

# Material Contravention Statement

Proposed Strategic Housing Development, 'Kenelm', Deer Park, Howth, Co. Dublin



Prepared on behalf of  
GLL PRS Holdco Limited

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# 1 Introduction

This Material Contravention Statement has been prepared by McCutcheon Halley Planning Consultants on behalf of the Applicant to address whether any aspect of the proposed Strategic Housing Development (SHD) may be considered to materially contravene the Fingal Development Plan (FDP) 2017-2023, in accordance with Section 8 of the Planning and Development (Housing) and Residential Tenancies Act 2016.

Where an application is deemed by An Bord Pleanála to materially contravene the relevant development plan, Section 8(1)(a)(iv)(II) requires a statement *“indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000”*.

Under Section 8(1)(iv) of the Planning and Development (Housing) and Residential Tenancies Act 2016, where a proposed development is considered to materially contravene the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), then the SHD application must include a statement:

*“(I) setting out how the proposal will be consistent with the objectives of the relevant development plan or local area plan, and*

*(II) where the proposed development materially contravenes the said plan other than in relation to the zoning of the land, indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000.”*

Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, confers power on An Bord Pleanála to grant permission for a development which is considered to materially contravene a Development Plan or Local Area Plan, other than in relation to the zoning of land, as follows:

*“(6) (a) 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 even where the proposed development, or a 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 a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the 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.”*

The purpose of this report is to address the possibility that the proposed development could be deemed by An Bord Pleanála to represent a material contravention of the FDP 2017 – 2023, specifically relating to;

- i. The core settlement strategy for Howth in the Fingal Development Plan indicates a figure of 498 potential residential units. Table 2.8 of the adopted Variation No. 2 *Alignment of the Fingal Development Plan with the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES)* indicates that there is 14 hectares of zoned land remaining in Howth, with a capacity to deliver 436 residential units. This represents a density of 31 units per hectare across the zoned available land. There is 1 no. permitted (ABP Ref. TA06F.306102) SHD scheme (Claremont) in Howth that alone provides for 512 no. apartments and it the 498 target is thus breached. This subject proposal includes 162 no. units and combined with Claremont this would amount to 674 no. units in Howth. Accordingly, An Bord Pleanála may consider the proposed development to be a material contravention of the core settlement strategy for Howth as established in the extant Development Plan.
- ii. Compliance with Objective DMS30 – Ensure all new residential units comply with the recommendations of Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (B.R.209, 2011) and B.S. 8206 Lighting for Buildings, Part 2 2008: Code of Practice for Daylighting or other updated relevant documents.
- iii. Compliance with Objective DMS23– Permits up to 8 apartments per individual stair/lift core within apartment schemes.
- iv. Compliance with quantitative requirements for children’s play, specifically Objective DMS75; and
- v. Compliance with Objectives DMS77 and NH27 that relate to protection of trees.

## 2 Proposed Development

The development will consist of;

- i. 162 no. residential units distributed across 3 no. blocks (A, B & C) ranging in height from 5-6 storeys, with a cumulative gross floor area (GFA) of 13,337.10 sq.m comprising;
  - a. 29 no. 1-bedroom units, - 17.9%
  - b. 104 no. 2-bedroom units and – 64.2%
  - c. 29 no. 3-bedroom units – 17.9%
- ii. 3 no. resident services and amenity rooms (1 no. in each block A-C) to accommodate co-working space, a community room and a meeting room (combined GFA 108 sq.m)
- iii. 132 no. car parking spaces at basement level (underlying Blocks A & B) including 6 no. accessible spaces, 13 no. electric vehicle spaces and 4 no. car sharing spaces;
- iv. 325 no. residents bicycle parking spaces (long-stay) at basement level, and 30 no. visitor bicycle parking spaces (short-stay) at surface level;
- v. communal amenity space in the form of courtyards and roof gardens (combined 2,192 sq.m)
- vi. public open space of 1,161 sq.m including a botanic garden and pocket park;
- vii. a single storey ESB sub-station and switch room (45.5 sq.m);
- viii. demolition of 2 no. sections of the existing demesne northern boundary wall to provide, a primary access (vehicular/pedestrian/cyclist) to the northwest and a separate pedestrian/cyclist access at the centre;
- ix. restoration and refurbishment of the remaining extant northern and eastern demesne boundary wall;
- x. change of use and regrading of part of the Deer Park Golf Course from active recreation use to passive amenity parkland and planting of a woodland belt on the southern boundary;
- xi. undergrounding of existing ESB overhead lines, and, relocation of the existing gas main; and,
- xii. all ancillary site development works including waste storage and plant rooms at basement level, drainage, landscaping/boundary treatment and lighting.

### **3 Section 37(2) of the Planning and Development Act 2000 (as amended)**

Section 37(2) of the Planning and Development Act 2000 (as amended) provides for the Board to grant permission where the proposed development materially contravenes the development plan, subject to paragraph (b) where it considers:

*(i) the proposed development is of strategic or national importance,*

On determining that point (i) is applicable, it must be determined that one of the sub sections set out below is relevant.

*(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.*

#### **3.1 Application of Section 37(2)(b)(i) Considerations to the Proposed Development**

##### **3.1.1 National Importance**

The national importance of the proposed development relates to;

- i. The substantial challenges for the State in the housing sector, including insufficient housing output to address current and projected demand and high unmet need for social housing.**

Rebuilding Ireland - Action Plan for Housing and Homelessness (2016) set a target of delivering 125,000 new homes over the period 2017 to 2021 . Between 2017 and 2020, 74,396 new homes were delivered, this is 26% below the minimum target of 100,000 for this period. It is reasonably anticipated that the restrictions in construction activity in the 1st Quarter of 2021 will significantly impact the 2020-2021 target and beyond. The proposed development is thus of national importance as it will contribute to increasing the significant deficit in supply of new homes. This proposed development would deliver 162 no. new homes (including 16 no. social and affordable homes) within Dublin City & Suburbs, a location that is significantly impacted both socially and economically by the housing crisis.

At least 40% of all new homes nationally will be delivered within the built-up footprint of existing settlements under the National Planning Framework's commitment to promote compact and sustainable growth of cities, towns, and villages. Better spatial planning, through concentration of development in the existing built environment, will reduce the carbon emissions of new developments, and deliver a better quality of life, including shorter commute times, better connections between places of work and homes, and more vibrant, people-focused environments.

**ii. The proposed development's contribution toward climate change mitigation through promoting a modal shift, reduced car parking and building energy efficiency and the State's international binding commitments.**

The EU Effort Sharing Decision (ESD) established binding annual GHG emission targets for Member States for the period 2013-2020. These targets concern emissions from inter alia transport and buildings. For the year 2020, the target set for Ireland was that emissions should be 20% below their level in 2005. The Environmental Protection Agency (EPA) produces emission projections on an annual basis for all sectors of the economy. According to the latest projections produced by the EPA (June 2019), projected emissions for 2020 indicate that Ireland's emissions could be in the range of 5-6% below 2005 levels, representing a significant shortfall in terms of reaching the 20% reduction in 2020.

