

Applicant: LISMORE HOMES LTD.



STRATEGIC HOUSING DEVELOPMENT

PLANNING APPLICATION

PROPOSED RESIDENTIAL DEVELOPMENT

at

Stapolin-Baldoye, Coast Road, Baldoye, Dublin 13,

MATERIAL CONTRAVENTION STATEMENT

**Kieran O'Malley and Company Limited
Town Planning Consultants**

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TABLE OF CONTENTS

	page
1. INTRODUCTION	3
2. PLANNING LEGISLATION	4
3. JUSTIFICATION FOR MATERIAL CONTRAVENTION	6
3.1 Core Strategy	6
3.2 Car Parking	10
3.3 Density	11
3.4 % of 1 Bed Units (Mix of Units)	12
3.5 Heights	13
3.6 Construction Phasing	20
4. CONCLUSION	21

1. INTRODUCTION

This material contravention statement accompanies a Strategic Housing Development planning application by Lismore Homes Ltd. for the construction of 1,007 residential apartments (consisting of 58 no. studio units, 247 no. 1 bedroom units, 94 no. 2 bedroom 3 person units, 563 no. 2 bedroom 4 person units, and 45 no. 3 bedroom units), communal residential community rooms, and a ground floor creche in 16 no. buildings with heights varying from 4 to 12 storeys, basement and surface level car parking, secure bicycle parking, landscaping, water supply connection at Red Arches Road, and all ancillary site development works on a site located in the townland of Stapolin, Baldoyle, Dublin 13.

This report addresses the issue of material contraventions of the Fingal County Development Plan 2017-2023 [the development plan] and the Baldoyle-Stapolin Local Area Plan 2013 (as extended) [the LAP] as required under Section 8 of the Planning and Development (Housing) and Residential Tenancies Act 2016.

The following items 1 – 5 are identified as material contraventions and item 6 is a potential material contravention:

1. Chapter Two: **Core Strategy** in the development plan
2. Section 12.10: **Car Parking** in the development plan
3. Section 4D.2: **Density** in the LAP
4. Objective RS 2: **% of 1 Bed Units (Mix of Units)** in the LAP
5. Section 4D.4: **Heights** in the LAP
6. Section 6.4.2: **Construction Phasing** in the LAP

As set out below, the Board is invited to consider guidelines issued under section 28 of the Planning and Development Act 2000 (as amended) including Sustainable Urban Housing, Design Standards for New Apartments (2020), Urban Development and Building Heights – Guidelines for Planning Authorities (December 2018), conflicting objectives in the development plan and LAP, and the pattern of decisions granted in the area since the making of the development plan and LAP in its assessment of the material contraventions. In doing so, it is submitted that this material contravention statement provides a robust planning basis for An Bord Pleanála to conclude that there is justification for material contravention in relation to these issues.

2. PLANNING LEGISLATION

The relevant planning legislation is set out in the Planning and Development (Housing) and Residential Tenancies Act 2016 and the Planning and Development Act 2000 (as amended). Section 8(1)(a)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act 2016 requires that where a proposed development is considered to materially contravene the relevant Development Plan or Local Area Plan (other than with regard to the zoning of the land), then the SHD application must include a statement:

“(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.”

It is confirmed in Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 that the Board may grant permission for a proposed SHD which materially contravenes a Development Plan or Local Area Plan. Section 9(6) is 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.”

Section 37(2)(b) of the Planning and Development Act 2000 (as amended) states as follows in respect of material contravention and what provisions are available to the Board to grant planning permission:

“(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

- i. the proposed development is of strategic or national importance,*
- ii. there are conflicting objectives in the Development Plan or the objectives are not clearly stated, insofar as the proposed development is concerned,*

or

- iii. permission for the proposed development should be granted having regard to regional planning guidelines 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.”*

It follows from section 37(2)(b) that an applicant must demonstrate that the proposed development is of strategic or national importance plus it must meet one of the subsequent criteria under (ii), (iii) or (iv).

As this proposal is being filed to An Bord Pleanála under the strategic housing development provisions and it accords with the definition of Strategic Housing Development, it should automatically follow that it satisfies the strategic criteria as set out in section 37(2)(b) of the Planning and Development Act 2000 (as amended). That was the stated position in the Board's decisions in respect of the proposed developments for Growth Area 1 (TA06F.310418) and Growth Area 3 (TA06F.311016), and based on this proposal for 1,007 residential units, it should follow that it is also considered of strategic importance.

In addition, it is noted that Table 5.1 in the Eastern & Midland Regional Assembly Regional Spatial and Economic Strategy identifies Baldoyle-Stapolin as a strategic development area for residential development. This is further confirmation that the proposed development of the application site is considered of strategic importance.

As set out in section 3 below, it is therefore considered that a grant of planning permission for the proposed development is permissible having regard to criteria (ii), (iii) and (iv) of Section 37(2)(b).

3. JUSTIFICATION FOR MATERIAL CONTRAVENTION

As stated above, the proposed development is considered to materially contravene the statutory plans for the site as follows:

- Fingal County Development Plan 2017 - 2023 with regard to the core strategy (Chapter 2) and car parking provision for apartments (section 12.10).
- Baldoyle- Stapolin Local Area Plan 2013 (as extended) with regards to density (section 4D.2), percentage of 1 bedroom units [mix of units] (objective RS2), and heights (section 4D.4).

In addition, there is a potential material contravention of the LAP in respect of construction phasing as set out in section 6.4.2 of the LAP. Each of these six issues is addressed in turn.

