

Strategic Housing Development: Material Contravention Statement

Residential Development

At

Heuston South Quarter
St. John's Road West, Dublin 8

Submitted on Behalf of

HPREF HSQ Investments Ltd
32 Molesworth Street, Dublin 2

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1.0 INTRODUCTION

This Material Contravention Statement accompanies an application by HPREF HSQ Investments Ltd. (the applicant), for a residential development of 399 no. residential units and associated development. The application site comprises part of the Heuston South Quarter (HSQ) development at St. John's Road West and Military Road, Kilmainham, Dublin 8.

This Statement has been prepared to address matters associated with the proposed development that might be determined to materially contravene relevant provisions of the Dublin City Development Plan, 2016-2022 (DCDP).

This Statement is prepared pursuant to Section 8(1)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (hereafter referred to as 'the 2016 Act') that requires an application which materially contravenes a development plan or local area plan to contain a statement as to why permission should be granted by having regard 'to a consideration specified in section 37(2)(b) of the Act of 2000'.

It is noted that elements of a proposed development may contravene a policy or objective of a statutory land use plan but may not be determined to represent a 'material contravention(s)' of the plan. This is a matter of professional planning judgement. This Statement has included a number of matters that are considered to contravene provisions of the DCDP, primarily to comply with Ministerial Guidelines published since the adoption of the DCDP and could be determined to 'materially contravene' the relevant provisions of the plan. These matters relate primarily to residential qualitative / quantitative standards, as set out in sub-section 16.10.1 of the DCDP. In this regard sub-section 16.10.1 of the DCDP acknowledges national guidance in this regard where it states that:

'The standards set out for apartment developments are set out in the Department of Environment, Community and Local Government guidelines entitled Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (December 2015), (www. environ.ie), hereafter referred to as the 2015 Department Guidelines¹. In addition, proposals for apartments shall comply with the standards set out below and with the requirements of other relevant development standards including public open space, play space, safety and security, and acoustic privacy standards.'

An abundance of caution approach has been taken to the identification of the provisions referenced and addressed in this Statement and as set out in detail under Section 3, below. In summary these matters relate to apartment development standards in respect of:

- Minimum Apartment Floor Areas.
- Unit Mix.
- Block Configuration (number of units per floor per access core).
- Minimum Internal Apartment Space Standards; and
- Private Amenity Space provision.

¹ Superseded by the 2020 revised guidelines - Guidelines on Sustainable Urban Housing: Design Standards for New Apartments (2020)

This Statement provides a supporting rationale for the Board to grant permission, pursuant to its statutory powers, notwithstanding the possible material contravention of these policies and objectives of the Dublin City Development Plan, 2016-2022 (DCDP).

2.0 RELEVANT LEGISLATION – MATERIAL CONTRAVENTION

2.1 Planning and Development (Housing) and Residential Tenancies Act, 2016

In the event that a proposed development would materially contravene the relevant provisions of a development plan other than in relation to the zoning of the land, Section 8(1)(iv)(II) of the 2016 Act requires that the applicant should include a statement as to why permission should nonetheless be granted having regard to a consideration specified in section 37(2)(b) of the Planning and Development Act 2000, as amended (the 2000 Act).

This document constitutes a Statement of opinion, in compliance with section 5(6), setting out an opinion as to why permission should be granted having regard to those provisions.

Sections 9(3) provides that the Board shall have regard to specific planning policy requirements contained in guidelines issued by the Minister (i.e., Section 28 Guidelines), and where those requirements differ from the provisions of the development plan, then those requirements will apply instead of the relevant provisions of the development plan:

“Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan ..., then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.”

Section 9(6) provides that the Board may decide to grant permission for a proposed strategic housing development even where the proposed development (or a part of it) materially contravenes the development plan or local area plan, other than in relation to the zoning of land. This is subject to s.9(6)(c), which provides:

‘Where the proposed strategic housing development would materially contravene the development plan or local area plan, ... 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.’

Section 10(3)(a) requires that a decision of the Board under Section 9 must state: *“the main reasons and considerations on which the decision is based”*. Furthermore, under Section 10(3)(b), the Board must state, where permission is granted in material contravention of a development plan or local area plan, *“the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be”*.

2.2 Planning and Development Act, 2000 (as amended)

Section 37(2)(b) of the Act states that where a proposed development materially contravenes the development plan, the Board may grant permission 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.'

Having regard to the above criteria, it is demonstrated in Section 4 (below) that the development satisfies criterion (i) and (iii). It is noted that the inclusion of the word 'or' after criteria (ii) to (iv) establishes that a development need only satisfy one of those criteria in addition to criterion (i).

