

**D C W N E Y**

# **MATERIAL CONTRAVENTION STATEMENT**

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**Proposed Strategic Housing Development**

**on Lands at Back Road & Kinsealy,  
Kinsaley, Broomfield,  
Malahide, Co. Dublin**

**Applicant: Birchwell Developments Ltd.**

**April 2022**

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## 1.0 INTRODUCTION

Downey, Chartered Town Planners, 29 Merrion Square, D02RW64, have prepared this Statement of Material Contravention, on behalf of the applicant, Birchwell Developments Ltd. This Statement accompanies a planning application to An Bord Pleanála for a proposed Strategic Housing Development on lands at Back Road and Kinsealy Lane, Kinsalely, Broomfield, Malahide, Co. Dublin.

The proposed development subject to this SHD application provides for construction of a total of 415 no. residential dwellings, comprising 252 no. houses (192 no. 3 beds, 48 no. 4 beds, and 12 no. 5 beds), 28 no. duplex units (8 no. 1 beds, 14 no. 2 beds, and 6 no. 3 beds) and 135 no. apartments (37 no. 1 beds, 93 no. 2 beds, and 5 no. 3 beds), with ancillary amenity facilities, 1 no. childcare facility and associated car parking and bicycle parking, landscaping, boundary treatments, and all associated engineering and site development works necessary to facilitate the development.

An Bord Pleanála issued a Notice of Pre-Application Consultation Opinion to the applicant in respect of this development in May 2021. This Opinion made reference to a number of different matters and made a specific reference to Material Contravention as follows, *“Where the applicant considers that the proposed strategic housing development would materially contravene the relevant development plan or local area plan, other than in relation to the zoning of land, a statement indicating the plan objective(s) concerned and why permission should, nonetheless, be granted for the proposed development, having regard to a consideration specified in Section 37(2)(b) of the Planning and Development Act 2000. Notices published pursuant to Section 8(1)(a) of the Act 2016 and Article 292 (1) of the Regulations of 2017, shall refer to any such statement in the prescribed format.”*

In light of the foregoing, this Material Contravention Statement has been prepared in order to address those matters in the evident of an argument being made, that the proposed development is deemed to materially contravene the provisions of Fingal Development Plan 2017-2023, in accordance with Section 8(1)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act 2016, which outlines:

*“8. (1)(a)(iv) 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.”*

The requirements of Section 37(2)(b) of the Planning and Development Act 2000 (as amended) read as follows:

*“(2) (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 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.”*

It is respectfully requested that An Bord Pleanála have regard to the arguments and matters raised in the following Statement, with respect to the location and context of the site, and the strategic and national significance of the proposed development as there is a clear and urgent need for housing at a national level within Ireland. This emerging need, as asserted in the national and regional planning frameworks, is expected to experience a continued growth in the Dublin Metropolitan Area, and as such the NPF aims to deliver 30% of the projected housing need within the MASP, where the subject site is located.

We would also draw the Board’s attention to Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 which provides that 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. 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 where it considers that, if section 37(2)(b) of the Planning and Development Act 2000 were to apply, it would grant permission for the proposed development.

We have set out a justification for why we think the criteria in Section 37(2)(b) do apply to the application and the Board is permitted to grant permission, notwithstanding any material contravention. An overview of the provided justifications can be found in the Table below:

*Table 1. An Overview of the Justifications to the Raised Material Contraventions*

Conflicting Objective	Section 37(2)(b)			
	(i) strategic or national importance of the proposed scheme	(ii) conflicting objectives of the development plan	(iii) having regard to the national to local plans and/or any guidelines under Section 28	(iv) having regard to the pattern of development in the area
Public Open Space & SuDS Provision	✓	-	✓	-
Car Parking Provision	✓	-	✓	✓
Preparation of a Masterplan	✓	✓	✓	✓

We would also respectfully draw the Board’s attention to Section 10(3) of the 2016 Act which states that where the Board grants a permission in accordance with section 9(6)(a), the Board should state

the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be, and where conditions are imposed in relation to the grant of any permission, the main reasons for imposing them.

It is important to note that this Material Contravention Statement must be read in conjunction with the Statement of Consistency with Planning Policy prepared by Downey and submitted under a separate cover as part of the application. The Statement of Consistency follows a list of various statutory and strategic policy documents, demonstrating consistency and compliance of the proposed development with the pertinent Development Plan, and the relevant S.28 Guidelines, National and Regional Policy.

## 2.0 POTENTIAL MATERIAL CONTRAVENTION

We address hereunder the following in respect of potential material contravention of the Fingal Development Plan 2017-2023, in relation to the Dublin airport noise zone and public safety zone, SuDS provision within public open space, proposed quantum of playground facilities, trees preservation, car parking provision, the preparation of a Masterplan, and the Core Strategy & Housing Targets.

### 2.1 Dublin Airport Noise Zones & Public Safety Zone

The Fingal Development Plan 2017-2023 seeks to minimise the adverse impact of noise without placing unreasonable restrictions on development and to avoid future conflicts between the community and the operation of the airport. Variation no. 1 of the Development Plan introduces three noise buffer zones for Dublin Airport, replacing the previous Inner Noise Zone and Outer Noise Zone, with Noise Zones A, B, and C.

**Objective DA07** of the Fingal Development Variation no. 1 seeks:

*“Strictly control inappropriate development and require noise insulation where appropriate in accordance with table 7.2 above within Noise Zone B and Noise Zone C and where necessary in Assessment Zone D, and actively resist new provision for residential development and other noise sensitive uses within Noise Zone A, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone. To accept that time based operational restrictions on usage of a second runway are not unreasonable to minimize the adverse impact of noise on existing housing within the inner and outer noise zone.”*

With respect to the Dublin Airport Noise Zones and as illustrated in the Figure below, the majority of the subject site is located within the Noise Zone C, and a small portion of the site in the southern ends is located in the Noise Zone B.

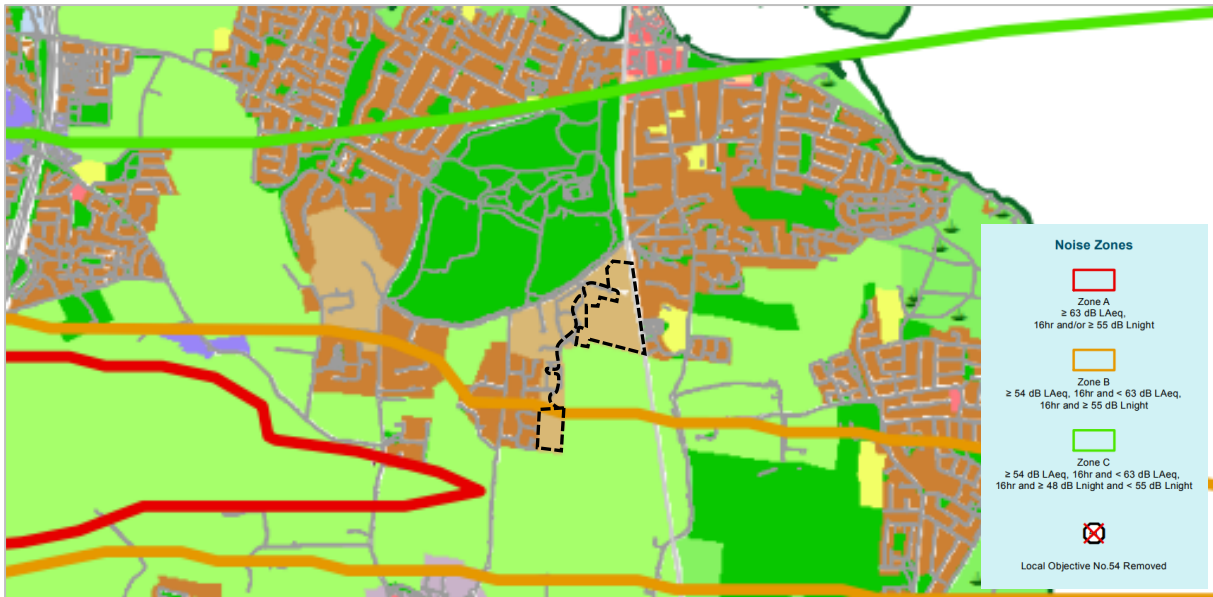


Figure 1. Dublin Airport Noise Zones extracted from the Development Plan (approximate boundaries of the subject site outlined in dashed black line)