The built environment (residential sector) accounted for 10.9% of Ireland's greenhouse gases (GHGs) in 2019. It is important that the energy efficiency of buildings, including homes, is improved, by meeting higher energy performance standards. This will reduce Ireland's dependence on fossil fuels. The proposed development complies with Part L of the Building Regulations and the 'Nearly Zero Energy Buildings' (NZEB) requirements meaning the buildings would have a very high energy performance. Full details of the proposed energy strategy is included in the Energy Statement prepared by Ethos Engineering and submitted under separate cover. It will thus contribute to reducing GHGs from the residential sector.

By 2040 the population of Ireland is expected to grow by over 1 million to 5.7 million people. This growth, along with other NPF growth projections on the economy and employment rates, will drive greater demand for transport across various modes, with increased movement of people. While this is a sign of a vibrant economy, it intensifies the decarbonisation challenge, in particular as transport accounted for 20.3% of Ireland's GHGs in 2019. Furthermore, air pollution emitted from transportation contributes to poor local air quality, in the form of increased micro-particulates and nitrogen oxides, which reduces people's quality of life and harms health.

The proposed development site's proximity to high frequency and high quality public transport (DART and Dublin Bus) means that it would contribute to addressing emissions from the transport sector as it would support a modal shift to more sustainable transport modes, public transport and active transport modes (walking and cycling). Occupants of the proposed development would have convenient access to public transport and could avail of daily living needs by walking and cycling given the wealth of services and amenities available locally.

**For the reasons set out above, this proposed development is of national importance having regard to its ability to contribute to the delivery of new homes and address climate change challenges.**

### 3.1.2 Strategic Importance

Howth is afforded a high degree of protection as a consequence of its Special Area Amenity Order (SAAO) and European Site designations. Land suitable for development is therefore limited. 16 hectares is zoned under the extant Development Plan for residential development. In this context maximising the use of zoned land having regard to Howth's proximity to the City Centre and the availability of public transport is strategically important in the context of realising efficient spatial planning and counteracting the negative effects of urban sprawl.



The proposed development would deliver 162 no. new homes at a density of 140 dwellings per hectare on lands zoned for residential development with the requisite infrastructure in place together with supporting services and amenities.

**Activating this proposed development site through effective density and consolidation, rather than more sprawl of urban development is strategically important in the context of the scarcity of developable land available in Howth, a location that lies within Dublin City and Suburbs.**

### **3.2 Application of Section 37(2)(b)(ii-iv) Considerations to the Proposed Development**

3.2.1 Core Strategy (Housing Target) - Permission should be Granted having regard to 37(2)(b)(ii)

*There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned.*

Table 2.8 of Variation No. 2 of the Fingal Development Plan 2017-2023 identifies that there is 14 hectares of land available in Howth for residential development with an associated housing yield of 436. This is a density of just over 31 units per hectare.

The 2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas recommends that a minimum net density of 50 units per hectare (uph) should be applied within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station. The proposed development site, together with the permitted Claremont development and indeed the entirety of land zoned for residential development satisfy this criteria. Accordingly, it is respectfully submitted that at the time of preparing the Development Plan and the Variation the appropriate density to apply was a minimum of 50 uph as opposed to 31uph, having regard to the 2009 Guidelines. This would yield a minimum of 700 potential residential units.

The Development Plan states “*regard should be given to Sustainable Residential Development in Urban Areas (2009)...The Council promotes higher densities at suitable locations such as along public transport corridors and in main town centres.* The Plan includes **Objective PM41** that seeks to “*Encourage increased densities at appropriate locations whilst ensuring that the quality of place, residential accommodation and amenities for either existing or future residents are not compromised.*”

It is submitted that the core settlement strategy for Howth conflicts with this objective, as the density applied is below the minimum standard established in the 2009 Guidelines and does not encourage increased densities as cited in Objective PM41.

It is our professional opinion that there are conflicting objectives in the development plan so that the application meets the criterion set out under Section 37(2)(b)(ii) so that the Board have the legal power to grant permission pursuant to Section 37(2)(b).

### 3.2.2 Core Strategy (Housing Target) - Permission should be Granted having regard to 37(2)(b)(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.*

Since the adoption of the Fingal County Development Plan, both national and regional planning policy has changed with the publication of *Project Ireland 2040 - National Planning Framework* (NPF) and the *Eastern and Midlands Regional Spatial Economic Strategy* (RSES). Relevant Ministerial Guidelines to guide development have also been published including *Guidelines on Urban Development and Building Heights for Local Authorities* and the *Design Standards for New Apartments – Guidelines for Planning Authorities*.

National planning policy supports compact growth through implementation of effective density and consolidation thereby counteracting urban sprawl.

National Policy Objective (NPO) 3a requires that 40% of all new homes nationally are to be delivered within the built-up footprint of existing settlements. To achieve this, the NPF recognises that a significant and sustained increase in urban housing output and apartment type development is required. It states;

*“To more effectively address the challenge of meeting the housing needs of a growing population in our key urban areas, it is clear that we need to build inwards and upwards, rather than outwards. This means that apartments will need to become a more prevalent form of housing, particularly in Ireland’s cities.”*

NPO 35 seeks to increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, **infill development schemes**, area or site-based regeneration and **increased building heights**. (emp added).

This NPO is underpinned by recognition that; *“Historically, low-density housing development has been a feature of Ireland’s housing landscape in cities, towns, villages and the countryside. To avoid urban sprawl and the pressure that it puts on both the environment and infrastructure demands, increased residential densities are required in our urban areas.*

The objectives of the NPF (NPO2a & NPO3b) and RSES (RPO 3.1 & RPO 4.3) require compact growth, focused on the five cities and on the existing built up areas. They also require a higher proportion of residential development within the cities and their suburbs to comprise infill (50% under NPO 3b).

The RSES RPO 5.5 requires, inter alia, the future residential development within the Dublin Metropolitan Area (DMA) to follow a clear sequential approach with a primary focus on the consolidation of Dublin City and Suburbs, which is recognised as a key future planning and development priority for the region under the NPF. Howth is within the DMA as illustrated on **Figure 1**.

