or invitee of the Tenant or of their subtenants or any other person occupying or on the Demised Premises or any part of it for any injury or death suffered by any person or damage to or loss of any chattel or property sustained on or about the Demised Premises or for financial or consequential loss of any kind whatsoever

7.8 No implied easements

Nothing contained in this Lease shall impliedly confer or grant to the Tenant any easement right or privilege save those expressly granted by this Lease

7.9 Nearby Premises

Any dispute arising between the Tenant and occupiers of the Nearby Premises as to any easement quasi-easement right or privilege or Conduit in connection with the Demised Premises or as to the party or other walls or structures separating the Demised Premises from the Nearby Premises or as to access ways or car parking facilities shall be fairly and reasonably determined by the Landlord's Surveyor whose decision shall be final and binding on the parties and whose fees shall be payable by the Tenant

7.10 Restrictions on adjoining occupiers

The Tenant shall not be entitled to the benefit of any restriction for the time being imposed on any owner lessee or occupier of any Nearby Premises and nothing in this Lease shall prevent or hinder the Landlord and any Superior Landlord from waiving or varying in whole or in part any such restriction or shall create or be deemed to create a binding scheme while the Tenant is in occupation of the Demised Premises.

8. **CERTIFICATES.**

- 8.1 **IT IS HEREBY CERTIFIED** by the Tenant that the Demised Premises are entirely situate in the City of Dublin.
- 8.2 **IT IS HEREBY FURTHER CERTIFIED** that for the purposes of the stamping of this instrument that this is an instrument to which the provisions of Section 53 of the Stamp Duties Consolidation Act 1999 do not apply to this Instrument.
- 8.3 **IT IS HEREBY FURTHER CERTIFIED** that the property hereby leased is wholly non-residential and that the transaction hereby affected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration other than rent exceeds €10,000.00.
- 8.4 **IT IS HEREBY FURTHER CERTIFIED** for the purposes of Section 29 of the Companies Act 1990 that the Tenant and the Landlord are not connected persons within the meaning of the Companies Act 1990

IN WITNESS whereof the parties hereto have executed this Lease in the manner following and on the day and year first above **WRITTEN**

FIRST SCHEDULE
THE DEMISED PREMISES

ALL THAT AND THOSE the premises known as 295 White Heather Industrial Estate, South Circular Road in the City of Dublin comprising a gross external Floor Area of 955.28 sq.m., more particularly delineated on the map attached hereto and thereon edged red.

SECOND SCHEDULE
RIGHTS GRANTED TO THE TENANT

Full right and liberty for the Tenant as appurtenant to the Demised Premises (but subject to the rights excepted and reserved in the Third Schedule) in common with the Superior Landlord, the Landlord and all other persons who have or may hereafter have the like right:-

- (1) The free passage and running of the Utilities (subject to temporary interruption for repair alteration or replacement) to and from the Demised Premises through the Conduits which are now or may at time be in or passing through the nearby Premises or any part thereof insofar as is necessary for the proper and reasonable use and enjoyment of the Demised Premises
- (2) The exclusive right to park vehicles in the seven (7) car spaces shown coloured green on the map attached hereto. The right to park vehicles in the designated seven (7) car spaces shall only be permitted in connection with loading and unloading and normal access to the Demised Premises. The Tenant is strictly prohibited from assigning or underletting any of the car parking spaces.
- 3(a) The right (in common with the Landlord and all other persons having a like right) for the Tenant, its servants, agents, employees and invitees) to pass and repass to and from the Demised Premises at all times with or without vehicles of any description for all purposes connected with the use and enjoyment of the Demised Premises (but not) otherwise over and along the roadway outlined in brown on the map attached hereto leading to and from the South Circular Road.

- (b) The Landlord will provide to the Tenant a key/code as are required to access the Estate.
- 4. The right in the event of a fire to exit the Demised Premises through the Fire Exits at the side of the Demised Premises and in the event of emergency only to pass and repass to and from the Demised Premises over and along the area coloured yellow on the map attached hereto.

THIRD SCHEDULE
EXCEPTIONS AND RESERVATIONS

There is excepted and reserved out of these presents in favour of the Landlord any Superior Landlord and their respective tenant sub-tenant licensees successors and assigns and all other persons authorised by the Landlord for the benefit of any Nearby Premises and any buildings which are now or may at any time be erected thereon and every part thereof the easements rights and privileges following that is to say:-