It is the Objective of the Fingal Development Plan Variation no. 1 for **Noise Zone C**:

***“To manage noise sensitive development in areas where aircraft noise may give rise to annoyance and sleep disturbance, and to ensure, where appropriate, noise insulation is incorporated within the development.***

*Noise sensitive development in this zone is less suitable from a noise perspective than in Zone D. A noise assessment must be undertaken in order to demonstrate good acoustic design has been followed.*

*The noise assessment must demonstrate that relevant internal noise guidelines will be met. This may require noise insulation measures.*

*An external amenity area noise assessment must be undertaken where external amenity space is intrinsic to the development’s design. This assessment should make specific consideration of the acoustic environment within those spaces as required so that they can be enjoyed as intended. Ideally, noise levels in external amenity spaces should be designed to achieve the lowest practicable noise levels.*

*Applicants are strongly advised to seek expert advice.”*

Also, it is the Objective of the Fingal Development Plan Variation no. 1 for **Noise Zone B**:

***“To manage noise sensitive development in areas where aircraft noise may give rise to annoyance and sleep disturbance, and to ensure noise insulation is incorporated within the development.***

*Noise sensitive development in this zone is less suitable from a noise perspective than in Zone C. A noise assessment must be undertaken in order to demonstrate good acoustic design has been followed.*

*Appropriate well-designed noise insulation measures must be incorporated into the development in order to meet relevant internal noise guidelines.*

*An external amenity area noise assessment must be undertaken where external amenity space is intrinsic to the developments design. This assessment should make specific consideration of the acoustic environment within those spaces as required so that they can be enjoyed as intended. Ideally, noise levels in external amenity spaces should be designed to achieve the lowest practicable noise levels.*

*Applicants must seek expert advice.”*

On the other hand, the Fingal Development Plan Variation no. 1 outlines Broomfield amongst townlands which **Assessment Zone D** applies to.

*“To identify noise sensitive developments which could potentially be affected by aircraft noise and to identify any larger residential developments in the vicinity of the flight paths serving the Airport in order to promote appropriate land use and to identify encroachment.*

*All noise sensitive development within this zone is likely to be acceptable from a noise perspective. An associated application would not normally be refused on noise grounds, however where the development is residential-led and comprises non-residential noise sensitive uses, or comprises 50 residential units or more, it may be necessary for the applicant to demonstrate that a good acoustic design has been followed.*

*Applicants are advised to seek expert advice.”*

This Strategic Housing Development application is accompanied by a detailed noise assessment prepared by AWN Consulting Ltd. which is contained within the EIAR. This assessment demonstrates the proposed development is compliant with the relevant standards in the Fingal Development Plan Variation no. 1, and good acoustic design has been followed in the design process.

Moreover, it has been recognized that the incidence of aircraft accidents is the highest in the immediate vicinity of busy runways. To address the risk of an aircraft accident to people on the ground, Public Safety Zones (PSZ) are established around the runways. PSZs are areas of land at the end of the runways at the busiest airports, within which development is restricted in order to control the number of people on the ground at risk of death or injury in the event of an aircraft accident on take-off or landing. The Fingal Development Plan 2017-2023 provided for this objective as follows: -

**Objective DA14** of the Fingal Development Plan seeks to:

*“Review Public Safety Zones associated with Dublin Airport and implement the policies to be determined by the Government in relation to these Public Safety Zones.”*

The blue lines in the Figure below depict the outer PSZ, whereas the yellow lines represent the inner PSZ. The southern portion of the Broomfield development lies within the outer PSZ.



Figure 2. PSZ at Dublin Airport extracted from the Aviation Safety Assessment accompanied by the Application for the Proposed Development

As per the Environmental Resources Management (ERM) Ireland, 2003 “In some cases, permitted developments are restricted to a maximum density of persons. This density is expressed as the number of persons per half hectare. A half hectare was chosen as this approximates the average maximum aircraft crash area. The maximum density should be applied to any single half hectare within which the proposed development is located.” And therefore, the southern portion of the Broomfield SHD application site is restricted to a maximum occupancy of 60 persons in any  $\frac{1}{2}$  hectare.

This Strategic Housing Development application is accompanied by an Aviation Public Safety Assessment prepared by Cyrrus Ltd., which demonstrates:

- The latest layout revision assessed within this report fully complies with the published Aviation Public Safety Zone requirements;
- Of the identified  $\frac{1}{2}$  hectare grid squares, none exceed the stated maximum population density of >60 persons per  $\frac{1}{2}$  hectare;
- This development does not compromise the population density of pre-existing dwellings;
- Provided that the Fingal Development Plan and Regional Spatial and Economic Strategy (RSES) are implemented as published, the housing occupancy rate in Fingal should decrease over the coming years as more housing stock comes online, thereby ensuring ongoing compliance.

In light of the above, Downey are of the professional opinion that the proposed development complies with the requirements of the Aviation Public Safety Zone, and the provisions for the density stipulated in the ERM report, and therefore, is considered to be consistent with the relevant policy and planning framework. For further details on these specific matters, please refer to the noise and vibration



chapter of the EIAR which has been prepared by AWN Consulting Ltd. as part of this application, and the Aviation Public Safety Zone Assessment Report prepared by Cyrrus Ltd.

## 2.2 Public Open Space & SuDS Provision

The Fingal Development Plan 2017-2023 sets out an objective which sets a threshold for public open space provision in a given proposed development site area. This objective is as follows: -

**Objective DMS57A** of the Fingal Development Plan seeks:

*“Require a minimum 10% of a proposed development site area be designated for use as public open space.*

*The Council has the discretion for the remaining open space required under Table 12.5 to allow provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities outside the development site area, subject to the open space or facilities meeting the open space ‘accessibility from homes’ standards for each public open space type specified in Table 12.5.*

*The Council has the discretion for the remaining open space required under Table 12.5 to allow provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/ amenity facilities is not achievable. This is subject to the Regional Park meeting the open space ‘accessibility from homes’ standard specified in Table 12.5.”*

**Objective DMS57B** of the Fingal Development Plan seeks:

*“Require a minimum 10% of a proposed development site area be designated for use as public open space.*

*The Council has the discretion to accept a financial contribution in lieu of remaining open space requirement required under Table 12.5, such contribution being held solely for the purpose of the acquisition or upgrading of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities subject to the open space or facilities meeting the open space ‘accessibility from homes’ standards for each public open space type specified in Table 12.5.*

*The Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities is not achievable, subject to the Regional Park meeting the open space ‘accessibility from homes’ standard specified in Table 12.5.*

*Where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space.”*

As per the following Table, the proposed development provides for an overall of c. 1.35 ha public open space, comprising of both Class 1 and 2 public open spaces, as specified within the Fingal Development Plan. With respect to the developable site area of 11.1 ha, this would provide for 12% public open space provision which exceeds the threshold envisaged in the Development Plan.

*Table 2. Public Open Space Provision within the Proposed Development (source: MCORM Architects)*

<b>Public Space Provision</b>	Area 1: 2,940 sqm
	Area 2: 2,250 sqm
	Area 3: 919 sqm
	Area 4: 2,830 sqm
	Area 5: 1,357 sqm
	Area 6: 470 sqm
	Area 7: 414 sqm
	Area 8: 1,350 sqm
	Area 9: 510 sqm
	Area 10: 460 sqm
<b>Total</b>	<b>13,500 sqm (1.35 ha)</b>

For further details in this regard, please refer to the landscape drawings and report prepared by KFLA Landscape Architecture and Proposed Site Layout prepared by MCORM Architects which accompany the application for the proposed development. The design of the development has been carefully considered with the public open space integrated as part of the development proposal that will cater for the residents of the subject site and the immediate local area.

At this juncture, it is also important to note that the aforementioned open space provision does not include the additional 5,425 sqm (0.55ha) Green Route/Cycle Link provided as part of the proposed development or the over-provision of open space for the Ashwood Hall development which is also intended to serve the proposed development and immediately adjoins this large central area of open space. Furthermore, the Malahide Castle and Demesne (Class 1 Open Space Area) is located immediately north of the application site, and this extends to over 260 acres of parkland, woodland, playground, walking trails and botanical gardens. It is submitted that given the proximity of the application site to Ashwood Hall and Malahide Castle and Demesne, the provision of public open space is appropriate in this instance given the excellent provision of public open space facilities in the locality. Therefore, it is considered that the provision for public open space within the scheme is consistent with Objective DMS57A and Objective DMS57B of the Fingal Development Plan.