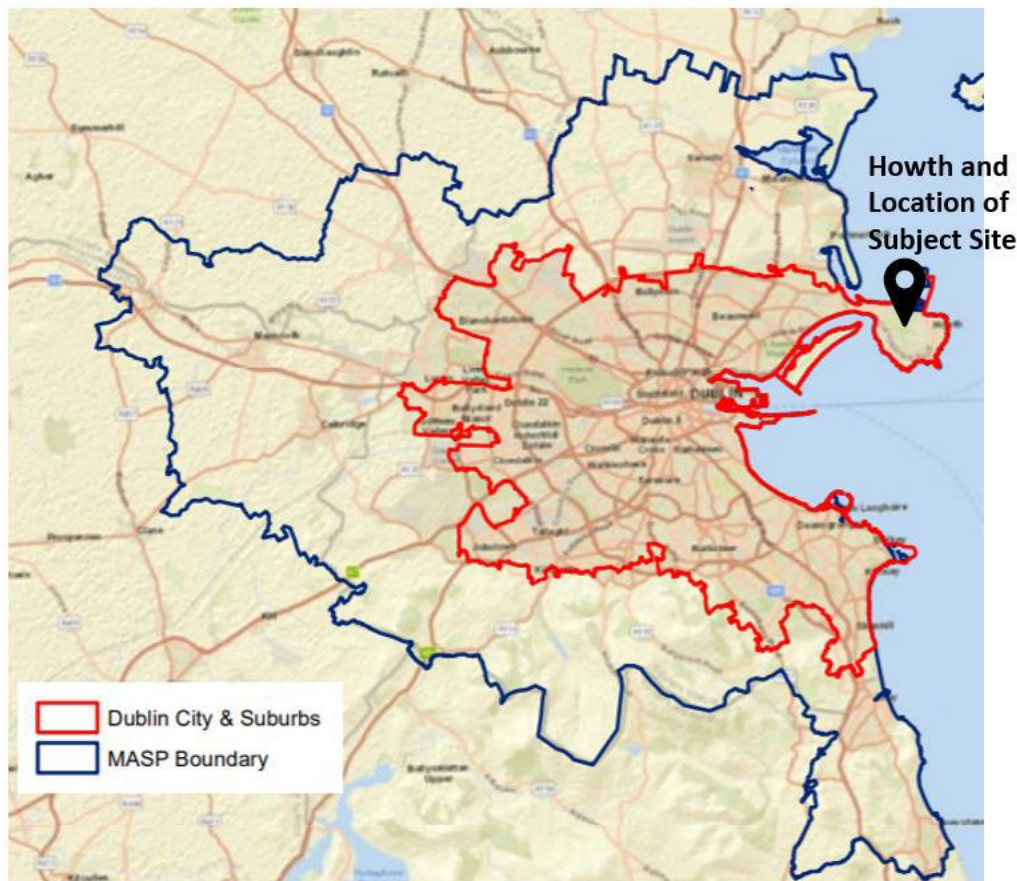


FIGURE 1 MASP BOUNDARY SHOWING HOWTH WITHIN 'DUBLIN CITY & SUBURBS'

Compact growth is set as one of the 10 National Strategic Outcomes (NSO 1) of the NPF. Many of the specific objectives of the NPF (NPO 2a, NPO 3a-3c, RPO 7, RPO 9, NPO 13) and of the RSES (RPO 3.1, 3.2, 4.3, 5.4 & 5.5) require or otherwise support the implementation of compact growth, including through the consolidation and maximising the development potential of infill sites to provide higher density and people intensive uses. This is relevant to all urban areas in the settlement hierarchy and is critical to the implementation of the NPF at local level.

The proposed development would provide housing at an appropriate density in an appropriate form on a zoned infill site within the built-up area of a town and on a public transport corridor. It is thus in line with the National Planning Framework, in particular objectives 3a, 13 and 35, and section 5.8 of the 2009 guidelines on sustainable urban residential development. It would also be in keeping with objective RSO1 of the RSES.

The proposed development site includes land zoned for residential and its location contiguous to existing and permitted development (Claremont) represents a natural expansion of Howth. It is located within the Dublin MASP and is well served and accessible to public transport and supporting infrastructure in Howth and as such is suitable for development and of a strategic and beneficial nature to Howth.

While Variation No. 2 reflects certain objectives of the RSES, in our professional planning opinion it is inconsistent with national and regional planning policy and section 28 Guidelines (Sustainable Urban Development Guidelines, Residential Density Guidelines, NPF and EMRA RSES compact

growth objectives, etc). Table 2.8 of Variation No. 2 of Development Plan identifies that there is 14 hectares of land available in Howth for residential development with an associated housing yield of 436. This is a density of just over 31 units per hectare. Variation No. 2 is thus inconsistent with objectives for efficient land-use and compact growth objectives in the Dublin Metropolitan Area.

For the reasons set out above, it is our professional opinion that the proposed development satisfies policy and objectives contained in the National Planning Framework and the Eastern and Midlands Regional Spatial Economic Strategy and Ministerial Guidelines (Design Standards for New Apartments and Urban Development and Building Heights) that were published to support the implementation of policy and objectives contained in the NPF and RSES, so that the application meets the criterion set out under Section 37(2)(b)(iii) so that the Board have the legal power to grant permission pursuant to Section 37(2)(b).

### 3.2.3 Core Strategy (Housing Target) - Permission should be Granted having regard to 37(2)(b)(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.*

There is 1 no. permitted strategic housing development in Howth, Claremont, and it is located to the north of Howth Road and within close proximity of the proposed development site.

Application Reference	Site	Development Description	Decision	Date of Decision
306102	Claremont, Techrete Site, Beshoff Motors, Garden Centre, Howth Road, Howth, Dublin 13.	Demolition of structures on site, construction of 512 no. apartments, childcare facility and associated site works.  Density 191 units per hectare	Granted	03.04.2020

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

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

all of which support denser residential development consisting of apartments on public transport corridors within the built-up area of Dublin City and its suburbs.

The Claremont development provides for 512 no. residential units and singularly this permission breaches the threshold outlined in the core strategy allocation. The justification applied by the Board and set out above is equally relevant to the subject development.

For this reason, it is our professional opinion, that permission for the proposed development should be granted having regard to the pattern of development and a permission granted in the area since the making of the Development Plan. The application meets the criterion set out under Section 37(2)(b)(iv) so that the Board have the legal power to grant permission pursuant to Section 37(2)(b).

### 3.2.4 Objective DMS30 (BRE Guidelines) - Permission should be Granted having regard to 37(2)(b)(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.*

The publication of the National Planning Framework (NPF), the Eastern and Midlands Regional Spatial and Economic Strategy (RSES) and Urban Development and Building Heights Guidelines for Planning Authorities (2018) support higher density development subject to achievement of performance based criteria.

The objective of higher density is to achieve compact growth in cities, towns and villages. This approach to spatial planning would counteract the negative environmental effects of the alternative scenario, urban sprawl, which results in a reduced standard of living as people travel longer to access employment and daily services and amenities. Increased travel distances requires people to use private vehicles and this is a significant contributor to greenhouse gas emissions which intensifies the negative consequences of climate change and negatively effects air quality with consequent poor health effects. Further, urban sprawl requires more land for development and this contributes to the ongoing biodiversity crisis.