3.1 Core Strategy

3.1.1 It was stated to our client by the Local Authority as part of the pre-application consultation phase that the Council considers the proposal would represent a material contravention of the Core Strategy of the development plan. Chapter Two of the Fingal County Development Plan 2017-2023 sets out the Council’s core strategy for the overall development of the County. In Table 2.4, it identifies a Residential Capacity of 1,498 persons for Baldoyle/Sutton based on 29 hectares of residential zoned land. The following image is an extract from Table 2.4:

Table 2.4 Total Residential Capacity provided under Fingal Development Plan 2017 – 2023, updated as of September 2019

Town/Village	Remaining Capacity (hectares)	Remaining Residential Units	Metropolitan Core % Land	Metropolitan Core % Units
Metropolitan Area				
Key Town				
Swords	481	14,799		
Dublin City and Suburbs				
Blanchardstown	260	9,306		
Howth	14	436		
Baldoyle/Sutton	29	1498		

Source: Table 2.4 in the Fingal Development Plan 2017-2023 (post variation no. 2)

3.1.2 In section 1 of the LAP, it states that “of these [2,223¹] units it is envisaged that the LAP lands have the capacity to deliver between 800 and 1,100 new units” and this range is repeated in Objective 8 of the LAP. It is also noted in section 2.3.1 of the LAP that “the 2001 Baldoyle Action Area Plan provided for approximately 2,600 homes on the Plan lands, which it was envisaged would equate to a population of 7,600. As of June 2012 c. 584 units were completed and occupied with 49 completed and vacant and a further 205 units are partially constructed.” Using these unit figures, the Council considered that 838 units were approved and or constructed within the LAP lands hence the additional capacity for between 800 and 1,100 new units.

3.1.3 By the time of variation no. 2 to the development plan in September 2019, there were two further planning permissions at Stapolin-Baldoyle with a cumulative consent for 915 no. units – 371 no. units in F11A/0290/E1 (the omission of a floor of units in compliance with Condition No. 1 reduced the no. of approved units from 400 to 371) and 544 no. units in F16A/0412.

¹ This is the corresponding figure for Baldoyle/Sutton from the Core Strategy in the 2011-2017 development plan.

Notwithstanding the dates of those planning permissions, the figures for Baldoyle/Sutton in Table 2.4 of the Core Strategy remained unchanged from what was originally stated in Table 2.6 in the development plan (before variation no. 2). The following is an extract from Table 2.6 that confirms the area of residential zoned land and the projected housing numbers are unchanged:

Portmarnock	57	1490	
Howth	16	498	
Baldoyle/Sutton	29	1498	
Other Settlements*	71	2791	
Moderate Sustainable Growth Town			
Donabate	116	4056	

Source: Table 2.6 in the Fingal Development Plan 2017 – 2023 (as initially approved)

- 3.1.4 From our review, it is our interpretation of the Core Strategy that its figure of 1,498 for Baldoyle/Sutton post variation no. 2 to the development plan does not account for the 915 no. units approved in the planning permissions for F11A/0290/E1 and F16A/0412. On that basis, and prior to consideration of the planning permissions granted for the two SHD applications, the Core Strategy had only 583 remaining units for Baldoyle/Sutton.
- 3.1.5 An Bord Pleanála has recently granted planning permission for 2 no. SHD applications for 882 no. units (TA06F.310418 refers) and 1,221 no. units (TA06F.311016 refers). The first SHD permission resulted in a net increase of 437 no. units on planning permission F16A/0412 (as amended by subsequent permissions), so the total number of residential units currently approved at Baldoyle is in the order of 2,573 no. residential units (371 + 544 + 437 + 1,221 = 2,573 units). As this proposal would supersede the extant permission on this site, the number of approved units on GA1 and GA3 sites is 2,202 residential units, and with this proposal added, it would result in 3,209 no. residential units that would exceed the 1,498 figure in the Core Strategy.
- 3.1.6 Setting aside the two SHDs that are subject of judicial review, the proposed 1,007 no. units added to the 544 no. units in F16A/0412, would also exceed the 1,498 figure in the Core Strategy albeit by only 53 no. units. Either way, it is accepted that the Council is correct to consider that the proposal would materially contravene the Core Strategy as set out in Chapter Two.
- 3.1.7 It is submitted to the Board that a material contravention of the Core Strategy in the development plan is justified by reference to the national and regional planning policies and objectives set out in the following documents:
- Rebuilding Ireland – Action Plan for Housing and Homelessness (2016)
 - Housing for All: A New Housing Plan for Ireland (2021)
 - National Planning Framework (NPF)
 - Eastern & Midland Regional Assembly Regional Spatial and Economic Strategy (RSES)
- 3.1.8 Rebuilding Ireland: Action Plan for Housing and Homelessness issued in July 2016 establishes the government policy to increase the supply of housing. The stated core objective in the overview of Rebuilding Ireland is, *“The overarching aim of this Action Plan is to ramp up delivery of housing from its current under-supply across all tenures to help individuals and families meet their housing needs, and to help those who are currently housed to remain in their homes or be provided with appropriate options of alternative accommodation, especially those families in emergency accommodation.”* This proposal would significantly ramp-up delivery of housing at Stapolin-Baldoyle in compliance with Rebuilding Ireland.

3.1.9 Housing for All: A New Housing Plan for Ireland is the Government’s latest housing plan to increase the housing output and to meet the targets set out for additional households in the National Planning Framework. To do so, Housing for All states that Ireland needs an average of 33,000 homes constructed per annum until 2030. To achieve that target, it has four overarching objectives as follows:

- Supporting Homeownership and Increasing Affordability;
- Eradicating Homelessness, Increasing Social Housing Delivery and Supporting Social Inclusion;
- Increasing New Housing Supply; and
- Addressing Vacancy and Efficient Use of Existing Stock.