However, the Fingal Development Plan 2017-2023 also outlines an objective which sets out a cap for SuDS provision within the proposed quantum of public open space. This objective is as follows: -

**Objective DMS73** of the Fingal Development Plan seeks:

*“Ensure as far as practical that the design of SuDS enhances the quality of open spaces. SuDS do not form part of the public open space provision, except where it contributes in a significant and positive way to the design and quality of open space. In instances where the Council determines that SuDS make a significant and positive contribution to open space, a maximum 10% of open space provision shall be taken up by SuDS. The Council will give consideration to the provision of SuDS on existing open space, where appropriate.”*

**Objective DMS74** of the Fingal Development Plan seeks:

*“Underground tanks and storage systems will not be accepted under public open space, as part of a SuDS solution.”*

Detailed drainage drawings have been prepared by Waterman Moylan Consulting Engineers which accompany the application for the proposed development. According to the drawings, an overall of c. 2,145.4 sqm is proposed to provide underground attenuation storage tanks as part of a SuDS solution. This comprises 15.8% of the public open space provision (13,500 sqm) which exceeds the stated maximum threshold for SuDS provision within the public open space. And therefore, it is submitted that the proposed development may be considered to potentially materially contravene Objective DMS73 and Objective DMS74 of the Development Plan.

### **2.3 Playground Facilities Provision**

Fingal Development Plan sets out threshold that all residential schemes in excess of 50 units should incorporate playground facilities which should be provided at a rate of 4 sqm per residential unit. This objective is as follows: -

**Objective DMS75** of the Fingal Development Plan seeks to:

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

It is submitted that the proposed development provides for 210 sqm of play areas with formal equipment, 800 sqm of informal play areas, along with 2,000 sqm useable kickabout space, which are demarcated on the Landscape drawings prepared by KFLA Landscape Architects. This amounts for an overall total of 3,010 sqm play area throughout the development, which considering the overall 415 no. proposed dwellings, provides for c. 7.2 sqm play area per unit.

Outlined in the Development Plan, *“playground facilities should cater for defined age groups and provide for a variety of facilities and play opportunities”*. Furthermore, the most recent practice policy guidelines of the Space for Play; A Play Policy developed by the Council's Parks & Green Infrastructure Division expands the terminology on play area provision, providing for a range of spaces defined as play facilities. This includes children’s play area, local area for play, local equipped area for play, neighbourhood equipped areas for play, and natural playgrounds.

With respect to the foregoing, it is considered appropriate that the range of play areas and opportunities provided within the scheme is consistent with the Development Plan and relevant guidelines. However, out of an abundance of caution it has been included in this Material Contravention Statement should it be considered to potentially materially contravene the Fingal Development Plan 2017-2023 by the competent authority in their assessment of the application.

It is also important to note that the over-provision of open space within the lands and its context, comprising Ashwood Hall and Brookfield, would also provide additional room for play area provision

in the area which essentially future-proof the scheme. This is further reinforced by the existing eminent public open space in the area, in the likes of Malahide Castle and Gardens which has a large well-equipped children playground. However, at the discretion of the Planning Authority, the applicant is also welcomed to contribute in lieu of the provision of playground facilities on site.

## 2.4 Trees Preservation

The proposed development will require the removal of 46 individually recorded trees, 12 groups of trees/hedgerows, and the partial removal of five groups of trees/hedgerows. The proposed removals are specified within the Tree Work Schedule at Appendix A of the Arboricultural Report prepared by Charles McCorkell Arboricultural Consultancy, and are highlighted on the Tree Removal Plans at this Appendix. Therefore, the proposed development requires a large number of trees to be removed, which regarding the **Objective DMS77** of the Fingal Development Plan, this may forward the argument that the proposed development potentially materially contravene this Objective.

Accordingly, **Objective DMS77** of the Fingal Development Plan seeks to:

*“Protect, preserve and ensure the effective management of trees and groups of trees.”*

However, it is respectfully submitted that the majority of these trees are of low and poor quality and their loss will not have a significant visual impact on the landscape character of the local area. More precisely, of the 63 survey entries proposed to be removed or partially removed, 6 trees are of moderate quality and value (B Category), 42 trees and groups of trees/hedgerows are of low quality and value (C Category), and 15 trees are of poor quality (U Category). For further details in this regard, please refer to the enclosed Arboricultural Report prepared by Charles McCorkell Arboricultural Consultancy.

The technical assessment of the site also reveals that the removal of trees will have an impact on local canopy cover; however, with new high-quality and well-structured tree planting, the loss of canopy cover can be replaced and even improved upon in the medium to long term, provided the right species are selected. Also, the development has been designed to retain the main boundary tree cover. This will have a positive visual impact on the development, as it will add an element of maturity to the overall proposed landscape. Moreover, the landscape proposal has taken into consideration the loss of trees and includes substantial replacement tree planting. New tree planting can help to mitigate the loss of trees and potentially, in the future, enhance local biodiversity and canopy cover.

Furthermore, all retained trees and hedgerows can be protected during the proposed development works by using robust fencing measures which comply with the recommendations outlined within BS 5837:2012. The location and specification of all tree protection measures are highlighted on the Tree Protection Plans at the Appendix B of the Arboricultural Report prepared by Charles McCorkell Arboricultural Consultancy.

Therefore, it is submitted that the proposed development does not materially contravene the Fingal Development Plan, however, out of an abundance of caution it has been included in this Material Contravention Statement should it be considered to potentially materially contravene the Fingal Development Plan 2017-2023 by the competent authority in their assessment of the application.

## 2.5 Car Parking Provision

Set out under Chapter 12 of the Fingal Development Plan 2017-2023, the car parking standards based on land use provision are as follows: -

Table 12.8 - Car Parking Standards

Land Use	Criterion	Proposed	Notes	Category	Norm or Max
House - urban/suburban 1 or 2 bedrooms	Unit	1-2	Within curtilage	Residential	Norm
House - urban/suburban 3 or more bedrooms	Unit	2	Within curtilage	Residential	Norm
House - rural	Unit	2-3	Within curtilage	Residential	Norm
Apartment, townhouse 1 bedroom	Unit	1	Plus 1 visitor space per 5 units	Residential	Norm
Apartment, townhouse 2 bedrooms	Unit	1.5	Plus 1 visitor space per 5 units	Residential	Norm
Apartment, townhouse 3+ bedrooms	Unit	2	Plus 1 visitor space per 5 units	Residential	Norm
Sheltered housing	Unit	0.5	Plus 1 visitor space per 5 units	Residential	Norm
Caravan / mobile home park	Stand	1		Residential	Norm
Hotel, Motel, Motor Inn, Guest House	Bedroom	1		Residential	Norm
Pre-school facilities / creche	Classroom	0.5		Education	Maximum

Figure 3. Car Parking Standards extracted from the Development Plan

According to the Development Plan's car parking standards, the quantum of car parking required to serve the proposed development is 721 spaces, with 217 being provided for the apartment and Duplex units (1.25 car parking spaces per unit). In-curtilage parking is proposed for each of the houses. The creche includes 6 no. pickup and drop off spaces and 10 staff parking which also serve as visitor parking for Apartment Block D during off peak times.

It is also noted that there are 7 disabled car parking spaces included in the Apartment/Duplex Blocks. This consists of 1 disabled car parking space per blocks C, D and E with 4 disabled car parking spaces for Blocks A and B.

The Development Plan requires that each dwelling to be provided with 2 no. car parking spaces which is being provided within this scheme. The car parking for apartments and duplex units, however, is provided at a ratio of 1.25 car parking spaces per unit. Thus, the overall car parking provision may be considered to potentially materially contravenes the Fingal Development Plan 2017-2023.