3.0 MATERIAL CONTRAVENTION STATEMENT

The matters identified within this statement relate primarily to residential qualitative / quantitative standards, as set out in sub-section 16.10.1 of the DCDP. These, along with relevant provisions of the Apartment Guidelines are discussed under separate headings, below.

3.1 Minimum Apartment Floor Areas

The following minimum overall apartment floor areas are applicable:

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

The DCDP standards for standard 1-bed and 2-bed (4 person) apartments are consistent with the requirements of the Apartment Sustainable Urban Housing: Design Standards for New Apartments (2020). However, the Development Plan only includes a single standard for two-bed apartments which is consistent with the 4 person, two-bed apartment provided for under the Apartment Guidelines (73sqm minimum GFA). The Apartment Guidelines also include a reduced size two-bed apartment, 63sqm GFA, which is suitable for 3 persons. It is also noted that the minimum floor area for studio units at 37 sq.m and as promoted in the Apartment Guidelines are 3 sq.m smaller in area / size than the relevant DCDP standard of 40 sq.m.

In addition to the above, it is also a requirement of the DCDP *that 'the majority of all apartments in a proposed scheme of 100 units or more must exceed the minimum floor area standard by at least 10% (studio apartments must be included in the total but are not calculable as units that exceed the minimum).'* Unlike the DCDP development plan standards, Section 5 of the Apartment Guidelines distinguishes between build-to-sell and build-to-rent typologies and provides express guidance on the Build to Rent (BTR) development typology as proposed in the subject application - in this regard SPPR 7 of the

guidance is relevant. SPPR 8 goes on to provide distinct planning criteria applicable to BTR development and in this regard SPPR 8 (iv) removes the requirement that majority of all apartments in a proposed BTR scheme should exceed the minimum floor area standards by a minimum of 10%.

Having regard to Schedule 2.1 (Apartment Types) as set out in the submitted Housing Quality Assessment it is noted that:

- All studio type units proposed (with the exception of Unit types S.4, S.6 and S.8) are smaller than 40 sq.m. In all other instances the proposed studio units comply with the 37 sq.m requirement of the Apartment Guidelines.
- The proposed development includes 13 no. two beds (Apartment Types 2.6 and 2.12) which are deemed to be 3 person two-bed units consistent with the Apartment Guidelines. Given the Development Plan omits any provision for 3 person two-bed units, it is considered that the proposed 3 person two-bed units could be considered to be a material contravention of the Development Plan.
- Having regard to the 'Apartment Type' summary table on pg. 25 of the submitted HQA it is noted that the majority of proposed apartment types (with the exception of Apartment Types 1.1, 1.01D; 1.8, 1.9, 1.12, 1.13 and 2.8D) will not exceed the required minimum floor area standard by at least 10%. The aforementioned unit types comprise 77 no. units in total or 19.3% of the total number of units that will exceed the required minimum floor area standard by at least 10%.

3.2 Unit Mix

Section 16.10.1 of the Dublin City Development Plan 2016-2022 states that in 'build to let' schemes that up to 42-50% of the total units may be in the form of one bed or studio units:

"The above mix of unit types will not apply to managed 'build-to-let' apartment schemes for mobile workers where up to 42-50% of the total units may be in the form of one bed or studio units. Communal facilities such as common rooms, gyms, laundry rooms etc. will be encouraged within such developments. This provision only applies to long-term purpose-built managed schemes of over 50 units, developed under the 'build-to-let' model and located within 500 m (walking distance) of centres of employment or adjoining major employment sites. Centres of employment are identified in Fig W Housing Strategy Appendix 2A, and for clarity these centres are located within the following Electoral Divisions:

Ushers F....."

The application site is located within 500m walking distance of the 'Ushers F Electoral District area as identified on Figure W of the Housing Strategy. However, the proposed development provides for 46 no. studios (11.5%), 250 no. one bedroom units (62.6%), and 103 no. 2 bedroom units (25.8%). As such, 74.2% of the proposed units are studios and one bed units, being in excess of the 42-50% provided for in section 16.10.1 of the City Development Plan. As such, the proposed unit mix could be considered to materially contravene the City Development Plan.

However, the proposed unit mix is consistent with SPPR 8(i) of the Apartment Guidelines which removes restrictions on dwelling mix for BTR schemes where it states that 'No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise.'