3.1.10 This proposal is consistent with Housing for All’s objective to increase the supply of housing. There is a current permission on this site for 371 no. residential units; this proposal, if approved, would provide for 1,007 no. units thus directing providing more residential units. This application site is fully serviced and zoned for residential development, so it would meet the Government’s required housing need at a density and scale consistent with recent permissions at Stapolin, Baldoyle. With the change in the Part V housing provision, the proposal would now deliver 200 no. residential units for Fingal County Council and an agreement in principle, is in place with the Council.

3.1.11 The GA2 lands at Stapolin Baldoyle are on the edge of the built-up area of Dublin City being c. 10 km ‘as the crow flies’ from O’Connell Street. Irrespective of whether the lands are east or west of the railway line/DART station, this brownfield site forms part of Dublin City and suburbs, so it is submitted that the proposed residential development is supported by national policy objectives 3b, 11 and 35 of the National Planning Framework, which are as follows:

National Policy Objective 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.

National Policy Objective 11

In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.

National Policy Objective 35

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.

3.1.12 The additional residential units proposed for the site would directly contribute towards the realisation of these NPOs through the delivery of compact development linked to existing infrastructure at Stapolin, Baldoyle. In doing so, it would increase housing delivery and contribute to meeting the housing demand thus complying with national policy in respect of sustainable housing on serviced urban land.

3.1.13 At regional level, regional policy objective RPO4.3 in the Eastern & Midland Regional Assembly Regional Spatial and Economic Strategy (RSES) is to “support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs”. The proposed development that would significantly increase the residential development yield on this site from 371 units to 1,007 units would therefore contribute towards the implementation of objective RPO4.3 of the RSES.

3.1.14 Chapter 5 of the RSES focuses on the Dublin Metropolitan Area Strategic Plan (MASP) that also applies to the site at Stapolin, Baldoyle. To achieve the vision for the MASP, there are a number of guiding principles for the sustainable development of the Dublin Metropolitan Area that inter alia include the following:

- *Compact sustainable growth and accelerated housing delivery – 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.*
- *Integrated Transport and Land use – To focus growth along existing and proposed high quality public transport corridors and nodes on the expanding public transport network and to support the delivery and integration of ‘Bus Connects’, DART expansion and LUAS extension programmes, and Metro Link, while maintaining the capacity and safety of strategic transport networks.*

3.1.15 The proposed development for Growth Area 2 is supported by both of these guiding principles. Further, the RSES plan identifies a number of strategic development areas to create sustainable compact communities for a resident population of some 1.65 m people in the metropolitan area by 2031. The following is an extract from table 5.1 that identifies Baldoyle-Stapolin as a strategic development area:

TABLE 5.1 Strategic Development Areas and Corridors, Capacity Infrastructure and Phasing

Corridor	Residential	Employment/ Mixed Use	Phasing/Enabling infrastructure
City Centre within the M50 (Multi-modal) Population capacity Short 35,000 Medium 10,000 Long 15,000 Total 60,000	Docklands build out of North Lotts and Grand Canal Docks with further physical and social regeneration of Poolbeg and northeast inner-city lands	Further development of people intensive high tech and services-based business districts in Docklands and Poolbeg	Short to Medium term Dodder bridge, LUAS extension to Poolbeg, local and wider area water upgrades, waste water upgrades and district heating
	City centre regeneration of older social housing projects (former PPPs), Parkwest-Cherry Orchard, Ballymun, Ashtown-Pelletstown and St James - Heuston lands	Regeneration of Diageo lands, health and education related employment at St James and Grangegorm campus	Short to Medium term Waste water upgrades, social infrastructure Long term Long term capacity supported by DART underground
	Naas Road /Ballymount - significant brownfield lands in South Dublin and Dublin City Council areas, with potential for residential development and more intensive employment/ mixed uses	Re-intensification of underutilised lands including Naas road and older industrial estates, subject to feasibility study	Medium to Long term Multi-modal public transport, new Luas stop, site assembly, waste water upgrades and local area water network upgrades
	Dunsink - major greenfield landbank with long term potential to develop a new district centre	Subject to feasibility	Long term LUAS extension to Finglas, access, site conditions, feasibility
North-South corridor (DART) Population capacity Short 31,000 Medium 13,000 Long 7,000 Total 51,000	North Fringe - large scale urban expansion creating new communities at Clongriffin-Belmayne (Dublin City) and Baldoyle-Stapolin (Fingal)	Completion of mixed-use districts with retail and service provision	Short to Medium term Access to rail station, bus upgrades, new road connections, drainage, parks and social infrastructure
	Donabate - significant residential capacity in this strategically located rapidly growing coastal village	Consolidation of economic and service base in tandem with population growth	Short term DART expansion, distributor road and railway bridge, social infrastructure, local area water network and storage upgrades
	South County Dublin - North	Strengthening commercial town	Short term

Source: Extract from Table 5.1 of Eastern & Midland Regional Assembly Regional Spatial and Economic Strategy 2019-2031

- 3.1.16 The proposed development for an increased residential yield in excess of the Core Strategy would facilitate a strategic residential development area at Baldoyle-Stapolin as expressly identified in the Eastern & Midland Regional Assembly Regional Spatial and Economic Strategy.
- 3.1.17 Finally, while it is noted that the GA3 planning approval is subject to judicial review, if that review does not overturn the decision of the Board and it is determined prior to the determination of this application, then the Board can rely on that decision and section 37(2)(b)(iv) of the Planning and Development Act 2000 (as amended) to further justify a material contravention of the Core Strategy.
- 3.1.18 There is overriding national and regional planning policy to support the proposed residential development of 1,007 units at the application site and to justify a material contravention of the development plan’s Core Strategy.