The Building Height Guidelines give expression to National Policy Objective (NPO) 13 in the NPF, whereby;

*“In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. **These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.**” (emp. added)*

Section 2.3 of the Guidelines state;

*“While achieving higher density does not automatically and constantly imply taller buildings alone, increased building height is a significant component in making optimal use of the capacity of sites in urban locations where transport, employment, services or retail development can achieve a requisite level of intensity for sustainability. Accordingly, the development plan must include the positive disposition towards appropriate assessment criteria that will enable proper consideration of*

*development proposals for increased building height linked to the achievement of a greater density of development.”*

The development management process therefore needs to apply site specific tolerances to achieve a balance between (i) the overarching national planning policy objective for compact growth and (ii) achieving high quality living environments.

Section 3.2 sets out development management criteria for 3 different scales;

- the city/town,
- district/neighbourhood/street, and
- the site/building.

Daylight and sunlight is dealt with under the site/building heading and the Guidelines highlight that *“the form, massing and height of proposed developments should be carefully modulated to maximise access to natural daylight.”*

The Guidelines state that;

*“**Appropriate and reasonable regard** should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research Establishment’s ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’.*

***Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.”***

The development management criteria at the site/building scale cannot be considered in isolation. It is also necessary to consider the criteria set out for the city/town level and the district/neighbourhood/street scale. A review of these criteria in combination with the site/building criteria crystallises the necessity for a balanced approach to the assessment of individual proposals.

The development management criteria for city/town are;

*“The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.*

The proposed development site is within walking distance of high quality and high frequency public transport, namely the DART and Dublin Bus.

*Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/ enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.*

This application is supported by a Urban Design Statement, Architectural Design Statement, Architectural Heritage Assessment Report and Landscape & Visual Assessment together with verified photomontages. All of the criteria outlined above are considered and evaluated and the reports conclude that the modest increase in building height proposed would successfully integrate and enhance the character of the area.

*On larger urban redevelopment sites, proposed developments should make a positive contribution to place-making, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.*

The proposed development site is 1.7 hectares and of this 1.16 hectares is zoned residential. This area represents an infill development opportunity and owing to the absence of previous development would not represent a 'redevelopment site'. Notwithstanding, the design as proposed makes a positive contribution to place-making, it would provide new public open space with a diversity of uses to facilitate passive and active recreation. The scale, form, massing and height is a considered response that responds to the site setting together with existing adjoining development. The supporting reports included with this application demonstrate that it will not affect the amenities of dwellings to the west and would not result in undue overshadowing, overlooking or diminishment in daylight and sunlight to those dwellings located closest to the proposed development site. The high quality design including materiality and works proposed to the boundary wall will enhance the streetscape at this location.

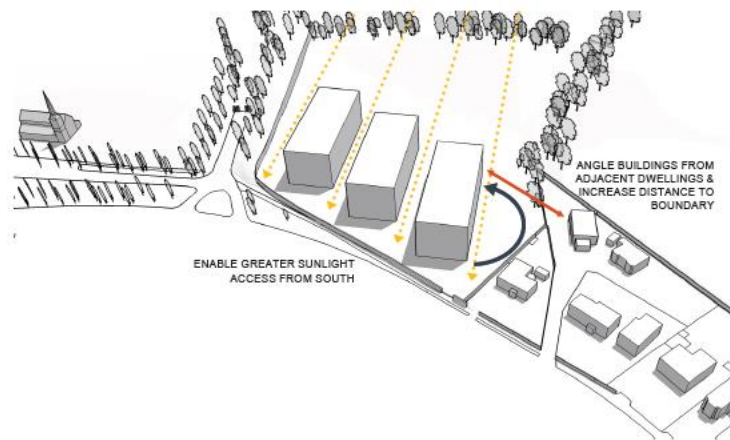
The development management criteria for the district/neighbourhood/street are;

- *The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.*
- *The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.*
- *The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/ marine frontage, thereby enabling additional height in development form to be favourably considered in terms of enhancing a sense of scale and enclosure while being in line with the requirements of "The Planning System and Flood Risk Management – Guidelines for Planning Authorities" (2009).*
- *The proposal makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is situated and integrates in a cohesive manner.*
- *The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood."*

Considerable attention has been applied during the design development process to achieving all of the above criteria including maximising daylight within individual units and safeguarding the amenities (inclusive of daylight and sunlight) of existing residential dwellings to the west of the proposed development site.

The proposed development comprises three buildings of linear form, arranged side-by-side, aligned north-south, roughly perpendicular to the Howth Road. Each building is divided into a front and rear volume, with the two volumes offset so that the floorplan is staggered, providing the apartments in the rear volumes with views north towards the sea. The layout would create a strong built frontage to Howth Road, on the approach to the town centre, while retaining a visual connection between the

buildings to the woodlands and upland to the south. The north-south aligned spaces between the buildings would also allow for sunlight penetration to the scheme.



The front volumes of the proposed buildings are five storeys, with the top floor set back behind a shallow terrace. The rear volumes step up to six storeys, so that the buildings would reflect the topography of the site, which rises towards the south, away from the road and the coastline.

Having regard to the site's location at the edge of the demesne lands, with a verdant backdrop, providing a high quality landscape response was a priority for the design team. Of the total application area of 1.7 hectares, 54% is retained as open amenity space. Reserving this amount of area free of building obstructions assists with integrating the proposed development into the existing landscape.

Regarding the design of the individual blocks, dual-aspect layouts greatly enhance the internal environment of a dwelling and have a positive effect on the well-being of the occupants. The design maximises the number of dual-aspect apartments to achieve the many inherent benefits of this approach. These include better daylight, a greater chance of direct sunlight for longer periods, natural cross-ventilation, a greater capacity to address overheating, a choice of views, greater flexibility in the use of rooms, and more potential for future adaptability by altering the use of rooms. The site is central and accessible, so under SPPR 4 of the Design Standards for New Apartments 33% of the apartments should have dual aspect. Within the proposed development 99 units or 61% are dual aspect. Single aspect units are located facing east and west, 57% of which benefit from a projecting bay window arrangement, meaning living room windows look in two directions. There are no north-facing single aspect units.

The recommended minimum for Average Daylight Factor (ADF) is based on the function of the room being assessed. The recommendations as per the BS 8206-2:2008 are as follows:

- 2% for kitchens;
- 1.5% for living rooms; and,
- 1% for bedrooms.

BS 8206-2:2008 also recommends that where a room serves more than one purpose e.g. living/kitchen/dining (LKD) space, the minimum average daylight factor should be taken for the room with the highest value.



The **Daylight & Sunlight Report** that accompanies this application demonstrates that when measured against the 2% criteria the approx. overall compliance rate is 93%.

Achieving a high quality, modern, living environment e.g. generous room sizes and private amenity space (balconies) as is proposed in this application results in a deep floor plan for LKDs and this can affect daylight penetration.