## 2.6 Preparation of a Masterplan

The Fingal Development Plan 2017-2023 sets out an objective which seeks the preparation of a Masterplan for particular areas, including the lands at Broomfield within which the subject site is located. The objective arguably required the preparation of a masterplan when the Development Plan was made in 2017. This objective is as follows: -

**Objective PM14** of the Fingal Development Plan seeks:

*“Prepare Masterplans for areas designated on Development Plan maps in co-operation with relevant stakeholders, and actively secure the implementation of these plans and the achievement of the specific objectives indicated.”*

This is further reinforced by Malahide Development Plan Objectives outlined in the Development Plan, as below: -

**Objective MALAHIDE 11** of the Fingal Development Plan seeks:

*“Prepare and/or implement the following Masterplans during the lifetime of this Plan:*

- *Streamstown Masterplan (see Map Sheet 9, MP 9.A)*
- *Broomfield Masterplan (see Map Sheet 9, MP 9.B)*”

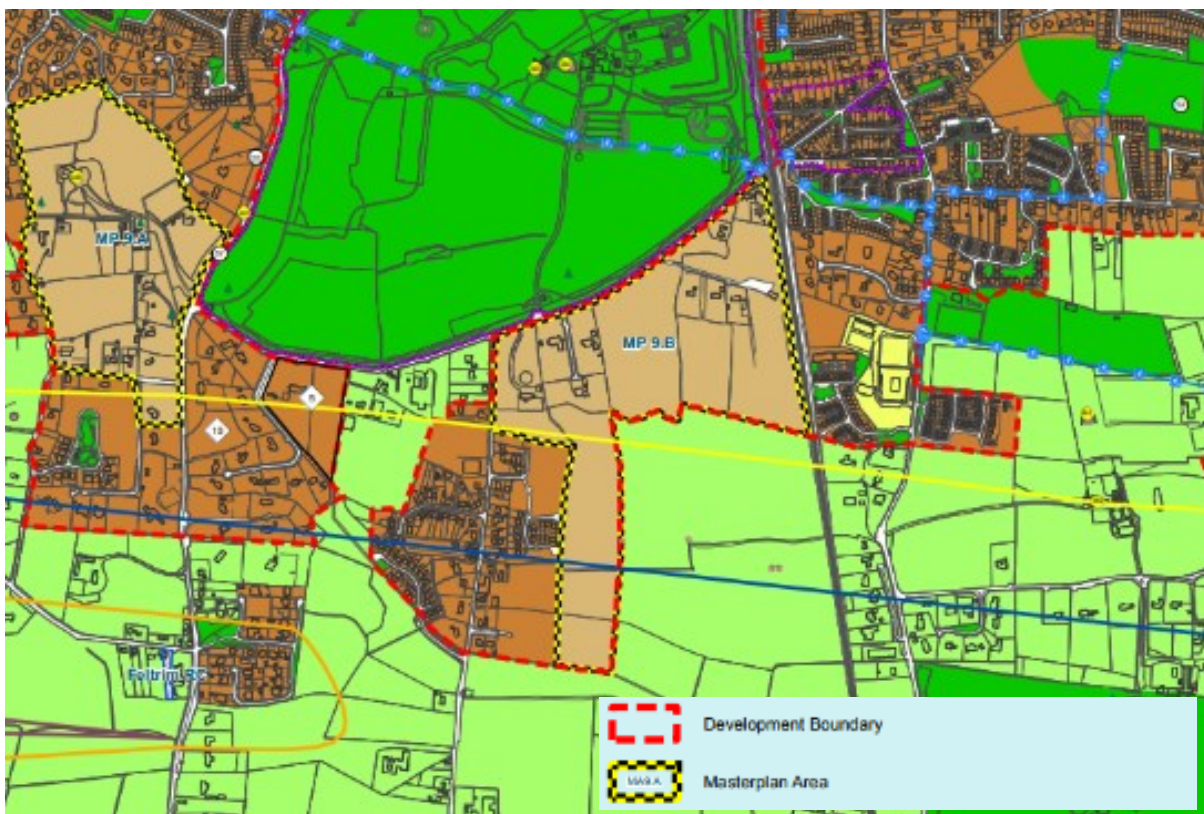


Figure 4. Extent of the Broomfield Lands Designated for Preparation of a Masterplan in the Development Plan

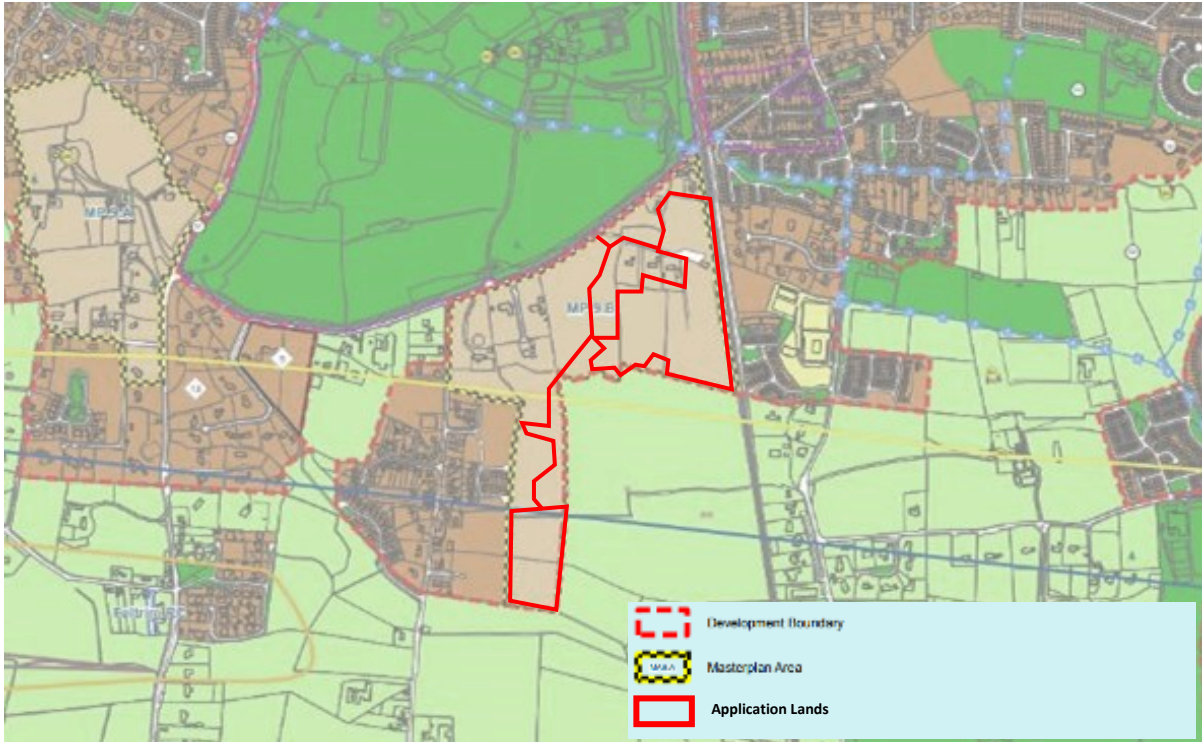


Figure 5. Application Site within the Masterplan Designation (approximate boundaries of the site outlined in red)