3.2 Car Parking

3.2.1 The proposal includes 0.6 car parking spaces per residential unit, which the Council deemed in the pre-application consultations to materially contravene its development management standard on car parking provision. Section 12.10 of the development plan requires the following car parking for the proposed development:

1-Bed Apartment:	1 space per unit	305 no. units x 1 = 305
2-Bed Apartment:	1.5 spaces per unit	657 no. units x 1.5 = 985.5
3-Bed Apartment:	2 spaces per unit	45 no. units x 2 = 90
Total		1,380.5 spaces

3.2.2 The provision of 605 no. car parking spaces at a rate of 0.6 spaces per unit is a material contravention of the development plan standards for car parking. The Board is invited to permit this material contravention having regard to section 28 guidelines and the planning permissions granted in the area since the making of the development plan. Each is addressed.

3.2.3 The reduced car parking provision is justified by reference to paragraph 4.19 as follows from the Sustainable Urban Housing: Design Standards for New Apartment (December 2020):

In larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.

3.2.4 The proposed development is very well located adjacent to existing high quality public transport services. Clongriffin DART station is just over 230 metres from the site and was specifically constructed to service the residential development at Stapolin, Baldoyle. That station caters for all DART services between Malahide and Greystones and a number of commuter services north to Dundalk and south to Gorey.

3.2.5 There are also a number of existing Dublin Bus services nearby that inter alia provide access to Malahide, UCD, Dublin city centre, and Dublin Airport. Further, the Bus Connects proposal identifies proposed new routes in the immediate vicinity of the application site with three routes connecting with Clongriffin DART station and the Malahide to Dublin City Centre route also serving the Coast development including the application site. As required by the Apartment

Guidelines, the site is highly accessible by existing and proposed public transport and thus reduced car parking provision is compliant with those section 28 Guidelines.

- 3.2.6 The proposed reduced car parking provision is also consistent with planning permissions at Stapolin Baldoyle since the introduction of the Fingal County Development Plan 2017-2023. Of particular relevance, are the permissions issued by the Board for GA1 and GA3 that provided 0.54 car parking spaces per apartment unit. In both applications, the Board’s inspector noted that *“the proposed development is in line with the advice contained in the Apartment Guidelines with respect to car parking, despite contravening the statutory plan and permission could be granted.”*
- 3.2.7 It is noted that the GA1 and GA3 schemes are currently subject of judicial review. Therefore, it is submitted to the Board that the reduced car parking provision can be justified with or without reference to the GA1 and GA3 planning permissions under section 37(2)(b)(iii).

3.3 Density

- 3.3.1 The LAP identifies medium to high density (42-50+ units per hectare) and high density (50-80+ units per hectare) on the application site. The density of the proposed development is c. 165 units per hectare that would materially contravene the density provisions in the LAP. The following reasons set out the justification for the density of the proposed development.
- 3.3.2 First, the Sustainable Residential Development in Urban Areas Guidelines published in 2009 promote higher density development on brownfield sites and sites within walking distance of a railway station and town centre. Section 5.6, 5.7 and 5.8 of those Guidelines specify that there is no general upper limit on the density within any town or city centre sites, they encourage higher densities and the potential for car-free developments at the brownfield locations that can provided in town centres, and increased densities should be promoted within 1 km of a rail station. These Guidelines fully support the density of the proposed development.
- 3.3.3 Second, section 2.4 of the Sustainable Urban Housing: Design Standards for New Apartment guidelines published in December 2020 state that central and or accessible urban locations such as the application site are *“such locations are generally suitable for small to large scale (will vary subject to location) and higher density development (will also vary), that may wholly comprises apartments”*. The application site is within 230 metres walking distance of Clongriffin DART station that was constructed in part to serve the application site and adjoining residential development lands. Planning permission has also been granted for a local town centre within the overall Stapolin Baldoyle development and it is also proposed to be serviced with BUS Connects routes. The site is a highly accessible urban location and the higher density proposed is compliant with the Apartment Guidelines (2020).
- 3.3.4 Third, the residential density of the planning permissions at growth area 1 and 3 exceed the density ranges in the LAP. The density for GA1 is 97 units per hectare whereas for GA3 it is 177 units per hectare. In the Board’s assessment of both of those planning applications, it was determined that neither constituted a material contravention of the LAP’s density provisions.
- 3.3.5 Finally, the objectives in the LAP are not clearly stated in that a range is provided but both ranges do not include an upper limit by virtue of the “+” sign in each range. This clearly implies densities in excess of the upper figure in each range will be considered at the application site. Further, both objectives RS7 and RS8 in the LAP reference “minimum” densities, which would infer that the LAP is more concerned to delivering sustainable densities that do not fall below a certain level as opposed to exceeding the ranges shown in section 4D.2 and on Figure 4D.1. This application of the density ranges would be consistent with the following objectives from the development plan:

Objective SS01: Consolidate the vast majority of the County's future growth into the strong and dynamic urban centres of the Metropolitan Area while directing development in the hinterland to towns and villages, as advocated by national and regional planning guidance.

Objective SS16: Examine the possibility of achieving higher densities in urban areas adjoining Dublin City where such an approach would be in keeping with the character and form of existing residential communities, or would otherwise be appropriate in the context of the site.

3.3.6 Also, objective RS10 in the LAP requires proposals are in accordance with the principles set out in the DoEHLG document 'Sustainable Residential Development in Urban Areas 2009', which as stated in paragraph 3.3.2 above require no general upper limit on the density within any town or city centre sites.

3.3.7 While it is open to the Board to also conclude that the density of the proposed development does not constitute a material contravention of the LAP, it is our position that it does and that permission can be granted having regard to section 37(2)(b) of the Planning Act.