Having regard to this and notwithstanding the recommendation of 2% contained in BS 8206-2:2008, 3D Design Bureau, the specialist daylight consultant appointed to the project, recommend that that an ADF target value of 1.5% is appropriate for LKDs in this context. The rationale for this departure from the recommended minimum ADF of 2%, is;

- i. the primary function of LKDs within apartment developments is typically that of a living space.
- ii. the quality of the overall living environment could be compromised if the 2% target is applied as it would necessitate removal of balconies (private amenity space) and reduction in the floor areas of the LKDs. Such mitigation measures could reduce the quality of living within the proposed units to a greater degree than the improvements that would be gained with increased ADF values.
- iii. the scheme includes compensatory design solutions including direct access to balconies/terraces, access to conveniently located communal amenity space (at ground and roof level) that benefits from excellent sunlight and access to resident amenity rooms in each block that all meet the 2% target.

The ADF study demonstrates that when measured against a 1.5% target value, the proposed development achieves a approx. 96% compliance rate.

The report details that the primary reason for the ADF results in the lower performing rooms is due to the recessed balconies, which are an integral part of the proposed design, providing privacy for future residents. These balconies, whilst they affect the level of daylight in the units, they also provide a valuable amenity of private external space.

Importantly, the design integrates large windows which ensure that even the rooms that do not achieve the recommended ADF value of 1.5% will benefit from good day light access in the areas of the room that are within close proximity to the windows, with the rear of the rooms likely to require supplementary electric lighting. This is qualified by an additional assessment of the living areas as standalone space i.e. without the kitchen area included. The results confirm that all living spaces would be in receipt of adequate levels of daylight.

The mandatory s. 28 Building Height Guidelines require appropriate and reasonable regard to be had to the BRE guidelines. This is a recognition that implementation of the National Planning Framework requires increased density, scale and height of development and a balanced approach to qualitative standards is required. Accordingly, a positive disposition towards appropriate assessment criteria that will enable proper consideration of development proposals for increased building height linked to the achievement of a greater density of development is required.

In summary, the proposed development combines distinctly urban characteristics (e.g. the building typology and scale) with the retention of key landscape features such as the demesne wall and woodland/trees that lend the site and the area its particular character. This is a considered response to the urban edge/gateway location (which has been reinforced by the permission for the Claremont development) and a receiving environment rich in cultural and natural heritage. The proposed density of 140 units per hectare is necessary to achieve a sustainable settlement strategy that aligns

with the National Planning Framework and Eastern and Midlands Regional Spatial Economic Strategy.

Applying the 2% target, the proposed development achieves a 93% compliance rate and this increases to 96% when a target of 1.5% is applied. A balance must be applied to the development of the subject site having regard to the low volume of zoned developable land in Howth, its location within Dublin City and Suburbs, proximity to high quality and high frequency public transport and weather of amenities and services available locally.

The BRE Guidelines – Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice set out scientific and empirical methods of measuring daylight and sunlight. The Guidelines are not fixed standards but should be applied flexibly to take account of the specific circumstances of each case. The Introduction to the Guidelines states:

*"The guide is intended for building designers and their clients, consultants and planning officials. The advice given here is not mandatory and this document should not be seen as an instrument of planning policy. Its aim is to help rather than constrain the developer. Although it gives numerical guidelines, these should be interpreted flexibly because natural lighting is only one of the many factors in site layout design."*

The 'flexibility' recommended in the Guidelines should reflect the specific characteristics of each case being considered. For example, as the numerical targets within the Guidelines have been derived on the basis of a low density suburban housing model, it is entirely appropriate to apply a more flexible approach when dealing with higher rise developments in a denser urban environment where the general scale of development is greater.

This does not mean that the recommendations and targets within the Guidelines can be disregarded but, instead, the 'flexibility' that should be applied should be founded on sound scientific principles that can be supported and justified. This requires a certain level of professional value judgement and experience.

Where rooms have been found in the proposed development to receive lower levels of daylight, this is primarily due to their generous size or to the obstruction caused by a balcony. Such factors are considered to contribute to the overall quality of the residential units and therefore the trade-off with reduced daylight levels could be considered acceptable.

Section 3.2 of the Guidelines identifies specific assessments that **may** be required to support proposals at some or all scales. (emp. added) Having regard to the nature of the proposed development, the identified assessments were considered by the project team and it was determined that some of those listed are relevant.

- Specific impact assessment of the micro-climatic effects such as downdraft. Such assessments shall include measures to avoid/ mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.

Having regard to the modest height proposed, it has been determined that micro-climatic would not arise as a result of the proposed development and accordingly a specific assessment is not warranted in this instance. Micro-climatic effects are associated with tall buildings and the height of the proposed development would not constitute a tall building.

- In development locations in proximity to sensitive bird and / or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight lines and / or collision.

The Natura Impact Statement that accompanies this application assesses and evaluates collision risk impacts and flight lines. It concludes that the risk of collision is significantly lowered with a static, clearly detectable building. The proposed buildings consist of glazing, broken up with intermittent stone and brick cladding with louvre panelling and metal balustrade over sections of external glazing. It is, considered that the building will not pose a collision risk to identified species. The NIS states that the presence of the proposed development may alter flight patterns slightly to avoid the proposed building structure. It has been objectively concluded by Scott Cawley Ltd., following an examination, analysis and evaluation of the relevant information, including in particular the nature of the predicted impacts from the proposed development, that the proposed development will not adversely affect (either directly or indirectly) the integrity of any European site, either alone or in combination with other plans or projects. This conclusion includes impacts on flight lines and collision risks to sensitive birds.

The Biodiversity Chapter of the EIAR includes and assessment and evaluation of the impact of the proposed development on bats. The proposed lighting arrangement has been reviewed by the project ecologist and it is deemed to be appropriate and would not effect the existing bat population locally.

- An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.

Impacts on telecommunication channels are most likely to occur if a building or structure is located in an elevated position. The proposed development site is not located on a significantly elevated site and the modest height of the buildings is not anticipated to interfere with telecommunication channels locally.

- An assessment that the proposal maintains safe air navigation. The proposed development site is outside of Dublin Airport's flight path.

- An urban design statement including, as appropriate, impact on the historic built environment. The application is accompanied by an Urban Design Statement and an Architectural Heritage Assessment Report that consider the impact on the historic built environment.

- Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.

The application is accompanied by an EIAR, Screening for Appropriate Assessment and Natura Impact Statement.

It is a Specific Planning Policy Requirement (SPPR) 3(a) of the Urban Development and Building Heights Guidelines for Planning Authorities that where an applicant for planning permission sets out how a development proposal complies with the criteria in section 3.2; and, where An Bord Pleanála considers that such criteria are appropriately incorporated into development proposals, they shall apply Specific Planning Policy Requirement (SPPR) 3 under Section 28 (1) (C) of the Planning and Development Act 2000 (as amended).