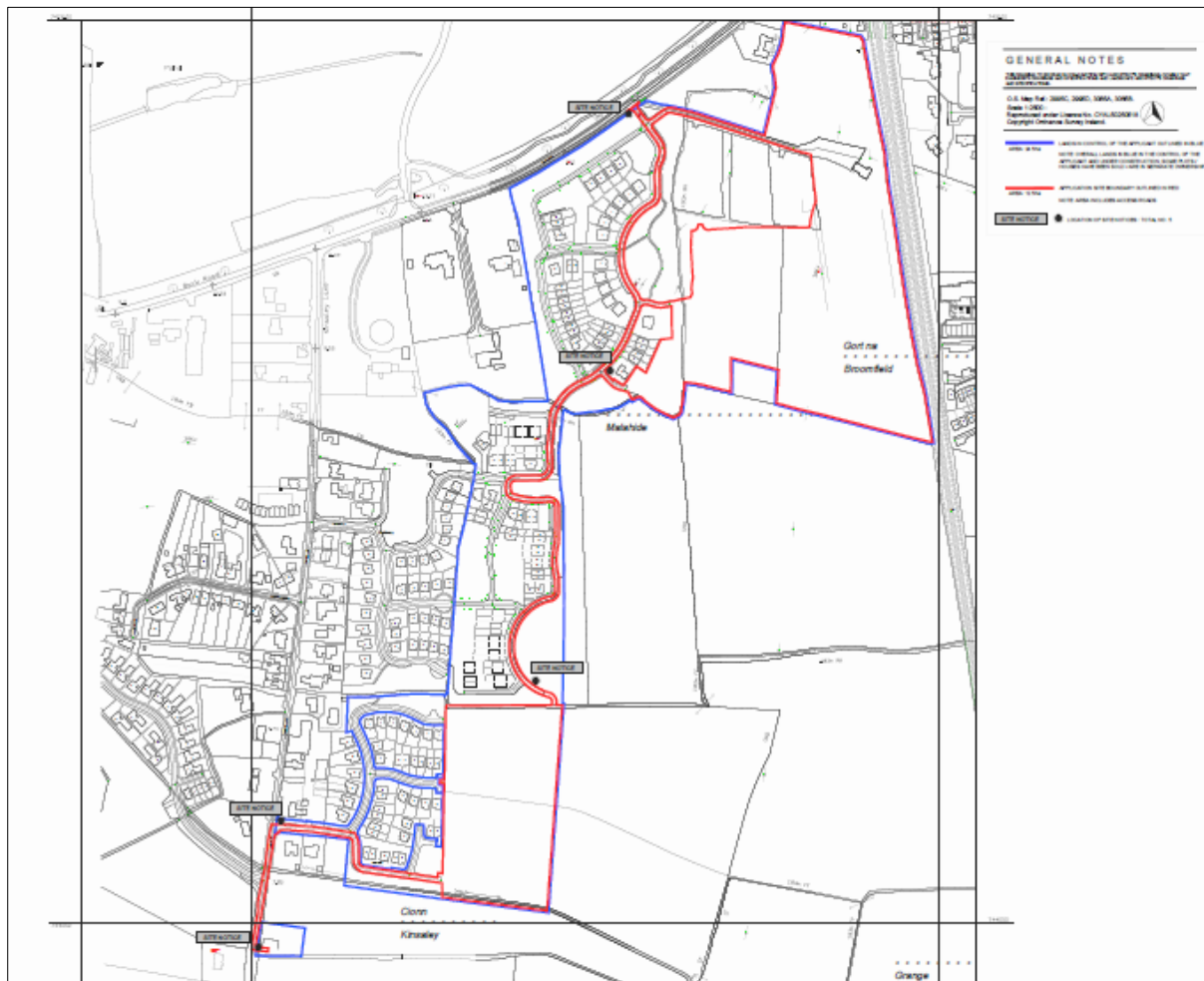


Figure 6. Application Site within the Extent of Applicant's Land Ownership (approximate boundaries of the site outlined in red within the overall landholding outlined in blue)

This provides that the proposed development may be considered to potentially materially contravene Objective PM14 and Objective MALAHIDE 11 of the Fingal Development Plan in that a Masterplan has not yet been prepared or implemented for the Broomfield lands. However, with respect to the current circumstances of the lands and by matters of planning permission precedent, Downey are of the professional opinion that the foregoing objectives appear superfluous. To better demonstrate this, the Fingal Development Plan was adopted back in 2017, with Fingal County Council recently commencing the review process of this Development Plan on 12<sup>th</sup> March 2021. These specific objectives have also been superseded by virtue of planning permission decisions and development that have occurred in the area since 2017.

As illustrated in the Figure below, the suggested plan area is already substantially built on and/or under construction or approved for development, with the exception of the application lands. The applicant controls all remaining developable lands, with the remaining lands the subject of ongoing development or planning permissions or one-off houses. Lands built/under construction include Ashwood Hall and Brookfield residential developments and a handful of high-end individual one-off house developments on big plots. Thus, the making of this application effectively constitutes the completion of the designated lands as the lands comprise the remaining lands available for development under the Broomfield Masterplan designation.

The Fingal Development Plan also contains **Objective SS02A** which states:

*“Development will be permitted in principle on lands where there is a Local Area Plan or Masterplan in place and only when these lands are substantially developed will permission be granted for the development of lands without such a framework. Should the lands identified within a LAP or Masterplan not come forward for development in the short term, consideration will be given to other lands.”*



Figure 7. Extent of Lands Built/Under Construction within the Masterplan Designation Boundaries (latest aerial map)



Furthermore, regarding development built in the area, the Broomfield Masterplan designation currently extends onto developed lands. This blend of land ownership comprises a considerable portion of the Broomfield Masterplan designated lands.

Under the Planning and Development Act 2000 (as amended), Masterplans are non-statutory processes in their own right, which may be prepared in order to set out further technical details in respect of zoned amenity and/or development lands, to inform future planning applications, and/or 'Part 8' Local authority consent processes.

The Broomfield lands were subject to an LAP designation under the 2011-2017 Fingal Development Plan which was on foot of an LAP having previously been prepared for the lands. The 2017-2023 Development Plan which provides for a masterplan, in effect adopted the LAP as the masterplan so that effectively all the lands within the designation, except the land the subject of this application, have now been developed.

It is submitted that in circumstances above, the only land that is subject to the objective comprises this application and that the applicant controls all the land that now in effect amounts to the masterplan and is consistent with the previous approach to development in the area and in this regard complies with the objective.

It is submitted that the Masterplan designation, on now substantially developed land, essentially conflicts with the requirements to prepare a Masterplan. Thus, it is submitted that the Objective PM14 and Objective MALAHIDE 11 of the Fingal Development Plan has either been complied with or by the preparation of this SHD scheme in respect of the remaining lands, the development plan objectives have been superseded.

Therefore, it is submitted that the proposed development does not materially contravene the Fingal Development Plan, however, out of an abundance of caution it has been included in this Material Contravention Statement should it be considered to potentially materially contravene the Fingal Development Plan 2017-2023 by the competent authority in their assessment of the application.

## 2.7 Core Strategy and Housing Targets

Set out under **Objective SS02** of the Fingal Development Plan, Fingal County Council seeks to:

*“Ensure that all proposals for residential development accord with the County’s Settlement Strategy and are consistent with Fingal’s identified hierarchy of settlement centres.”*

Outlined in the Core Strategy of the Fingal Development Plan Variation No. 2, in line with NPF and RSES, Malahide is listed as a ‘Self-Sustaining Town’ with 75.5 ha lands zoned for residential provision aiming at delivery of 956 no. housing target over the Plan period, i.e., 2017-2023 (Table 2.4 of the Adopted Variation No. 2 of the Development Plan).

With respect to the timing and sequencing of planning applications in the area, there may be a possible material contravention of the proposed scheme with the Core Strategy of the Development Plan. An overview of the applications on housing provision in the area, mainly lodged through the SHD process, expects that an overall total of 646 no. units to be potentially delivered in Malahide up to 2023. This

includes Seamount Road SHD providing for 142 no. dwellings (TA06F.305991 - granted permission on 20/03/2020), Auburn House SHD providing for 368 no. dwellings (TA06F.309907 - in the pre-application stage), Lamorlaye, Back Road SHD providing for 102 no. dwellings (TC06F.310125 - in the pre-application stage), and Streamstown Lane development providing for 34 no. dwellings (PL06F.301848 - granted permission on 03/12/2018). Thus, there is still a remaining capacity of 310 no. residential units to be delivered in the area.

It is also important to acknowledge that the granted permissions in the area for housing provision is suggested to be more than the above-mentioned figure, and therefore, it might be considered that the proposed development may materially contravene the Core Settlement Strategy of Fingal County Council, providing for additional housing units over and above the Core Strategy housing target for Malahide. However, with respect to the activation rate of planning permissions in the County, an updated increased housing need across the state and the County as reflected in the new Housing for All document and in particular the strategic location of Malahide within the Dublin Metropolitan Area, Downey are of the professional opinion that the proposed scheme is not conflicting with the Core Strategy and Objective SS02 of the Development Plan. It is also noteworthy to mention that the most recent geo-political conflicts and massive displace of the Ukrainian people would have a further impact on the immigration levels to Ireland, surging the need for revising the population targets, housing demand, and means of delivering for this emerging need.

In terms of the activation rate of planning permission within County Fingal, as illustrated in the Table below, an overall total of 1,142 no. planning permissions were granted over 2017-2020, which provides for an overall total of 12,720 no. residential units in County Fingal. Of which 7,616 no. dwellings were completed, resulting in an average activation rate of 59.9% in the County.

*Table 3. An Overview of the Activation Rate of Granted Permissions in Fingal County over 2017-2020*

	2017	2018	2019	2020	2017-2020
<b>Planning Permissions Granted</b>	289	386	245	222	1,142
<b>Units of which Permission Granted</b>	4,189	3,037	2,206	3,288	12,720
<b>Dwelling Completion</b>	1,826	2,100	2,306	1,384	7,616
<b>Activation Rate</b>	<b>43.6</b>	<b>69.1</b>	<b>104.5</b>	<b>42.1</b>	<b>59.9</b>

*Source: CSO StatBank*

Applying the foregoing activation rate to the overall recent permissions granted and/or pending under SHD in Malahide (646 no.) would potentially give rise to completion of 387 no. units over the Plan period, which is still below the housing target for Malahide outlined in the Core Strategy.