3.4 % of 1 Bed Units (Mix of Units)

3.4.1 Objective RS2 of the Baldoyle-Stapolin LAP 2013 sets out the following in respect of the mix of units to be provided in new developments:

"Ensure that one bedroom dwellings are kept to a minimum within the development and are provided only to facilitate choice for the homebuyer. In any event, no more than 5% of units in any application or over the whole development, shall be one bedroom units."

3.4.2 The proposed development has the following mix of units, which materially contravenes objective RS2 of the LAP:

- Studios 5.8 %
- 1 beds 24.5%
- 2 beds 3 person 9.3%
- 2 beds 4 person 55.9%
- 3 beds 4.5 %

3.4.3 At the time the LAP was adopted, the residential property market was stagnant and there appeared to be very little or no demand for 1 bed units. However, that position changed rapidly and subsequent Apartment Guidelines that supersede the LAP introduced different percentages for the mix of units within apartment schemes. In particular, the Board is referred to SPPR1 of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' (December 2020). SPPR1 states:

"Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s)."

3.4.4 The mix of units in the proposed development complies with SPPR1. Further, the Council has not prepared a Housing Need and Demand Assessment as part of the current development plan but

section 12.4 of the development plan does require “any residential scheme should provide a balanced range of dwelling types and sizes to support a variety of household.” It would appear there are conflicting objectives in respect of mix of units between the LAP and the development plan. As required by the development plan, the proposal provides for a range of dwellings sizes that includes studios, 1 beds, 2 beds (3 and 4 person versions), and 3 bed apartments with more than 90% exceeding the floor area standard by more than 10%.

3.4.5 In addition, planning permission has been granted for two schemes at GA1 and GA3 at Stapolin, Baldoyle that also materially contravene the LAP with regard to the percentage of one bedroom units. The GA1 scheme has 28% one bed units whereas the GA3 scheme has 41%.

3.4.6 It follows that the Board has three reasons to justify the material contravention of objective RS2 of the LAP. The mix of units is fully compliant with SPPR 1 of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (December 2020); there are conflicting objectives between the development plan and LAP; and having regard to planning permissions granted since the adoption of the development plan.

3.5 Heights

3.5.1 In section 4D.4 of the LAP, objective RS12 “require buildings to conform to the heights set out in Figure 4D.2 Building Heights within the LAP lands.” The following is figure 4D.2 from the LAP:

Figure 4D.2 Building Heights



3.5.2 The LAP requires building heights ranging from 2 – 4.5 storeys in height within the application site. It is proposed to construct 16 no. buildings with heights ranging from 4 to 12 storeys, which would materially contravene the LAP. Having regard to the extant permission on the site, the

approvals at GA1 and GA3, and the provisions of the Urban Development and Building Height Guidelines, it is submitted to the Board that permission can be granted for the heights proposed.

3.5.3 Addressing the planning permissions granted, the extant planning permission on the site has approved building heights ranging from 3 to 7 storeys, which contravene the building heights set out in Figure 4D.2. A review of the reasons and considerations stated in the Board’s decision on that appeal (ref. PL06F.239732) will confirm that it had regard to the Baldoyle-Stapolin Local Area Plan 2013 in determining to grant planning permission and it did so without invoking the material contravention provisions. More recently, the Board has approved two SHD developments (TA06F.310418 and TA06F.311016) at Stapolin-Baldoyle with building heights ranging from 2 to 15 storeys. There is also planning permission on the Dublin City Council side of Clongriffin DART Station for a residential apartment development with buildings heights between 6 and 16 floors (see PL29N.248713). Between these approved developments, there is justification to approve this latest proposed having regard to Section 37(2)(b)(iv).

3.5.4 Since the publication of the LAP, the Minister has issued Urban Development and Building Height Guidelines that also support the principle of additional height at the application site and at Stapolin consistent with the approved GA1 and GA3 schemes. The Urban Development and Building Height Guidelines were prepared in response to the National Planning Framework and as means of supporting increased density, scale and height of development in the town and city cores. The Guidelines note that “*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.*” The proposal is consistent with the overriding principle of these Guidelines but it is necessary to demonstrate compliance with its four SPPRs; each is now considered.

3.5.5 SPPR1 relates to locations that are appropriate for increased building height and density, and it states as follows:

In accordance with Government policy to support increased building height and density in locations with good public transport accessibility, particularly town/ city cores, planning authorities shall explicitly identify, through their statutory plans, areas where increased building height will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building height.

3.5.6 The subject site is located in close proximity to existing and planned public transport including Clongriffin DART station, Dublin Bus routes, and BUS Connects. It therefore represents a suitable location for increased building heights and densities in compliance with SPPR1.

3.5.7 SPPR2 has been included in the Guidelines in “*the interests of achieving national policy objectives for significantly increased urban housing delivery, there is a need for planning policy to ensure that an appropriate quantum of residential developments*” and states as follows:

In driving general increases in building heights, planning authorities shall also ensure appropriate mixtures of uses, such as housing and commercial or employment development, are provided for in statutory plan policy. Mechanisms such as block delivery sequencing in statutory plans² could be utilised to link the provision of new office, commercial, appropriate retail provision and residential accommodation, thereby enabling urban redevelopment to proceed in a way that comprehensively meets contemporary

economic and social needs, such as for housing, offices, social and community infrastructure, including leisure facilities.

3.5.8 The subject site is part of the overall Coast development and is within the Baldoyle-Stapolin local area plan that sets out three growth areas and clear phasing within those areas to deliver a sustainable residential community and village centre around Clongriffin DART station.