SPPR 3(a) states that where;

- (i) *an applicant for planning permission sets out how a development proposal complies with the criteria above; and*
- (ii) *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.*

Taken as a whole the proposed development performs well in terms of daylight when assessed against the 2% target and this improves further when a departure from 2% to 1.5% is applied. A clear justification is set out for the departure and it is submitted that it would give effect to policy requirements contained in the Apartment Guidelines specifically regarding private amenity space as set out at para. 3.35 and 3.36 and reproduced below;

*“It is a policy requirement that private amenity 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 level, private amenity space shall incorporate boundary treatment appropriate to ensure privacy and security. Private amenity space should be located to optimise solar orientation and designed to minimise overshadowing and overlooking.*

*Balconies should adjoin and have a functional relationship with the main living areas of the apartment. In certain circumstances, glass-screened ‘winter gardens’ may be provided. The minimum required areas for private amenity space are set out in Appendix 1.”*

Having regard to all of the information presented above, it is submitted that the Board may grant permission where the proposed development would materially contravene Objective DMS30 of the Fingal Development Plan 2017-2023, having regard to the criterion set out under Section 37(2)(b)(iii) so that the Board have the legal power to grant permission pursuant to Section 37(2)(b).

### 3.2.5 Objective DMS30 (BRE Guidelines) - Permission should be Granted having regard to 37(2)(b)(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.*

Since the adoption of the Fingal Development Plan in 2017, the Claremont development to the north of Howth Road received permission from An Bord Pleanála for the demolition of existing structures and construction of a mixed use scheme incorporating 512 apartments, 2 shops, a creche, a restaurant and a café across 4 blocks with a maximum height of 8-storeys.

The Claremont site is immediately north east of the proposed development site and the permission reflects national planning policy promoting compact growth through efficient use of the built environment including;

- NPO 2a: A target of half (50%) of future population and employment growth will be focused in the existing five Cities and their suburbs.
- NPO 3a: Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlement.
- NPO 3b: Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.
- NPO 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- NPO 35: Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

For that scheme 80% of habitable rooms achieved the average daylight factor stated as being 1% for bedrooms and 1.5% for living rooms. A review of the floor plans submitted with the application identifies that the layout included a LKD arrangement. The Inspector's Report prepared during the processing of the application notes that *"appropriate daylight and sunlight will be available with reference to BRE and BS standards... Given the aspect and outlook that many of the apartments would have towards scenic areas and open spaces, this level is reasonable and in keeping with the advice at section 3.2 of the guidelines on building height"*

Notably, in making its decision, the Board did not consider that the average daylight factor was a material contravention.

The permission for Claremont represents an acceptance that a lower average daylight factor of 1.5% is acceptable having regard to other national, regional and section 28 Ministerial Guidelines. The Board in their decision concluded that the Claremont scheme accords with the proper planning and sustainable development of the area.

Geographically, the Claremont Scheme is immediately north east of the proposed development site. The same strategic planning policy issues pertain to both sites. It is submitted that;

- both sites are in Dublin City and Suburbs and the RSES supports the consolidation of Dublin.
- the proposed development site is also central and accessible under the terms set out in section 2.4 of the Apartment Guidelines and so is suitable for apartment schemes at higher densities.
- In line with Claremont's 191 dwellings per hectare, the density (140 dwelling per hectare) of the proposed development is in keeping with the advice at section 5.8 of the 2009 guidelines on sustainable urban residential development for public transport corridors. The design would meet the 12 criteria set out in the manual issued with those guidelines.
- In the same manner as Claremont, this proposed development is of high quality and complies with various policies and objectives of the Development Plan in favour of good quality housing.

As such, it is submitted that the proposed development satisfies section the criterion of Section 37(2)(b)(iv) so that the Board have the legal power to grant permission pursuant to Section 37(2)(b). Permission for the proposed development should be granted having regard to the pattern of development i.e. high density at a site opposite the proposed application area, and permissions granted i.e. the Claremont scheme, in the area since the making of the development plan.

3.2.6 Objective DMS23 (8 apartments per core) - Permission should be Granted having regard to 37(2)(b)(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.*

The Fingal Development Plan 2017-2023 requires;

*“Up to 8 apartments per floor per individual stair/lift core may be provided in apartment schemes. Where this is not possible, applicants and developers should maximise the number of apartments per floor per stair/lift core.”*

Objective DMS23 states: *“Permit up to 8 apartments per individual stair/lift core within apartment schemes”*

Since the adoption of the Development Plan in 2017, the section 28 Design Standards for New Apartments was published. Design Parameters including Apartments to stair/lift core ratios are addressed.

Paragraph 3.28 of the Guidelines state;

*“Enabling a dwelling mix that includes a greater proportion of one-bedroom or studio type units would facilitate an increase in the number of apartments per floor per individual stair/lift from the previous maximum of 8 in the 2015 guidelines, to a maximum 12 apartments per floor per individual stair/lift core under these guidelines. This is particularly applicable to higher density schemes in more central and accessible and some intermediate locations i.e. sites near to city or town centres, close to high quality public transport or in SDZ areas, subject to high quality design.”*

The proposed development satisfies the criteria to qualify as a Central and/or Accessible Urban Location as defined in the 2018 Building Height Guidelines.

The 2015 Guidelines upon which Objective DMS23 is based is now superseded by the 2018 Apartment Guidelines.

It is a Specific Planning Policy Requirement (SPPR) 6 that;

*“A maximum of 12 apartments per floor per core may be provided in apartment schemes. This maximum provision may be increased for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha , subject to overall design quality and compliance with building regulations”.*

The design of the proposed development includes the following layout.

<b>Building Ref.</b>	<b>Ground – 3<sup>rd</sup> Floor</b>	<b>4<sup>th</sup> Floor</b>	<b>5<sup>th</sup> Floor</b>
<b>A</b>	10	8	4
<b>B</b>	10	8	4
<b>C</b>	11	9	5

Accordingly, the ground to 3<sup>rd</sup> floor of each proposed block and the 4<sup>th</sup> floor of Block C exceeds the Development Plan’s stated objective of 8 apartments per lift core.

Para 3.28 of the Guidelines identifies that 12 apartments per floor per core may not be possible or necessary in all blocks in all apartment schemes, subject to good design and compliance with Building Regulations, maximising the number of apartments per floor per stair/ lift core will assist in ensuring that service charges and maintenance costs faced by residents into the future are kept at reasonable levels.

Appendix 1 of the Guidelines establish development management standards for apartments and the Housing Quality Audit that accompanies this application demonstrates that the proposed scheme meets and exceeds these standards as they relate to floor areas, storage requirements and private and communal amenity space.

The site is central and accessible, so under SPPR 4 of the Design Standards for New Apartments 33% of the apartments should have dual aspect. Within the proposed development 99 units or 61% are dual aspect. Single aspect units are located facing east and west, 57% of which benefit from a projecting bay window arrangement, meaning living room windows look in two directions. There are no north-facing single aspect units.

The design of the proposed development is fully compliant with requirements of the Building Regulations.

It is our professional planning opinion that this numerical exceedance represents a contravention of the Development Plan but not a Material Contravention, having regard to the 2018 Apartment Guidelines.