From a different angle, inspection of dwelling completion over 2017-2021Q3 could also provide a clear baseline as to evaluate both necessity and contribution of the proposed development to the Core Settlement Strategy of Fingal County.

Prior to illustrating this comparison, it is important to note that the spatial breakdown of the dwelling completion has only been narrowed down to the Eircode area level by the CSO StatBank, and therefore, this scale has been utilised within the following justification. As for the case of Malahide, this area is labelled as Eircode K36 comprising of both Malahide and Donabate. Thus, the details on dwelling completion in the assessment area are summarised in the Table 4 below.

Table 4. Dwelling Completion in the Eircode K36 Area (Malahide and Donabate Combined)

	2017	2018	2019	2020	2021Q1-2021Q3
<b>New Dwelling Completion</b>	190	311	418	225	88

Source: CSO StatBank

With respect to the above Table, a total of 1,232 no. residential units have been delivered in Malahide and Donabate over 2017-2021Q3. Considering that the Development Plan Variation 2 provides for a combined housing delivery target of 4,488 no. units for this area (3,532 no. units for Donabate and 956 no. units for Malahide), there is a remained capacity of 3,256 no. residential units to be delivered over 2021Q4-2023 in both towns.

Therefore, it is submitted that the proposed development of 415 units is still within the projected housing delivery target for the area and complies with the objectives of the Development Plan to promote sustainable development through densification of the existing urban form. And thus, it is considered for the proposed development to be consistent with the relevant policy and planning framework. However, out of an abundance of caution this has been included in this Statement as it may be considered to potentially materially contravene the Fingal Development Plan 2017-2023 by the competent authority in their assessment of the application.

### 3.0 JUSTIFICATIONS

As outlined above, the proposed development conflicts with the Development Management Standards of the Fingal Development Plan in terms of car parking provision. It also potentially contravenes the Objective DMS74 of the Development Plan by means of over-provision of underground attenuation tank under public open space as part of a SuDS solution. It is further noted that despite outlining that absence of a Masterplan in this instance does not appear as a material contravention on the grounds of superfluous policy driven by the development status of the overall lands subject to that designation, this matter has also been included in the following section solely out of an abundance of caution.

This section of the Material Contravention Statement provides justification for contravening the Fingal Development Plan, suggesting the granting of permission for the proposed development of the lands at Back Road, Broomfield. The justification herein is based upon the requirements of Section 37(2) of the Planning and Development Act 2000 (as amended).

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

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

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

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

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

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

The following provides an overview of the subject site location and illustrates the strategic and national importance of the scheme, and thereafter, provides justifications with regards to the raised Material Contraventions.

### 3.1 Subject Site Location

The subject lands are located in Broomfield, Malahide, Co. Dublin, and extend to approximately 12.5 hectares to the south of the existing built-up area of Malahide. Access to the site is currently via an entrance off the Back Road, 0.55km east of the junction between Back Road and Kinsealy Lane. The overall proposed development is divided into 2 no. sites. The north site is bounded by Ashwood Hall to the west, the Dublin-Belfast rail line to the east, agricultural lands to the south, and by existing properties to the north. The southern site is bounded by the Hazelbrook housing development to the west, Ashwood Hall and Brookfield to the north and agricultural lands to the south and east. The surrounding land uses are generally residential. Malahide Castle and Demesne is located 800m to the north of the subject site and can be accessed via Back Road. To the northeast of the site there is Malahide DART Station at 1.3km and Malahide Beach at 1.8km. Malahide Golf Club is located c.1.5 km to the south of the lands. Malahide village centre is located to the north-east of the subject lands and provides a wide array of shops and services. The site enjoys excellent connectivity to Dublin City Centre via Dublin Bus services that run along Malahide Road, as well as commuter services from Malahide DART Station.



Figure 8. Aerial View of the Location of the Subject Site (approximate boundaries of the subject site outlined in red)

Under the Fingal Development Plan 2017-2023, Malahide is identified as a “Self-Sustaining Town”. Self-Sustaining Towns are towns that require contained growth, focusing on driving investment in services, employment growth and infrastructure whilst balancing housing delivery. As a Self-Sustaining Town, Malahide has an important role within the Dublin Metropolitan Area and should continue to develop as a self-sustaining centre through the provision of a range of facilities to support the existing and new populations. Population growth in self-sustaining towns shall be at a rate that seeks to achieve a balancing effect and shall be focused on consolidation and inclusion of policies in relation to improvements in services and employment provision.

*Malahide “contains a strong village centre structure with a regional park and access to a high level of local amenities. The settlement is served by the DART. Housing delivery has been provided at a steady pace on local area plan lands. Development on remaining lands is required to be undertaken by a masterplanning process. Having regard to the limited area of land remaining, a 5% population figure is considered acceptable.”*

In this case, the application site is located on appropriately zoned lands in an accessible location within the development boundary of Malahide where its setting will form a natural extension to the emerging suburbs of the town. Furthermore, the application site is located within immediate walking distance of Dublin Bus stop No. 3579 located along Malahide Road (R107) to the west of the application site and Dublin Bus stop No. 3632 along The Hill Road (R124) to the east of the site. The proposed development is located within 2km of Malahide train station (or a 10-12 minutes’ walk). The lands also represent the final developable lands of the wider Broomfield area, which is under construction, i.e. Ashwood Hall development and Brookfield development.

### **3.2 Demonstration of Strategic and/or National Significance of the Scheme**

It is submitted that the proposed development is both of strategic and national importance. The significant shortfall in housing output to address current and projected demand is of national importance, with the latest publication of DoHLGH, *Housing for All: A New Housing Plan for Ireland*, outlining that Ireland’s housing system is not meeting the needs of enough of people, and therefore, it needs to increase new housing supply to an average of at least 33,000 new units per year over the next decade. This will include over 10,000 social homes each year over the next five years, with 9,500 of these being new-builds, and an average of 6,000 affordable homes for purchase or rent. This urgent need for housing in the State is particularly prevalent within the larger cities and towns, including Malahide, which is located within the Dublin Metropolitan area. This is acknowledged by the Government as well as planning authorities and other such bodies. This crisis has led to a significant change in planning policy and guidance, which seeks to increase the output of housing with a focus being on increased densities within appropriate urban locations and zoned and serviceable sites. Key policy changes include:

- *Housing for All: A Plan for Ireland (2021);*
- *Project Ireland 2040 - National Planning Framework;*
- *Sustainable Urban Housing: Design Standards for New Apartments (2020); and,*
- *Urban Development and Building Heights Guidelines for Planning Authorities (December 2018).*

All of these documents acknowledge the current demand for additional housing and seek to bring forward the delivery of housing units. Locally, the lands are zoned for residential development and Malahide is listed as a self-sustaining town. The key tenet of the overall Settlement Strategy is the continued promotion of sustainable development through positively encouraging consolidation and densification of the existing urban built form, and thereby maximising efficiencies from already established physical and social infrastructure. Thus, it is submitted that the proposed development of 415 no. units complies with the objectives to promote sustainable development through densification of the existing urban form and the provision of residential dwellings where there is a great demand for housing. This current proposal offers the opportunity to bring forward 415 no. residential units for Malahide and the Metropolitan Dublin Area. Furthermore, the proposed scheme is being progressed through the Strategic Housing Development planning process which, in itself, confirms the strategic importance of the current application, in accordance with Section 37(2)(b)(i).

The proposed scheme's contribution to the NPF National Strategic Outcome No. 1 in respect of delivering compact growth and urban regeneration specifically in this instance involving an efficient use of greenfield lands, in a self-sustaining town, adjacent to public transport link and main access routes, further confirms the strategic nature of this development proposal. It is noted that the NPF sets a target for at least 40% of all new housing to be delivered within the existing built-up areas of cities, towns, and villages on infill and/or brownfield sites. The provision of residential-led development on the subject site in this instance will therefore be in accordance with the NPF's target of 40% of new housing to be located within existing towns and for 50% of population growth to take place within Ireland's existing settlements, outside of the five larger cities.

In light of the foregoing, Downey submit that this current proposed development is strategic in nature and therefore is of strategic and national importance.