- (1) Full free and uninterrupted passage and running to and from any Nearby Premises and every part thereof of the Utilities through the Conduits which are now or may at any time be in on under over or passing through the Demised Premises
- (2) The right to connect up with and to cleanse repair and renew the Conduits which are now or may at any time be in on under over or passing through the Demised Premises and to construct in on under or over the Demised Premises new Conduits and to inspect maintain replace alter cleanse repair and renew the same and for the aforementioned purposes to enter upon the Demised Premises with workmen and others and all necessary plant equipment and materials making good any damage thereby occasioned to the Demised Premises but not being responsible for any temporary inconvenience caused by any such works
- (3) The rights of light air support protection and shelter and all other easements and rights belonging to or enjoyed by or intended to be enjoyed by any Nearby Premises or any extensions or alterations thereto from the Demised Premises
- (4) Full right and liberty at all times to deal as the Landlord or any Superior Landlord (as the

case may be) may decide with the Nearby Premises or any part thereof and to execute and construct such works buildings alterations or additions thereon (whether by way of improvement redevelopment renovation or otherwise) in such manner as the Landlord or any Superior Landlord (as the case may be) may think fit in each case making good any damage thereby occasioned to the Demised Premises but without obtaining any consent from or making any compensation to the Tenant and notwithstanding that the access of light or air or other amenities to the Demised Premises may thereby be affected or interfered with

- (5) Full right and liberty at all reasonable times during the term granted by this Lease to enter upon the Demised Premises to view the condition of and to repair maintain alter paint redecorate or execute any works upon any Nearby Premises or any part thereof or for any other necessary or reasonable purpose making good any damage caused to the Demised Premises in the exercise of such right
- (6) The air space over the Demised Premises and every part thereof
- (7) The full and free right and liberty to enter upon the Demised Premises at all reasonable times and on reasonable notice in order to build on or into any dividing or party walls or fences or to build storeys thereover making good all damage occasioned to the Demised Premises in the exercise of such right

FOURTH SCHEDULE

RENT REVIEW

(Provisions as to Rent Revisions)

- 1. The revised rent referred to in this Lease in respect of any of the five year periods herein mentioned may be agreed at any time between the Landlord and the Tenant or (in the absence of agreement) be determined not earlier than the date of commencement of such period ("the Review Date") by an arbitrator to be nominated (in the absence of agreement between the parties) upon the application (made not more than two calendar months before or at any time after the Review Date) of the Landlord (or if the Landlord fails to make such application within twenty-eight days of being requested in writing so to do by the Tenant then on the application of either party) by either the President of the

Law Society of Ireland or the President of the Irish Auctioneers and Valuers Institute or the Chairman of the Society of Chartered Surveyors in the Republic of Ireland at the discretion of the party entitled to make the application

and

the revised rent so to be determined by the arbitrator shall be such as in his opinion represents at the Review Date the full open market yearly rent for the Demised Premises let as a whole without fine or premium:-

(A) **ON THE BASIS** of a letting with vacant possession thereof by a willing lessor to a willing lessee for a term (commencing on the Review Date) equal to the residue then unexpired of the term granted by this Lease and subject to the provisions herein set forth (other than as to the amount of the initial rent hereby reserved and such of said provisions as pertain to the review of rent)

(B) **ON THE ASSUMPTIONS** that:-

- (i) at and until the Review Date all the covenants on the part of the Landlord and the Tenant and the conditions contained in this Lease have been fully performed and observed
- (ii) in the event of the Demised Premises having been damaged or destroyed and not having been fully repaired reinstated or rebuilt (as the case may be) such damage or destruction had not occurred

and

(C) **HAVING REGARD** to other open market rental values current at the Review Date insofar as the arbitrator may deem same to be pertinent to the determination

(D) **BUT DISREGARDING** any effect on letting value of:-

- (a) the fact that the Tenant is or has been in occupation of the Demised Premises or any part thereof

(b) the goodwill which shall have attached to the Demised Premises by reason of the business carried on thereat

(c) any lawful improvements executed by and at the expense of the Tenant with the consent in writing of the Landlord in on to or in respect of the Demised Premises other than required works **PROVIDED** that in the interpretation of this sub-paragraph (c):-

the expression "the Tenant" shall extend to include the Tenant or any predecessor in title of the Tenant or any party lawfully occupying the Demised Premises or any part thereof under the Tenant

and

the expression "required works" shall mean works executed by the Tenant in pursuance of an obligation imposed on the Tenant by this Lease or by any lease of which this Lease is a renewal or by an agreement for the granting of this Lease or of any lease of which this Lease is a renewal or by virtue of any licence or deed of variation relating to the Demised Premises.

and

(d) any rent free concession, reduced rent or other inducement whatsoever which would or might be given to an incoming tenant on the grant of a lease of the Demised Premises at the Review Date in question to the intent that no reduction shall be made in ascertaining the current market rent to reflect such rent free concession reduced rent or other inducement to compensate the Tenant for the absence thereof.

2. All arbitrations hereunder shall be conducted in accordance with the provisions set forth in the Arbitration Acts 2010 or in any Act or statutory rule or order extending amending modifying or replacing the same and for the time being in force

3. In the event of the President or Chairman or other officer endowed with the functions of the President or Chairman of such Society or Institute as shall be relevant for the purposes of Paragraph 1 of this Schedule being unable or unwilling to make the nomination therein mentioned the same may be made by the next senior officer of that Society or Institute who shall be so able and willing

4. If the arbitrator shall relinquish his appointment or die or if it shall become apparent that