3.3 Block Configuration

The DCDP requires that there '*... shall be a maximum of 8 units per core per floor, subject to compliance with the dual aspect ratios Hallways and shared circulation areas should be appropriate in scale and should not be unduly narrow. They should be well lit, where possible with some natural light and adequate ventilation. Movement about the apartment building should be easily understandable by all users by keeping internal corridors short with good visibility along their length. In certain circumstances, deck access may be acceptable as long as bedrooms do not face out on to the deck and it is well proportioned and designed. In some cases, secondary bedrooms facing on to the deck may be acceptable if quality issues are satisfactorily addressed by careful design such as providing a semi-private external buffer zone. The key performance criterion is the quality of residential amenity.*'

Having regard to the submitted floorplans it is noted that all of the constituent residential blocks are rectangular in shape. Apartments are laid out / arranged on either side of a central access corridor. At podium level these central corridors run north-south through the blocks with access points at either side of each block. At the upper floor levels these central corridors extend off a central stair core. Having regard to typical upper-level floorplans (Level 01 and Level 04) it is noted that both Block A and E contain more than 8 units per core per floor.

However, as in the case of minimum floor areas and unit mix, SPPR 8(v) of the Apartment Guidelines states that:

'The requirement for a maximum of 12 apartments per floor per core shall not apply to BTR schemes, subject to overall design quality and compliance with building regulations'

3.4 Minimum Internal Apartment Space Standards

The DCDP sets out minimum internal space requirements for living/dining/kitchen rooms, bedrooms and storage areas, as follows:

Minimum aggregate floor areas for living/dining/kitchen rooms:

Minimum widths for the main living/dining rooms		
Apartment type	Width of living / dining room	Aggregate floor area of living/ dining/kitchen area*
Studio	5 m**	30 sq.m**
One bedroom	3.3 m	23 sq.m
Two bedroom	3.6 m	30 sq.m
Three bed	3.8 m	34 sq.m

*Note: an enclosed (separate) kitchen should have a min floor area of 6.5 sq.m. In most cases, the kitchen should have an external window.

**Note: Combined living/dining/bedspace

All proposed Studio Type S.1 and S.01.1 apartments (11no. apartments in total) do not meet the minimum 5m room width requirement as per the DCDP standard. However, in all instances the proposed studio units meet the minimum room width requirement of 4m.

All proposed 2 bed/3-person unit types 2.6 (12 no. units) and 2.12 (1 no. unit) do not meet the required 30 sq.m aggregate living/dining/kitchen floor area as per the DCDP standard for 2-bedroom units. However, all 2-bed/3-person units meet the required 28 sq.m aggregate floor area for living/dining/kitchen rooms, as identified in Annex 1of the Apartment Guidelines.

In terms of storage provision, the DCDP requires the following minimum standards:

- Studio unit: 3 sq.m.
- 1-bedroom unit: 3 sq.m
- 2-bedroom unit: 6 sq.m

Whilst the above standards for studios, 1-bed and 2-bed / 4-person units are consistent with the standards promoted in the Apartment Guidelines, it is noted that the Apartment Guidelines provides a distinct 5 sq.m storage requirement / standard in respect of 2-bed / 3-person units that is lower than the 6 sq.m standard for a 2-bed/4-person unit. In this regard, all the proposed 2 bed/3-person unit types 2.6 (12 no. units) and 2.12 (1 no. unit) do not meet the DCDP storage space standard of 6 sq.m but in all instances the minimum required 5 sq.m storage space, as per the Apartment Guidelines are met.

3.5 Private Amenity Space

The DCDP requires that private open space shall be provided in the form of gardens or patios/ terraces for ground floor apartments and balconies at upper levels. The minimum depth of private amenity open space (balcony or patio) shall be 1.5 m and the minimum area / size shall be as follows:

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

A total of 94 no. units (23.6%) benefit from private amenity space provision in the form of either a private patio / terrace (22 units) or a balcony (72 units). In this regard Schedule 2.1 of the submitted HQA indicates that in all instances the minimum area / size requirement is exceeded and that a minimum balcony depth of 1.5m is achieved in all instances

As set out under Item 3(a) of the submitted cover letter / response to the Board's Opinion, it is noted that SPPR8 (ii) of the Apartment Guidelines (2020) afford flexibility for a BTR scheme in this regard, stating:

'Flexibility shall apply in relation to the provision of a proportion of the storage and private amenity space associated with individual units as set out in Appendix 1 and in relation to the provision of all of the communal amenity space as set out in Appendix 1, on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development.'