Notwithstanding, we recognise the role of the competent authority in deciding this issue and should An Bord Pleanála consider that the proposed works constitute a material contravention of the Development Plan, then it is respectfully submitted that a grant of permission for the proposed development can be justified by reference to the 2018 Design Standards for New Apartments, were

the Board to decide to grant permission under section 37(2)(b) (iii) of the Planning and Development Act, 2000 (as amended).

3.2.7 Objective DMS23 (8 apartments per core) - Permission should be Granted having regard to 37(2)(b)(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.*

The permitted Claremont Strategic Housing Development that lies to the north east of the proposed development site received a Grant of Permission in April 2020 from An Bord Pleanála. This decision post dated the making of the 2017 Fingal Development Plan. The layout of that scheme included more than 8 apartments per core.

It is respectfully submitted that a grant of permission for the proposed development can be justified by reference to permissions granted in the area since the making of the Development Plan, were the Board to decide to grant permission under section 37(2)(b) (iii) of the Planning and Development Act, 2000 (as amended).

3.2.8 Objective DMS75 (Children's Play) - Permission should be Granted having regard to 37(2)(b)(ii)

*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.*

Regarding children's play areas, the following quantitative Objective is included in the Development Plan.

- *Objective DMS75 Provide appropriately scaled children's playground facilities within residential development. Playground facilities shall be provided at a rate of 4 sq m per residential unit. All residential schemes in excess of 50 units shall incorporate playground facilities clearly delineated on the planning application drawings and demarcated and built, where feasible and appropriate, in advance of the sale of any units.*

The proposed development is for 162 no. units and this would generate a requirement for 648 sq.m of play area. The proposed pocket park encompasses 350 sq.m and it is designed as a children's playground. The proposed courtyards that form part of the communal open space integrate opportunities for play.

It is not considered that the proposed scheme represents a material contravention of the Development Plan. Notwithstanding, should the Board consider it to be, set out below is a justification having regard to the provisions of 37(2)(b)(ii) of the Planning and Development Act 2000, as amended.

The 2018 Apartment Guidelines require;

Children's play needs around the apartment building should be catered for:

- *within the private open space associated with individual apartments (see chapter 3);*



All units proposed benefit from generous balconies or at ground level, private terraces, that meet the quantitative development management standards established in Appendix 1 of the Guidelines.

- *within small play spaces (about 85 – 100 sq. metres) for the specific needs of toddlers and children up to the age of six, with suitable play equipment, seating for parents/guardians, and within sight of the apartment building, in a scheme that includes 25 or more units with two or more bedrooms; and*

The proposed pocket park that occupied an area of 350 sq.m is designed to facilitate play for children. The play space has a grass area for informal activities such as playing with a ball and more formal activities with the provision of play equipment. The equipment will be aimed at the 2-10 years age group and composed of timber materials to assimilate the area into the surrounding garden landscape. The surface will be of bark mulch. Sheltered seating benches are dotted around the play area for those supervising children at play. The pocket park benefits from passive supervision, being located to the north east of the proposed Block A. This pocket park play area is supplemented with opportunities for play integrated into the courtyard design.

- *within play areas (200–400 sq. metres) for older children and young teenagers, in a scheme that includes 100 or more apartments with two or more bedrooms.*

As outlined above, the design of the scheme integrates opportunities for play aimed at older children including space for ball play within the pocket park and space dedicated to games, table tennis and exercise stations within the courtyards.

The proposed play areas meet the minimum cumulative play area (285 sq.m) requirement established in the Apartment Guidelines and accordingly, the Board may grant permission.

### 3.2.9 Objective DMS77 & NH27 (Trees) - Permission should be Granted having regard to 37(2)(b)(ii)

*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.*

*Objective DMS77 Protect, preserve and ensure the effective management of trees and groups of trees.*

*Objective NH27 Protect existing woodlands, trees and hedgerows which are of amenity or biodiversity value and/or contribute to landscape character and ensure that proper provision is made for their protection and management.*

The 2018 Building Height Guidelines establish development management criteria and the specific assessments required to accompany development proposals.

At the scale of district/ neighbourhood/ street, the relevant development management criteria to the objectives set out above are;

*The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape*

The supporting information included with this application confirms that the scheme is an appropriate response to the existing environment and would make a positive contribution. It respects the surrounding historical setting and integrates a considered high quality landscape design that will provide amenity for residents and the public and will enhance the local biodiversity. The relevant reports that should be consulted are; (i) Urban Design Statement, (ii) Architectural Design Statement, (iii) Landscape Design Statement, (iv) Arboricultural Report, (v) Biodiversity Chapter of EIAR, and, (vi) Landscape & Visual Chapter of EIAR, and (vii) Arboricultural Report.

Specific Assessments required to support proposals and of relevance to trees are;

*An urban design statement including, as appropriate, impact on the historic built environment.*

An Urban Design Statement accompanies this application and demonstrates that the proposed development is carefully considered in the context of the historic built environment. Regarding trees, the existing tree belt that line the avenue leading to Howth Castle are outside of the application area. The project arborist has provided the information necessary to ensure that there are no negative effects from the proposed development on the tree belt. Additional tree planting is proposed within the application area along the north-eastern and eastern boundary to supplement the existing tree belt and provide further screening of the development from the Architectural Conservation Area.

There is extensive woodland coverage surrounding St. Mary's Church and Howth Castle, both protected structures and they provide screening that mitigates any impact the proposed development may have on the protected structures. The photomontages that accompany the application demonstrates that the effect of the proposed development on the historic built environment is not significant.

The tree belt proposed for removal do not have historic origins. A review of heritagemaps.ie confirms that they are approx. 25 years old.

*Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.*

This application is supported by an Environmental Impact Assessment Report, a Screening for Appropriate Assessment Report and a Natura Impact Statement.

Chapters in the EIAR that are relevant to trees include the Landscape & Visual chapter, the Biodiversity chapter and the Cultural Heritage: Built Heritage chapter.

The layout of the development proposal has been designed to ensure the protection and incorporation of trees located along the eastern boundary, which have been collectively identified as an important arboricultural feature that contributes to the landscape character of the local area. The aim has been to utilise these boundary trees as key features, to create a harmonious relationship between the existing natural infrastructure and the new built environment.

The development proposal will require the removal of 9 individual category B trees and part removal of two category B groups, 11 individual category C trees, one individual category U tree and part removal of one category U hedge/area of vegetation.

Four trees are recommended for removal irrespective of the proposed development, due to structural defects or irreversible decline that warrants them in such a condition that they cannot be realistically retained as living trees in the context of current land use for longer than 10 years, or due to high likelihood of failure that poses an unacceptable risk to persons or property.

The aim has been to avoid development that will result in the loss of trees from all lands within the Applicants ownership, however where this has not been possible, a compensatory approach has been adopted that will see a diverse mix of new tree species planted across these lands.