### 3.3 Conflicting Objectives

#### 3.3.1 Public Open Space & SuDS Provision

In accordance with Section 37(2)(b) of the Act and as demonstrated in the Sections 3.1 and 3.2 of this report, the subject site location and its strategic and national significance have been fully addressed. The following illustrates that the proposed development is also in accordance with the relevant national and regional planning policies, including guidelines issued under Section 28 of the Planning & Development Act, 2000 (as amended). This is submitted to provide for the current proposal to satisfy two of the Sections 37(2)(b) criteria.

#### **National Planning Framework**

In relation to SuDS provision, the National Planning Framework 2040 promote SuDS as a solution to enhance water quality and resource management. Outlined in **National Policy Objective 57**, the NPF seeks:

*“Enhance water quality and resource management by:*

- *Ensuring flood risk management informs place-making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities.*
- *Ensuring that River Basin Management Plan objectives are fully considered throughout the physical planning process.*
- *Integrating sustainable water management solutions, such as Sustainable Urban Drainage (SUDS), non-porous surfacing and green roofs, to create safe places.*

### **Regional Spatial & Economic Strategy for the Eastern & Midland Region**

In terms of SuDS provision, the Regional Spatial & Economic Strategy for the Eastern and Midland Region support integration of water management solutions, including SuDS, within the developments to create nature-based solutions. Stated in **RPO 10.15 & 10.16**, it is an objective of the RSES:

*“Support the relevant local authorities (and Irish Water where relevant) in the Region to improve storm water infrastructure to improve sustainable drainage and reduce the risk of flooding in the urban environment and in the development and provision at a local level of Sustainable Urban Drainage solutions...”*

*Implement policies contained in the Greater Dublin Strategic Drainage Study (GSDSDS), including SuDS.”*

The Strategy goes on to state that the following Guiding Principles for SuDs shall be incorporated into development plans and LAPs:

- *Include policies and actions to encourage the integration of ‘soft’ measures including SuDs, green space, Green Infrastructure and permeable surfaces in the design of drainage and sustainable water management of existing and future developments.*
- *Identify areas where SuDS will or may be required to be incorporated.*
- *Include objectives requiring the use of SuDS in public and private developments in urban areas, both within developments and within the public realm to minimise and limit the extent of hard surfacing and paving and require the use of sustainable drainage techniques for new development or for extensions to existing developments, in order to reduce the potential impact of existing and predicted flooding risks.*
- *Take opportunities to enhance biodiversity and amenity and to ensure the protection of environmentally sensitive sites and habitats, including where flood risk management measures are planned. Plans and projects that have the potential to negatively impact on Natura 2000 sites should be subject to the requirements of the Habitats Directive.*
- *Encourage the use of Green Roofs where expansive roofs are proposed such as industrial, apartment, civic, commercial, leisure and educational buildings, and non-porous surfacing to create safe places.*
- *Seek to reduce the extent of hard surfacing and paving as well as requiring the use of sustainable drainage techniques. Where possible, consideration should be given to measures that have*

*benefits for both WFD and flood risk management objectives, such as natural water retention measures, and also for biodiversity and potentially other objectives.*

It is respectfully submitted that the foregoing demonstrates the proposed development is consistent with national and regional policy guidance where it clearly suggests integration of SuDS within the developments and as part of water management solutions as to maximise capacity to cater for all sort of developments.

As outlined, the proposed development provides for an overall of c. 1.35 ha public open space, comprising of both Class 1 and 2 public open spaces, as specified within the Fingal Development Plan. With respect to the developable site area of 11.1 ha, this would provide for 12% public open space provision which exceeds by 2% from the threshold envisaged in the Development Plan. Furthermore, the foregoing open space provision does not include the additional 5,425 sqm (0.55ha) Green Route/Cycle Link provided as part of the proposed development, all resulting in an over-provision of public open space within the scheme. This would effectively change the quantum of open space provision taken up by SuDS, reducing it to 11.3%.

At this juncture, it is also important to note that the proposed residential scheme represents the completion of the overall development for the Broomfield lands, and therefore cannot be considered taken out of its context. Having said that, the aforementioned open space provision does not include the over-provision of open space for the earlier development phases of the Broomfield lands, i.e., Ashwood Hall development. This is also intended to cater for the proposed development and immediately adjoins this large central area of open space.

Furthermore, the Malahide Castle and Demesne (Class 1 Open Space Area) is located to the immediate north of the application site, and this extends to over 105.2 ha of parkland, woodland, playground, walking trails and botanical gardens.

Moreover, it is submitted that the scheme is proposed to incorporate a Storm Water Management Plan through the use of various SuDS techniques to treat and minimise surface water runoff from the site. The methodology involved in developing a Storm Water Management Plan for the subject site is based on recommendations set out in the Greater Dublin Strategic Drainage Study (GSDSDS) and in the SuDS Manual. Based on three key elements of Water Quantity, Water Quality and Amenity, the targets of the SuDS train concept have been implemented in the design, providing SuDS devices for each of the: (1) Source Control; (2) Site Control; and (3) Regional Control. These are submitted to mitigate against the requirement for underground attenuation tanks to be utilised by the development. For further details in this regard, please refer to the enclosed Engineering Assessment Report prepared by Waterman Moylan Consulting Engineers.

With respect to the above-mentioned, it is submitted that the SuDS provision within the scheme needs to be seen and evaluated with regards to the overall development of Broomfield lands, as despite a gradual delivery approach towards the development of the lands, it is based upon an integrated design informed by the context. Waterman-Moylan Consulting Engineers have prepared a detailed Engineering Assessment Report accompanied by relevant drawings that clearly outlined a justification for the quantum of SuDS provision within proposed public open space of the scheme, which the Board are invited to refer to for further details.



### 3.3.2 Car Parking Provision

In accordance with Section 37(2)(b) of the Act and as demonstrated in the Sections 3.1 and 3.2 of this report, the subject site location and its strategic and national significance have been fully addressed. The following illustrates that the proposed development is also in accordance with the relevant national and regional planning policies, including guidelines issued under Section 28 of the Planning & Development Act, 2000 (as amended). Moreover, it is demonstrated that the scheme is justified by the pattern of the development within the area. This is submitted to provide for the current proposal to satisfy two of the Sections 37(2)(b) criteria.

#### **National Planning Framework**

In terms of parking provision, the National Planning Framework 2040 encourage a performance-based criteria, appropriate to general location, e.g. city/town centre, public transport hub, inner suburban, public transport corridor, outer suburban, town, village etc. Outlined in **National Policy Objective 13**, the NPF seeks:

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

#### **Sustainable Residential Development in Urban Areas (2009)**

In order to assist both planning authorities and developers in meeting certain standards in the design of residential development, the Guidelines aim to produce high-quality sustainable developments throughout the country, and inform the core principles of urban design when designing places of high quality and distinct identity. The Guidelines encourage realistic levels of car parking standards in developments having regard to proximity to public transport in order to avoid parked vehicles causing obstruction on residential streets in the evenings or at weekends.

Outlined in the Guidelines, new developments in central urban locations and in proximity to public transport corridors can feature appropriate reductions in car parking provision, where at the same time high-quality secured cycle parking and storage facilities are provided. As per the Guidelines:

*“The quantum of car parking or the requirement for any such provision for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria.”*

#### **Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2020)**

The Guidelines acknowledge that:

*“The quantum of car parking or the requirement for any such provision for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria.*

### **1) Central and/or Accessible Urban Locations**

*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.*

### **2) Intermediate Urban Locations**

*In suburban/urban locations served by public transport or close to town centres or employment areas and particularly for housing schemes with more than 45 dwellings per hectare net (18 per acre), planning authorities must consider a reduced overall car parking standard and apply an appropriate maximum car parking standard.*

### **3) Peripheral and/or Less Accessible Urban Locations**

*As a benchmark guideline for apartments in relatively peripheral or less accessible urban locations, one car parking space per unit, together with an element of visitor parking, such as one space for every 3-4 apartments, should generally be required.”*

In that vein, the Guidelines states that *“for all types of location, where it is sought to eliminate or reduce car parking provision, it is necessary to ensure, where possible, the provision of an appropriate number of drop off, service, visitor parking spaces and parking for the mobility impaired. Provision is also to be made for alternative mobility solutions including facilities for car sharing club vehicles and cycle parking and secure storage. It is also a requirement to demonstrate specific measures that enable car parking provision to be reduced or avoided.”*

It is respectfully submitted that the above-mentioned justification clearly demonstrates the proposed development is consistent with national policy guidance where it clearly shows the reduced provision of 1.25 car parking spaces per apartment/duplex unit reflects the location of the development in relation to its connectivity and access to public transport services. The Broomfield lands are located in a highly accessible suburban location with Malahide DART Station located within c. 1.3km and Malahide Beach located within c. 1.8km from the lands. This provides the subject site with an excellent connectivity to Dublin City Centre via Dublin Bus services that run along Malahide Road, as well as commuter services from Malahide DART Station.