It is submitted that this level of provision of private amenity space is appropriately supplemented through the generous provision of outdoor communal amenity space and a range of communal recreational facilities and amenities, as summarised below:

- Resident Support Facilities² – In this regard it was identified that the proposed development would benefit from concierge / management facilities and waste management facilities that will be provided at lower ground floor level.
- Resident Services and Amenities³ - A range of communal recreational facilities are provided, which include shared co-working area / lounge and gym at lower ground floor level and lounges on either side of a residential foyer within Block A and a TV Room / lounge in Block C – all at ground floor / podium level. Communal gardens / amenity spaces are provided in the form of roof terraces and communal courtyards at lower ground level.
- The quantitative requirement for outdoor communal amenity space (based on the Annex 1 standards and the mix of the previous proposed 399 no. BTR units) is identified as 2,155 sq.m.

A total of 3,809 sq.m of communal outdoor amenity spaces are proposed in the form of:

- secure, accessible roof gardens (1,179 sq.m).
- communal residential courtyards at lower ground floor level between blocks (960 sq.m); and
- communal open space at podium level, which includes the provision of a MUGA at the southern end of the site to encourage active recreational uses (totalling 1,670 sq.m).

As detailed in the Planning Report and Statement of Consistency and the submitted application documents, this level of outdoor communal open space provision comfortably exceeds the minimum required level of provision.

It is further noted that it was agreed in principle with DCC that balconies were not appropriate on the facades of the buildings that addressed the RHK and its gardens as this had the potential to create visual clutter on these visually sensitive and important facades. This reduced the number of units that could be provided with balconies to provide private amenity space. The majority of these units enjoy a westerly or south westerly aspect overlooking the RHK gardens. Accordingly, these units will enjoy a high level of direct sunlight and daylight exposure / penetration, and as such, will enjoy a correspondingly high level of internal amenity.

It is submitted that the quantity, quality and variety of the communal indoor and outdoor amenity and recreational spaces, provide for a very high level of amenity and recreational facilities for all units, and appropriately compensate for some units not having private amenity space provision, consistent with SPPR8(ii) of the Apartment Guidelines.

2 Facilities related to the operation of the development for residents such as laundry facilities, concierge and management facilities, maintenance/ repair services, waste management facilities, etc.

3 Facilities for communal recreational and other activities by residents including sports facilities, shared TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities, etc.

4.0 STATEMENT IN SUPPORT OF MATERIAL CONTRAVENTION

With regard to the requirements of Section 37(2)(b) of the Act of 2000, it is demonstrated under sub-section 4.1 below why the proposed Strategic Housing Development is considered to be of strategic importance. It is also demonstrated under sub-sections 3.1 to 3.5 (above) and summarised under sub-section 4.2 below why it is considered that proposed development is consistent with Section 28 Guidelines, particularly the Sustainable Urban Housing: Design Standards for New Apartments (2020), pursuant to Section 37(2)(b)(iii) of the Planning and Development Act.

4.1 Section 37(2)(b)(i): Strategic or National Importance

It is submitted that the proposed residential development is of strategic importance having regard to provisions of the National Planning Framework (NPF) and the Regional Settlement and Economic Strategy (RSES).

The proposed development comes within the definition for 'Strategic Housing Development' under the Acts on the basis that the proposed development exceeds 100 no. units and is located on appropriately zoned land - Objective Z5 (SDRA7), *'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'* where residential development is permitted in principle.

In addition to the proposed development being considered to be strategic by reason of coming within the definition of a Strategic Housing Development for the purpose of the Act, it is submitted that the proposed development is also strategic for the reasons set out below.

The NPF acknowledges the critical role that Dublin City plays in the country's competitiveness. It therefore supports Dublin's growth (jobs and population) and anticipates the city and suburbs to accommodate an extra 235,000 - 293,000 people by 2040. To support and manage Dublin's growth, the NPF is seeking that the city needs to accommodate a greater proportion of the growth it generates within its footprint than was the case heretofore and that housing choice, transport mobility and quality of life are key issues in the future growth of the city. The NPF therefore sets a target of at least 50% of all new homes targeted for Dublin City and suburbs are delivered within its existing built-up footprint.

A key objective of the NPF is to 'see that greatly increased levels of residential development in our urban centres and significant increases in the buildings heights and density of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels'. The NPF contains a number of directly relevant national policy objectives to ensure the delivery of compact urban growth. These include:

- National Policy Objectives (NPO) 2(a) relating to growth in our cities;
- NPO 3(a)/(b)/(c) relating to brownfield redevelopment targets;
- NPO 4 relating to attractive, well-designed liveable neighbourhoods;
- NPO 5 relating to sufficient scale and quality of urban development; and
- NPO 6 relating to increased residential population and employment in urban areas.

Furthermore, the NPF seeks to secure compact and sustainable urban growth. This means focusing on reusing previously developed 'brownfield'" land, building up infill sites (and either reusing or

redeveloping existing sites and buildings) in well serviced urban locations, particularly those served by good public transport and supporting services.