3.5.9 SPPR3 sets out the development management criteria that needs to be complied with to the satisfaction of the local authority and An Bord Pleanála. SPPR3 states as follows:

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

3.5.10 The development management criteria referred to in (A)1 of SPPR3 are set out in section 3.2 of the Guidelines and relate to the assessment of the scale of the proposal at the relevant city/town, of district/neighbourhood/street, of the site/building, and other specific assessments. These are now all considered.

At the scale of the relevant city/town

3.5.11 There are three bullet point criteria under this part of the assessment. Each bullet point is stated with commentary confirming compliance below each one.

- *The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.*
 The site is very well served by existing, high capacity and high frequency public transport at Clongriffin DART station, which was part funded by Helsingor Limited in order to serve the Stapolin-Baldoyle residential zoned lands and Dublin Bus services with further planned public transport in the form of BUS Connects also planned to service the area.
- *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.*
 The proposed site layout plan complies with the overall masterplan layout for Baldoyle-Stapolin including maintaining view lines along Ireland's Eye Avenue and Stapolin Avenue as

required by the LAP. The proposal including the higher building heights being sought will assimilate into the approved built environment at GA3 to the west and the existing five storey apartment building to the south of Sector 8C. Visual nodes and variety through building heights is created along the east and northern boundary of the site to proposed Racecourse Park. The building edges to Sectors 6B, 8A, 8B, and 8C will frame the public realm to Stapolin Haggard Class 2 open space. The four, five, and six storey building heights to the Haggard are more appropriate in scale relative to the smaller area of public open space within the Haggard compared to the higher buildings that will form the edge to proposed Racecourse Park. The landscape and visual impact assessment has been prepared by Murray Associates and which accompanies this application confirms the proposal won't have any injurious impact on the landscape or visual amenity 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 site layout plan follows the residential development sectors as set out in the local area plan and the approved layout per the extant planning permission on the site. As the primary road network has already been approved and constructed, the scheme knits into that long established layout. In terms of mass and scale, there is a variety in building heights throughout the scheme, with lower buildings positioned to the south of the development sectors and the building heights rising in height along the northern site boundary. Visual interest is created along the internal streetscapes through the building heights, the use of high quality materials, and by having multiple buildings within each sector. The development edge to proposed Racecourse Park is also 'broken-up' with the use of larger openings within the scheme along that boundary and the fact that the site forms an arc to the Racecourse Park, it creates visual interest and avoids a continuous hard edge to Park. Further, the proposed heights are cognisant of the adjoining built and approved residential developments, the gradation of heights, and maintenance of prospects in the local area plan. The Board is also referred to the CCH Architects Design Statement.

At the scale of district/neighbourhood/street

3.5.12 There are five bullet point criteria under this part of the assessment. Each bullet point is stated with commentary confirming compliance below each one.

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

The proposal comprises 16 no. building with heights that range from 4 stories to 12 storeys on a site that has an extant planning permission with building heights ranging from 3 to 7 stories. The existing and approved adjoining developments include heights ranging between 5 and 15 storey buildings. This scheme has been appropriately designed to be compatible with the scale and layout of those residential schemes. Further, the proposal will positively address the public realm to Stapolin Haggard Class 2 public open space that will benefit all future residents within the overall Coast development. The layout of the proposed development is consistent with the LAP, it would make a positive contribution to the Coast urban neighbourhood, and complete the streetscape of a development that has been on hold for over a decade.
- 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 Board is referred to the architecture drawings and CCH Architects design statement that confirm the proposal is not monolithic and avoids long, uninterrupted walls of building in the

form of slab blocks. With regard to materials and building fabric, this is directly addressed in section 4.12 of the Architect Design Statement prepared by CCH Architects. The selected materials and finishes are high quality, durable and appropriate to the site's coastal location and will complement those set out in the approved developments at GA1 and GA3.

- *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).*

As required by the local area plan, the site layout provides for prospects and views along Ireland's Eye Avenue and Stapolin Avenue which are within the overall Coast Development. Also, the scheme will extend and complete the existing urban edge to Racecourse Park, form a new edge to Stapolin Haggard, and enhance the use of both of those spaces through passive surveillance. The proximity to the proposed Racecourse Park enables additional height within this scheme as confirmed in the Board's assessment of the schemes at GA1 and GA3. Compliance with the Flood Risk Assessment Guidelines has been addressed in this application by JB Barry and Partners and JBA Consultants.

- *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.*

As the final application for the three growth areas as identified in the LAP, the proposal would complete pedestrian, cyclist and vehicle legibility through the application site and the wider Stapolin-Baldoyle Coast residential development. On its own, the proposal would extend the existing development northwards from Red Arches Drive and encompass the Class 2 open space at Stapolin Haggard thus completing a significant and strategic part of the overall integrated development at the Coast. It follows that proposal would fully integrate within the other constructed and approved phases of the Coast development.

- *The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood.*

This apartment scheme includes a broad mix of unit types (studios, 1 beds, 3 person 2 beds, 4 person 2 beds, and 3 beds), sizes with different orientations, aspects, etc. This mix is provided for in each sector of the development with the exception of sector 8C that does not have any studio units. As evident from Census 2016 Baldoyle Electoral Division, the majority of residential units within this DED are houses – 2,241 out of 2,704. The number of apartments was only 454 units but that will increase on construction of the permitted development at growth areas 1 and 3. The mix of apartments is compliant with the Apartment Guidelines (2020), so it should follow that the proposal would positively contribute to the overall mix of units in Baldoyle.

At the scale of the site/building

3.5.13 There are three bullet point criteria under this part of the assessment. Each bullet point is stated with commentary confirming compliance below each one.