It is proposed to partially remove a hedgerow that is approx. 25 years old and defines the boundary between the greenfield area and the golf course. To compensate for this, a new woodland belt incorporating in so far as is practical transplants from the original hedgerow, is proposed along the southern boundary of the application area. This proposed planting will connect with existing mature trees to the east and west. This will result in a future increase in canopy cover within the local landscape and create a post-development situation that improves the long-term arboricultural quality of the lands.

The Biodiversity Chapter of the EIAR identifies that the hedgerows within the proposed development site, while not dominated by native species, are wide, and natural and link with other woodland habitats in the immediate vicinity. The southern hedgerow is included in the Howth SAAO buffer zone. The hedgerows across the site are valued as local importance (higher value) on this basis. The bat surveys confirm that there are no trees with Potential Roost Features (PRF) identified in the proposed development site. The trees in the hedgerow are mostly of small diameter at breast height and have not developed wounds/cavities which could accommodate roosting bats. For these reasons, the trees across the proposed development site are of negligible suitability for roosting bats.

The hedgerow supports a small population of foraging common pipistrelle, and likely soprano pipistrelle bat and Leisler's bat (e.g., other bat species that use edge habitats). The habitats in the adjacent Deer Park demesne, particularly woodland habitats, are of high suitability for foraging and commuting bats.

The hedgerow is suitable for foraging and sheltering habitat for a range of terrestrial fauna species. Badger *Meles meles*, are known to dig setts (underground resting places) in banks and along hedgerows in the Dublin area (Author, pers. Obs). No setts were identified by surveyors in 2019 or 2020. The Deer Park demesne contains larger tracts of suitable habitat for badger, it is possible that badgers are present in the surrounding Howth demesne, although this was not identified during surveys for the proposed development site.

A range of common bird species were observed in the proposed development site and surrounding areas during surveys conducted in June 2020. Bird species were most frequently observed in or along hedgerows and trees and scrub in the lands.

The Biodiversity chapter of the EIAR concludes that

*“the partial removal of the southern hedgerow during the construction phase of the proposed development. **The removal of this feature is not deemed to affect the overall function of these hedgerows as linear habitats of suitable foraging/commuting habitats. As such the proposed development will not result in fragmentation of suitable foraging habitat**, as the linear western hedgerow will be retained and partial retention of the southern hedgerow, lands to the east and west of the site, which remain suitable for foraging bats, will continue to be connected via the portion of the southern hedgerows to be retained and will be enhanced by the landscaping design. It is therefore predicted that, despite any temporary effects, the loss of foraging/commuting habitat associated with the proposed development **is unlikely to affect the conservation status of the local bat population and will not result in a likely significant negative effect, at any geographic scale**, especially considering that common pipistrelle and Leisler’s bat are known to have a widespread distribution across the region, and in Ireland (Roche et al., 2014) and that both species are showing an increase in their population trend.”* (emp added)

The effect of the partial removal of the hedgerow on the landscape is considered in the Landscape and Visual chapter of the EIAR. It states;

- *A substantial portion of the golf course shelter belt on the site would be removed (with selected trees relocated on the site where feasible). It is proposed to replace the removed section of shelter belt with a realigned woodland belt along the southern site boundary, so that the east-west woodland connection across the site would be retained.*
- *In total, the development would include the planting of 9 no. mature trees, 12 no. semi-mature trees, 44 no. standard/multi-stem trees, and 1,960 whips (in the new/relocated woodland belt). This large number of trees would perform screening, landscape/visual amenity and biodiversity functions. The Arboricultural Impact Assessment concludes that “... within 25-30 years of planting, there will be a significant increase in canopy cover in the local landscape. Therefore, the long-term result will be an improvement on the pre-development baseline”.*
- *The portion of the site zoned High Amenity, would be retained as open space to the rear of the buildings, in the form of a terraced grassland.*
- *The magnitude of change to the landscape and green infrastructure of the receiving environment would be medium.*

The significance and quality of effect on the landscape is determined to be moderate (i.e. an effect that alters the character of the environment in a manner that is consistent with existing and emerging baseline trends). Given the preservation of the most valuable local landscape/GI feature, the retention of the High Amenity area as open space, and the volume of trees proposed in compensation for the removed shelter belt, the quality of the effect would be neutral.

The Built Heritage Chapter of the EIAR concludes that “*the proposed landscape design has been carefully considered to take into account the significance of the existing historic landscape of the adjoining Howth Castle demesne. The visual impact of the proposed development will be minimised through the retention of existing mature trees in the eastern section of the subject site, which will ensure screening between the site and the entrance gates to Howth Castle and St. Mary’s Church. The significant mature woodlands and tree belts to the south of the subject site are highlighted as providing visual screening to the Castle. The planting of new trees will ensure that the character of the historic demesne is maintained and protected. The proposed landscape design will be in keeping with the parkland character of the adjoining historic demesne.*”

The 2018 Apartment Guidelines establish that where An Bord Pleanála considers that the listed criteria are appropriately incorporated into development proposals, the relevant authority shall apply Strategic Planning Policy Requirement (SPPR) 3 (A) under Section 28 (1C) of the Planning and Development Act 2000 (as amended);

*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.*

Should An Bord Pleanála consider that the proposed removal of part of the tree belt within the proposed development site would constitute a material contravention of the Development Plan, then it is respectfully submitted that a grant of permission for the proposed development can be justified by reference to the 2018 Urban Development and Building Height Guidelines, were the Board to decide to grant permission under section 37(2)(b) (ii) of the Planning and Development Act, 2000 (as amended).

## 4 Conclusion

This report outlines 5 no. potential material contraventions of the Fingal Development Plan 2017-2023;

- i. Compliance with Residential Capacity for Howth
- ii. Compliance with BRE Guidelines, specifically Objective DMS30
- iii. Compliance with number of apartments per core, specifically Objective DMS30
- iv. Compliance with quantitative requirements for children's play, specifically Objective DMS75
- v. Compliance with Objectives DMS77 and NH27 that relate to protection of trees

It is established in this Material Contravention Statement that the proposed development is of national importance having regard to its ability to contribute to the delivery of new homes and address climate change challenges. Activating this proposed development site through effective density and consolidation, rather than more sprawl of urban development is strategically important in the context of the scarcity of developable land available in Howth, a location that lies within Dublin City and Suburbs. This proposal therefore meets the requirements of Section 37(2)(b)(i) of the Planning and Development Act 2000, as amended.

Having established the above, it is necessary for the proposed development to meet one of the following 3 no. criteria for the Board to grant permission where the proposed development materially contravenes the development plan;

- (i) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (ii) 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*
- (iii) 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.*

For each of the 5 no. identified potential material contraventions of the Fingal Development Plan 2017-2023, this report establishes a justification in the context of the requirements of 37(2)(b)(i-iii).

It is our professional planning opinion that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the Fingal Development Plan 2017-2023, in accordance with and Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) and by reference to sub-section (i), (ii) and (iii) of Section 37(2)(b) of the 2000 Act (as amended) for the reasons set out above.