The proposed development will contribute positively towards the achievement of this targeted growth whilst promoting compact growth and urban consolidation objectives through the intensification of a centrally located and accessible, brownfield, infill site that is well served by existing public transport including rail, Luas and QBCs. Accordingly, the application site is considered highly suitable for high-density residential development.

Furthermore, the strategic importance of the delivery of purpose-built Specific BTR residential units to address housing shortages in Dublin is consistent with the provisions of *'Rebuilding Ireland – The Government's Action Plan on Housing and Homelessness'* particularly Pillars 3 and 4 insofar as it will contribute to achieving an annual strategic housing delivery target of 25,000 homes per year for the period 2016 to 2021, and improving the range and quantity of rental homes available in Dublin. More recently, the Economic and Social Research Institute (ESRI) published a research paper entitled *Structural Housing Demand at County Level* in December 2020. As outlined in the DHLGH Ministerial Letter to Local Authorities dated 18 December 2020, based in the ESRI findings and other factors affecting existing demand, there is a total projected new household demand for almost 31,000 new households per annum every year from 2020 to 2040.

The Minister's Letter states that *'there is a more pressing need to increase national housing supply to meet existing, unmet housing demand, to the greatest extent possible in the shortest time possible, while also accommodating projected national housing demand. Factoring in existing demand together with future projected demand, will require annual average national demand for just over 33,000 new households per annum, to be met during the period 2020 to 2031'* [emphasis added].

The Ministerial Letter acknowledges current undersupply of housing and states that since the NPF was published in 2018, there have been three further years where supply has been constrained relative to demand, exacerbated by the setback arising from the Covid-19 pandemic.

The growth and settlement strategy of the Regional Spatial and Economic Strategy (RSES) emphasise the need for compact and sustainable development in accordance with the NPF to accommodate projected population growth in the Region. It is projected that the population of the region will grow by between 237,500 and 290,000 persons between 2016 and 2026 and that the population of the region will reach 2,668,000 to 274,5000 by 2031.

The subject site is located within the Dublin Metropolitan Area, for which the RSES includes a detailed planning and investment framework as set out in the Dublin Metropolitan Area Strategic Plan (MASP). Compact growth and accelerated housing delivery are identified as guiding principles of the MASP. The MASP seeks to *promote sustainable consolidated growth of the Metropolitan Area, including brownfield and infill development, to achieve a target of 50% of all new homes within or contiguous to the built-up area of Dublin City and suburbs, and at least 30% in other settlements. To support a steady supply of sites and to accelerate housing supply, in order to achieve higher densities in urban built up areas, supported by improved services and public transport'*. The MASP acknowledges that strategic sites, other than those outlined in the Plan, will come forward during the lifetime of the MASP through the ongoing development and intensification of brownfield and infill opportunities. The subject site is considered to be such an infill opportunity that is suitable for a high density BTR scheme of modern and adaptable new homes, on a brownfield site that is well served by public transport provision and local service

provision. This is in accordance with the principles and vision of the Metropolitan Area Strategic Plan (MASP).

Information from the Census 2016 indicates that the delivery of new housing has not kept pace with population growth. Between the 2011 Census and the 2016 Census the Irish population increased by 173,613 persons, from 4,588,252 to 4,761,865, representing a population growth of 3.8%. During this time, the total housing stock increased by just 8,800 no. units, from 1,994,845 to 2,003,645 no. units, representing a 0.4% increase in housing stock during this time.

Available information on New Dwelling Completions from the CSO indicates that the current rate of dwelling completions nationally is falling substantially below the 25,000 unit per year target set in Rebuilding Ireland and the NPF, which itself does not address the latent housing demand arising from the under-provision of housing in previous years. In 2018, just 17,952 no. new dwellings were completed nationally, which is 7,048 no. units below the NPF target. In 2019 this figure rose to 21,241 no. new dwellings which is 3,759 below the NPF target. This means over a two-year period there was a deficit of 10,807 no. new dwellings. The shortfall was further increased in 2020, with 20,676 no. new dwellings completed, 1.9% less than the previous year, falling well below the anticipated 25,000-unit target set in the NPF and the 33,000 envisaged in the Ministerial Letter.