- *The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.*

The form, massing and heights of the proposed development have been carefully designed to maximise access to natural daylight, ventilation and views and to minimise overshadowing and loss of light. This has been a dynamic part of the scheme design with the BRE Group

advising throughout the design process to ensure compliance with the BRE Guidelines in terms of daylight and sunlight. The generality of the scheme layout in terms of building height follows the approved layout per Reg. Ref. F11A/0290 by placing the lower building heights to the south and gradually building the height up to the north of the site and along Racecourse Park. In addition, it is proposed to amalgamate sectors 6A and 6B to create a wider courtyards for those apartment units.

- *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'.*

The applicant instructed the BRE Group to assess daylight, sunlight and overshadowing within the proposed development. Their detailed report accompanies this application and confirms substantial compliance with the BRE Guidelines.

- *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 BRE Group assessment predicts 93% of the rooms would meet the daylight recommendations of the UK National Annex of EN17037 with similar results of 92% using the older BS8206 recommendations. The BRE analysis suggests that the majority of living rooms that are below the recommended standards are on the lower floors and have balconies above them, which directly affect access to daylight. To improve daylight provision, an alternative would involve the removal of balconies, which would have the effect of increasing daylight provision but omitting valuable private open space.

The Board is invited to consider a number of compensatory measures that have been designed into this scheme. The apartment floor areas are large with more than 90% of them having floor areas in excess of 10% above the minimum floor area standard – the Guideline standard is at least 50%. Further, there is a very high percentage of dual aspect units with over 54% being dual aspect units – the Guidelines would permit 33% as dual aspect. Finally, the floor to ceiling heights throughout is 2.7 metres and high quality communal open space that is more than double the area required by the Apartment Guidelines has been provided. These compensatory measures more than make up for the small percentage of rooms that do not meet the BRE Guidelines, which the Board is reminded are only guidelines.

Specific Assessments

3.5.14 The final criteria is under the heading specific assessments that may be required and it includes six bullet point criteria under this part of the assessment. Each bullet point is stated with commentary confirming compliance below each one.

- *Specific impact assessment of the micro-climatic effects such as down-draft. 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.*

BRE Group has prepared a report on wind and micro-climate that accompanies this application.

- *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 proposal includes 16 no. apartment buildings between 4 and 12 storeys in height close to Baldoyle Bay SPA. It will form part of a wider development at the Coast that includes existing buildings up to 5 storeys high and approved buildings up to 15 storeys. The proposed development is located within an existing and emerging urban area amongst buildings that are taller and lower than those in this proposal. During the wintering bird assessment no significant flight lines for qualifying interests of the Baldoyle SPA were observed in the vicinity of the proposed development. The proposed apartment buildings will be constructed with high quality materials including brick, zinc, and glass that would be expected to be clearly visible to bird and bat species. Bat activity on site was relatively low in the vicinity of the treeline on site between sectors 8A and 8B. A single Soprano pipistrelle (*Pipistrellus pygmaeus*) was noted briefly foraging on site. No bats were detected emerging from any of the on-site trees. A single tree at the eastern end of the treeline was deemed to have moderate potential for bat roosting due to the presence of thick ivy on the trunk. As a result, impacts on bats, flight lines or qualifying interests of the SPA would be expected but these are not expected to be significant.

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

This is not applicable.

- *An assessment that the proposal maintains safe air navigation.*

The application includes a glint and glare study that concludes the proposal won't affect air navigation.

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

CCH Architects have prepared a Design Statement that is included with this submission. There is no historic built environment within the vicinity of the site.

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

The proposed development includes an Environmental Impact Assessment Report prepared by AWN Consulting as it exceeds the 500 units threshold and an Appropriate Assessment Screening & Natura Impact Statement - Information for a Stage 1 (AA Screening) and Stage 2 (Natura Impact Statement) AA for a proposed development at Baldoyle-Stapolin Growth Area 2 (GA2), Baldoyle, Dublin 13 prepared by Altamar Marine & Environmental Consultants.

3.5.15 It is submitted that this proposal development has regard to the policy framework set out in the Urban Development and Building Height Guidelines. The proposed development complies with the applicable objectives and therefore it is considered to be in accordance with the provisions of national policy guidelines, which should take precedence over the unsustainably low building heights in the LAP.

3.5.16 With regard to punctuation nodes, the scheme layout provides nodes at two of the three locations suggested on Figure 4D.2 of the LAP with additional height and nodes provided at suitable locations around the subject site and principally along the north and northeast boundary to proposed Racecourse Park. It is not accepted that the scheme materially contravenes the punctuation nodes per the LAP. In the event the Local Authority and or the Board disagrees, the compliance set out above in respect of the SPPRs in the Urban Development and Building Height

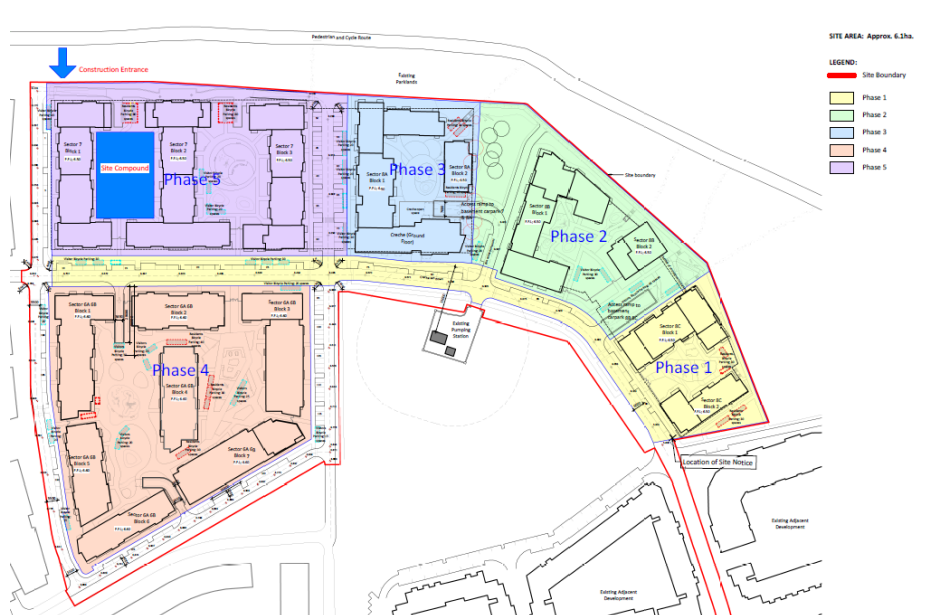
Guidelines. Having regard to section 37(2)(b)(iii) and (iv), the Board is entitled to grant planning permission in respect of the proposed building heights.