It is evident that despite national policy to accelerate housing delivery, new housing has not been provided in tandem with recorded population growth and that substantial residential development needs to occur to meet national population targets. It is therefore considered of strategic national importance that suitable and sustainable residential development is facilitated where it accords with national and regional level policies and Guidelines. It is submitted that the proposed BTR Residential development is consistent with the strategic and national policy objectives of the NPF and RSES / MASP that promote compact residential development at urban locations well integrated with public transportation and sustainable modes, close to employment and recreational opportunities, at a sustainable density which contributes to the viability of services and public transport. It is submitted that the proposed development is of strategic importance in the delivery of additional housing and will specifically relieve demand pressure on the available supply of rental accommodation in Dublin City.

The Statement of Consistency submitted herewith illustrates that the proposed development is consistent with the provisions of the Ministerial Guidelines, the NPF and the RSES, and represents an appropriate and high-quality and sustainable urban infill development within the Dublin Metropolitan Area. It is considered that the proposed development is of a scale that will make a meaningful contribution towards meeting housing stock and population targets as set out at the regional level and national level.

Accordingly, the proposed development can be considered to be of 'Strategic Importance' for the purposes of Section 37(2)(b)(i) of the 2000 Act.

4.2 Section 37(2)(b)(iii): Compliance with RSES, Specific Planning Policy Requirements (SPPRs) contained in relevant Section 28 Planning Guidance

As stated above, National and Regional Planning Policy is of relevance to the density, form, layout and location of the proposed development that are identified and assessed in sub-section 5.2 of the

accompanying Planning Report and Statement of Consistency.

To support Dublin's sustainable growth and continued competitiveness the MASP identifies a number of large-scale strategic sites (strategic development lands), based on key corridors that will deliver significant development (housing and employment development) up to the year 2031. The strategic development lands within the DCC administrative area include Dublin Docklands, Poolbeg West and the potential of brownfield lands in the Naas Road area. It identifies the Docklands and large industrial and other strategic land banks along major transport corridors within the city as Strategic Employment locations and seeks the intensification of all employment lands within the M50. However, the MASP recognises that strategic sites, other than those outlined in the Plan, will come forward during the lifetime of the MASP through the ongoing development and intensification of brownfield and infill opportunities. It is submitted that the subject site represents such an infill development opportunity.

The Dublin Metropolitan Area Strategic Plan (MASP), forms part of the RSES. The RSES include a number of Regional Policy Objectives (RPOs) of which RPO 5.4 in respect of strategic residential development within the Dublin Metropolitan area is of particular relevance:

'Future development of strategic residential development areas within the Dublin Metropolitan area shall provide for higher densities and qualitative standards as set out in the 'Sustainable Residential Development in Urban Areas', 'Sustainable Urban Housing; Design Standards for New Apartments Guidelines' and 'Urban Development and Building Heights Guidelines for Planning Authorities'. [Emphasis Added in underlining]

The Sustainable Urban Housing: Design Standards for New Apartments 2020 (Apartment Guidelines) build upon and updates the 2015 guidelines based on current and predicted future housing requirements in Ireland. The Guidelines seek to ensure apartment living is an increasingly attractive and desirable housing option for a range of household types and tenures, reflecting contemporary household formation and housing demand patterns and trends, particularly in urban areas.

These Guidelines contain qualitative and quantitative standards for the design of apartments and related facilities including storage areas, open spaces and communal facilities. The Guidelines apply to all apartments which may be made available for sale, or constitute 'build to rent' apartments as defined in the Guidelines.

Section 2.4 of the Guidelines identify a range of locations in cities and towns that may be suitable for apartment development. In this regard, the guidelines identify '*Central and/or Accessible Urban Locations*' as locations that '*...are generally suitable for small- to large-scale (will vary subject to location) and higher density development (will also vary), that may wholly comprise apartments, including:*

- Sites within walking distance (i.e., up to 15 minutes or 1,000-1,500 m), of principal city centres, or significant employment locations, that may include hospitals and third level institutions.
- Sites within reasonable walking distance (i.e., up to 10 minutes or 800-1,000 m) to/from high-capacity urban public transport stops (such as DART or Luas); and
- Sites within easy walking distance (i.e., up to 5 minutes or 400-500m) to/ from high frequency (i.e., min 10-minute peak hour frequency) urban bus services.'

The subject site occupies such a 'central and/or accessible urban location' that is conducive to the

delivery of a high-density residential scheme. With the exception of guidance on unit mix, the DCDP does not make any further distinction in terms of development standards / guidance between regular build-to-sell apartment development and specific Build-to-Rent (BTR) development, as proposed in this instance. In this regard SPPR 8 of the Apartment Guidelines provides distinct planning criteria applicable to BTR development, as follows:

'For proposals that qualify as specific BTR development in accordance with SPPR 7:

*(i) **No restrictions on dwelling mix** and all other requirements of these Guidelines shall apply, unless specified otherwise;*

*(ii) **Flexibility shall apply in relation to the provision of a proportion of the storage and private amenity space associated with individual units** as set out in Appendix 1 and in relation to the provision of all of the communal amenity space as set out in Appendix 1, on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development. This shall be at the discretion of the planning authority. In all cases the obligation will be on the project proposer to demonstrate the overall quality of the facilities provided and that residents will enjoy an enhanced overall standard of amenity;*

(iii) There shall be a default of minimal or significantly reduced car parking provision on the basis of BTR development being more suitable for central locations and/or proximity to public transport services. The requirement for a BTR scheme to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures;

*(iv) **The requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10% shall not apply to BTR schemes;***

*(v) **The requirement for a maximum of 12 apartments per floor per core shall not apply to BTR schemes, subject to overall design quality and compliance with building regulations.'** [Emphasis in Bold]*

In a recent High Court Judgement, McDonald J restated the clear statutory obligation under section 28(1C) in respect of SPPRs contained in section 28 Guidelines:

"Section 28(1C) imposes a very clear mandatory requirement that, where specific planning policy requirements are specified in ministerial guidelines, they must be complied with. It is not sufficient merely to have regard to them (which is a relevant requirement in relation to other aspects of the guidelines)."

Having regard to SPPR 8 and the standards contained at Annex 1 of the Apartment Guidelines it has been demonstrated that:

- All the proposed studio type and 2-bed/3person type units comply with the minimum 37 sq.m and 63 sq.m floor area requirements, as set out in Annex 1 of the Apartment Guidelines, respectively. In respect of the latter, it is noted that the DCDP does not contain any equivalent standard as it does not distinguish between a 2-bed / 4 person and 2-bed / 3-person unit. Furthermore, it is identified in sub-section 3.1 above that the majority of proposed apartment types will not exceed the required minimum floor area standard by at least 10%. However, SPPR 8 (iv) omits the requirement that the majority of all apartments in a proposed scheme shall

exceed the minimum floor area standards by a minimum of 10% in the case of BTR schemes, as proposed.

- Whilst the proportion of studio and 1-bedroom units exceeds the permissible proportion of between 42-50%, as per the DCDP. However, SPPR 8(i) is explicit that no restrictions shall apply on the dwelling mix provided in a BTR scheme, as set out under sub-section 3.2 above.
- The upper levels of Block A and E exceed the DCDP requirement that a maximum of 8 units per floor shall be served of a single core arrangement. However, the apartment guidelines contain a relaxed maximum standard of 12 units per core and SPPR 8 (v) goes further in the case of BTR development by omitting any such a maximum requirement, subject to overall design quality and compliance with building regulations.
- Whilst the proposed studio Type S.1 and S.01.1 apartments (11 no. apartments in total) do not meet the minimum width requirement of 5m as required in the DCDP, it meets the minimum 4m room width standard as identified in Annex 1 of the Apartment Guidelines for studio units.
- Whilst the proposed 2 bed/3-person unit types 2.6 and 2.12 (13 no. units) do not meet the required 30 sq.m aggregate living/dining/kitchen floor area as required for 2-bedroom apartments in the DCDP, it meets the required minimum of 28 sq.m aggregate floor area for living/dining/kitchen rooms, for bespoke 2-bedroom/3-person units as identified in Annex 1 of the Apartment Guidelines.
- The submitted apartment type floorplans – Drawing No's P19-213D-RAU-ZZ-ZZ-DR-A-AP-001; 002 and 003 clearly indicate the location and storage areas associated with each of the proposed apartment types. The Apartment Guidelines provides a distinct 5 sq.m storage requirement / standard in respect of 2-bed / 3-person units that is lower than the 6 sq.m standard for a 2-bed / 4-person unit, as per the DCDP. In this regard, all the proposed 2 bed / 3-person unit types 2.6 (12 no. units) and 2.12 (1 no. unit) do not meet the DCDP storage space standard of 6 sq.m but in all instances the minimum required 5 sq.m storage space, as per the Apartment Guidelines are met.
- Not all of the proposed units benefit from private amenity space provision as required by the DCDP. However, it has been demonstrated in sub-section 3.5 above and in the submitted cover letter / response to the ABP Opinion, prepared by Declan Brassil and Co. Ltd. that the level of private amenity space provision is appropriately supplemented, and any perceived shortfall in provision is adequately offset through the generous provision of outdoor communal amenity space and a range of indoor communal and recreational facilities and amenities to include:
 - Resident Support Facilities in the form of a concierge / management facilities and waste management facilities that will be provided at lower ground floor level.
 - Resident Services and Amenities in the form of a shared co-working area / lounge and gym at lower ground floor level and lounges on either side of a residential foyer within Block A and a TV Room / lounge in Block C – all at ground floor / podium level.
 - A total of 3,809 sq.m of communal outdoor amenity spaces in the form of: (a) secure, accessible roof gardens (1,179 sq.m); (b) communal residential courtyards at lower ground floor level between blocks (960 sq.m); and (c) communal open space at podium level, which

includes the provision of a MUGA at the southern end of the site to encourage active recreational uses (totalling 1,670 sq.m).