3.6 Construction Phasing

3.6.1 Section 6.4.2 of the LAP states as follows with regard to the phasing of Growth Area 2:

“Phasing in this Growth Area shall commence from the southern sectors (6A-6B) and work north (sector 7-8C) to prevent the creation of ‘gap’ or interim sites between the northern edge of the LAP lands and Ireland’s Eye Avenue.”

3.6.2 An alternative phasing arrangement is proposed in this application, which is 8C, 8B, 8A, followed by Sectors 6A/6B and finally Sector 7 as shown on the following extract from CCH Architects Drg. NO. BALN5 -CCH -00 -ZZ -DR -A -009:



3.6.3 The LAP also states in section 6.4 that *“Each Growth Area is subdivided into sectors which will be used to identify phasing priorities or unit numbers.”* Planning permission Reg. Ref. F16A/0412 (ABP Ref. PL06F.248970) is currently being implemented on site at Stapolin, Baldoye. That construction pertains to sectors 2C, 2D, 3A, and 3D, which is not following the *“phasing priorities or unit numbers”* as set out in the LAP. That permission was granted in November 2017, which post dates the adoption of the LAP.

3.6.4 Our client’s proposal to vary the phasing for Growth Area 2 is based on the location of the new haul route at Mayne Road as opposed to the now defunct haul route at Coast Road. As a result, it is no longer practical to construct the proposed development in strict compliance with the LAP. We do not consider this variation to constitute a material contravention of the LAP because inter alia the LAP identifies *“phasing priorities”*, and planning permission has also been granted for the subsequent Growth Area 3 phase of development. However, in the event the Local Authority and or the Board does consider it to materially contravene the LAP, it is submitted that permission can be granted having regard to the granted planning permissions at Stapolin since the adoption of the LAP and the extant development under construction on the site that does not follow the ***phasing priorities*** in the LAP.

4. CONCLUSION

4.1.1 This report sets out a clear rationale to support and justify the material contraventions of the development plan and the LAP. It is submitted that the Board can rely on the provisions of Section 37(2)(b)(i) to (iv) to approve this proposed development. Section 37(2)(b)(i) applies to each of the six planning issues identified, so the following is a summary of the additional legal provisions that support each material contravention:

Core Strategy

4.1.2 Sections 37(2)(b)(iii) and (iv) apply having regard to national policy set out in following documents and the Board's decisions to grant planning permission for TA06F.310418 and TA06F.311016:

- Rebuilding Ireland – Action Plan for Housing and Homelessness (2016),
- Housing for All: A New Housing Plan for Ireland (2021)
- National Planning Framework (NPF)
- Eastern & Midland Regional Assembly Regional Spatial and Economic Strategy (RSES)

Car Parking

4.1.3 Sections 37(2)(b) (iii) and (iv) apply as follows:

- The provisions of Sustainable Urban Housing: Design Standards for New Apartment (December 2020) advocate for substantially reduced or wholly eliminated car parking in highly accessible location, and
- The Board's decisions to grant planning permission for TA06F.310418 and TA06F.311016 that provide for 0.54 car parking spaces per apartment unit.

Density

4.1.4 Sections 37(2)(b)(ii), (iii), and (iv) apply as follows:

- There are objectives in the LAP are not clearly stated and are conflicting with regard to density;
- Sustainable Residential Development in Urban Areas Guidelines published in 2009 promote higher density development on brownfield sites and sites within walking distance of a railway station and town centre;
- The Sustainable Urban Housing: Design Standards for New Apartment (December 2020) that identify central and or accessible urban locations as suitable for higher density development; and
- The density approved by the Board decisions for TA06F.310418 and TA06F.311016.

% of 1 Beds (Mix of Units)

4.1.5 Sections 37(2)(b)(iii) and (iv) apply as follows:

- The percentage of 1 bed units complies with SPPR1 in the Sustainable Urban Housing: Design Standards for New Apartment (December 2020), and
- the Board's decisions to grant planning permission for TA06F.310418 and TA06F.311016 with 28% and 41% of the scheme being 1 bed units.

Heights

4.1.6 Sections 37(2)(b)(iii) and (iv) apply as follows:

- The Urban Development and Building Height Guidelines (2018) support increased building height and density in locations with good public transport accessibility, and the proposal complies with the SPPRs in those Guidelines; and
- The Board's decisions to grant planning permission for PL 06F.239732, TA06F.310418 and TA06F.311016 that all had building heights in excess of the heights set out in the LAP.

Construction Phasing

- 4.1.7 While it is not accepted that construction phasing proposed would represent a material contravention of the LAP, if it is deemed to do so, Sections 37(2)(b)(ii) applies because planning permission Reg. Ref. F16A/0412 (ABP Ref. PL06F.248970) is currently being implemented on site at Stapolin, Baldoyle and it does not follow the phasing priorities as set out in the LAP.