SPPR8 (ii) of the Apartment Guidelines (2020) afford flexibility for a BTR scheme in this regard. It is submitted that the quantity, quality and variety of the communal indoor and outdoor amenity and recreational spaces, provide for a very high level of amenity and recreational facilities for all units, and appropriately compensate for some units not having private amenity space provision. This approach is consistent with SPPR8 (ii) of the Apartment Guidelines that provides a basis for the provision of alternative, compensatory communal support facilities and amenities within a development, as set out under sub-section 3.5, above.

The effect of the SPPRs and guidance contained within the Apartment Guidelines is to obviate the requirement for a planning authority to invoke the material contravention procedures in relation to a contravention on the matters outlined in sub-sections 3.1 to 3.5 of this statement. The proposed apartments are fully compliant with all the standards set out in Annex 1 of the Apartment Guidelines and avail of all relevant BTR dispensations provided by SPPR 8 of the Guidelines, as set out above. Accordingly, it is submitted that the proposed development can be granted having regard to guidelines issued under section 28 of the Act. The proposed development is also consistent with national and regional policy, and section 28 Ministerial guidelines that set out the policies of the Government, for the reasons set out in sub-section 4.1 and on the basis that it will:

- (a) Accelerate the delivery of new housing at a significantly greater scale and at a quicker pace of development than that associated with regular private market apartment schemes. In this regard, section 5.7 of the Apartment Guidelines acknowledges that a BTR schemes becomes available to the rental sector over a much shorter timescale upon completion of the development. As such, the BTR model is capable of delivering a higher volume of housing than traditional models.
- (b) Accelerate housing construction through BTR, making a significant contribution to the required increase in housing supply nationally, as identified in 'Rebuilding Ireland', and the scale of increased urban housing delivery, as envisaged in the NPF.

Thus, it is submitted that the proposed development is consistent with the requirements of section 37(2)(b)(iii) of the 2000 Act having regard to regional spatial and economic strategy for the area and the Apartment Guidelines issued under Section 28 of the 2000 Act.

5.0 CONCLUSION

On the basis of the foregoing, it is submitted that the Board can consider granting permission for the proposed development under the provisions and requirements of Section 10(3) of the 2016 Act, in contravention of the Dublin City Development Plan for the reasons stated under sub-sections 4.1 and 4.2 above and pursuant to Section 37(2)(b) of the Act of 2000.

The proposed development is consistent with the standards and Specific Planning Policy Requirements contained in Section 28 Guidelines issued by the Minister. Section 9(3)(b) of the 2016 Act provides that where specific planning policy requirements are contained in Section 28 guidelines, then those requirements will apply (to the extent that they are different to any provision of the Development Plan) instead of the relevant provisions of the Development Plan:

"Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan ..., then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan."

In a recent High Court Judgement, McDonald J restated the clear statutory obligation under Section 28(1C) in respect of SPPRs contained in section 28 Guidelines:

"Section 28(1C) imposes a very clear mandatory requirement that, where specific planning policy requirements are specified in ministerial guidelines, they must be complied with. It is not sufficient merely to have regard to them (which is a relevant requirement in relation to other aspects of the guidelines)."

The effect of the SPPRs is to obviate the requirement for a planning authority to invoke the material contravention procedures in relation to a contravention on the matters outlined in sub-sections 3.1 to 3.5 of this statement. As such, the proposed development could be permitted by An Bord Pleanála, or Dublin City Council as the case may be, without invoking the material contravention procedures. Notwithstanding, out of an abundance of caution, the manner in which the proposed development satisfies the requirements of section 37(2)(b) of the Act of 2000 and the relevant SPPR(s), has been addressed in Section 4 and for the reasons stated under sub-section 4.1 it is submitted that this proposed Strategic Housing Development is of strategic importance to the City and State. For the reasons stated under sub-sections 3.1 to 3.5 and as summarised in sub-section 4.2 above, it is submitted that the proposed development is consistent with the requirements of Section 37(2)(b)(iii) by reason of being consistent with SPPR 8 of the Sustainable Urban Housing: Design Standards for New Apartments (2020).