As outlined, the proposed development provides for a total of 721 no. car parking spaces, serving residents, visitors and staff car parking, and drop off spaces for the creche. Waterman-Moylan Consulting Engineers have prepared a Travel Plan and TTA that clearly outlines a justification for the level of car parking being proposed as part of this development. The Travel Plan is submitted under

separate cover as part of the application and the Board are invited to refer to that report for further details.

### 3.3.3 Preparation of a Masterplan

In accordance with Section 37(2)(b) of the Act and as demonstrated in the Sections 3.1 and 3.2 of this report, the subject site location and its strategic and national significance have been fully addressed. The following illustrates that there are conflicting objectives in the development plan in terms of preparation of a Masterplan, also the proposed development is in accordance with the relevant national and regional planning policies, including Section 28 of the Planning & Development Act, 2000 (as amended). Furthermore, it is demonstrated that the scheme is justified by the pattern of the development within the Broomfield lands. This is submitted to provide for the current proposal to satisfy four of the Sections 37(2)(b) criteria.

It is evident that there are conflicting objectives within the Development Plan in terms of the preparation and adoption of Masterplans prior to the submission of any planning application.

With regards to the preparation of Masterplans, page 91 of the Development Plan states that Masterplans for these lands shall be prepared and agreed by the Planning Authority prior to the submission of any planning application.

*“Objectives are provided detailing locations where Local Area Plans (LAPs) and Masterplans are required in a number of urban areas. Details of these LAPs and Masterplans are identified below. In accordance with Objectives PM13 and PM14 (Chapter 3, Placemaking) the LAPs and Masterplans for these lands shall be prepared and agreed by the Planning Authority prior to the submission of any planning application. LAPs and Masterplans shall provide for the phased development of subject lands as appropriate.”*

Page 364 of the Development Plan notes that subsequent applications will be required to adhere to the approved masterplans: *“Subsequent planning applications will be required to adhere to the approved Masterplans”*.

However, the Planning Authority have already granted planning permission on lands that are within the designated masterplan area prior to such masterplan being prepared.

Irrespective of the existing circumstances of the lands and the need for real-time evaluation of policy, the proposed development may be considered to potentially materially contravene Objective PM14 and Objective MALAHIDE 11 of the Fingal Development Plan, in that a Masterplan has not yet been prepared or implemented for the Broomfield lands by Fingal County Council.

It is further submitted that seeking to prepare a masterplan by the Planning Authority prior to the lodgement of this planning application can prevent the delivery of housing on appropriately zoned lands, whereby the Planning Authority are not in a position to prepare such a plan within the lifetime of the County Development Plan. Objective SS02 of the Development Plan seeks to:

*“Ensure that all proposals for residential development accord with the County’s Settlement Strategy and are consistent with Fingal’s identified hierarchy of settlement centres”*.

The Core Strategy of the Development Plan (including Objective SS02) clearly seeks to have residential development take place during the lifetime of this Plan on appropriately zoned lands in the County. It is important to note that the current Development Plan is now under review and a new Plan is due to come into effect in February 2023.

Objective SS02A also reads as follows: Development will be permitted in principle on lands where there is a Local Area Plan or Masterplan in place and only when these lands are substantially developed will permission be granted for the development of lands without such a framework. Should the lands identified within a LAP or Masterplan not come forward for development in the short term, consideration will be given to other lands.

Therefore, it is submitted to the Board that there are conflicting objectives in the Development Plan and objectives not clearly stated with regards to the subject lands.

Planning precedent also exists where a number of applications were already made or granted in the masterplan area without the existence of an adopted masterplan, including Reg. Ref. F19A/0579, F19A/0580, F19A/0581, Reg. Ref. F20A/0113, and Reg. Ref. F20A/0507. This indicates conflicting policy and implementation of the Development Plan.

Moreover, it is submitted that the proposed development is in accordance with the following national and regional planning policies, including guidelines issued under Section 28 of the Planning & Development Act, 2000 (as amended).

#### **Development Management Guidelines for Planning Authorities**

The government's guidelines on Development Management state that development which is premature because of a commitment in a development plan to prepare a strategy, Local Area Plan or framework plan not yet completed should only be used as a reason for refusal if there is a realistic prospect of the strategy or plan being completed within a specific stated time frame. It is considered that the same constraint applies with regard to the commitment in a development to the preparation of a masterplan.

Having regard to the advice given in the Development Management Guidelines and the absence of a demonstrable commitment by the planning authority to commence work on the Masterplan, it is submitted to the Board that permission should be granted for the subject application noting that the lands are zoned for residential development and that the proposals comply with the objectives for a masterplan for the lands. It is submitted that it would be inappropriate to refuse permission for the proposed development on the grounds that the development is premature pending the preparation and adoption of a masterplan by the Council noting that the lands are the last available/remaining lands for development at Broomfield and that the proposed development has been sensitively designed in keeping with the earlier residential developments which are under construction at Broomfield and Ashwood Hall, and in a manner that does not prejudice the development of the surrounding lands or indeed does not prejudice the preparation of a masterplan by the Council.

#### **National Planning Framework 2040**

In terms of Dublin City and the Metropolitan Area, the National Planning Framework 2040 states that:

*“At a metropolitan scale, this will require focus on a number of large regeneration and redevelopment projects, particularly with regard to underutilised land within the canals and the M50 ring and a more compact urban form, facilitated through well designed higher density development.”*

*“A major new policy emphasis on renewing and developing existing settlements will be required, rather than continual expansion and sprawl of cities and towns out into the countryside, at the expense of town centres and smaller villages. The target is for at least 40% of all new housing to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites. The rest of our homes will continue to be delivered at the edge of settlements and in rural areas.”*

*“A focused approach to compact, sequential and sustainable development of the larger urban areas along the Dublin – Belfast economic and transport corridor, along which there are settlements with significant populations such as Dundalk and Drogheda.”*

**National Policy Objective 3a:** *“Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.”*

**National Policy Objective 4:** *“Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.”*

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

**National Policy Objective 33:** *“Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.”*

**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.”*

Downey are of the considered opinion that the proposed residential development is consistent with the Objectives of the NPF, which will help the Dublin Metropolitan area reach its targeted growth as outlined in the NPF. The proposed development will take place in a sustainable manner, on lands that are within the established urban settlement of Malahide and can be considered contiguous to existing residential developments. This will take place through appropriate design standards and achieving the

correct density for the subject site. The development will not give rise to any negative effects on the environment and will support the economic growth and development of Malahide.

As such it is respectfully submitted that the proposed development is in line with Government guidance and evolving trends for sustainable residential developments in urban areas.

### **Sustainable Residential Development in Urban Areas & Design Manual**

The role of the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' is to ensure the sustainable delivery of new development in urban areas throughout the country. The Guidelines provide clear guidance on the core principles of design when creating places of high quality and distinct identity. The Guidelines recommend that planning authorities should promote high quality development in policy documents and through the development management process. The Guidelines should be read in tandem with the Design Manual which demonstrates good design principles and their application in designing new residential developments.

With regards to the preparation of masterplans, the guidelines note that masterplans are non-statutory documents and that some planning authorities may consider preparing framework plans and/or masterplans to provide more detailed design guidance for large-scale mixed use development, for example, to indicate an overall structure for a new neighbourhood. In the case of all such non-statutory documents, **the policy context must be set by statutory plans, with the objective of providing detailed design guidance.** It is submitted to the Board that the Masterplan layout and supporting documentation submitted with the application is consistent with the requirement for Masterplans as set out in the Development Plan and does not prejudice either the preparation of a masterplan or the development of the surrounding lands.

The Guidelines recognise that a key design aim in delivering sustainable communities is to reduce, as far as possible, the need to travel, particularly by private car, by facilitating mixed-use development and by promoting the efficient use of land and of investment in public transport. Such policies will help to sustain viable local services and employment.

Section 2.1 of the Guidelines state that, *"the scale, location and nature of major new residential development will be determined by the development plan, including both the settlement strategy and the housing strategy."*

The sequential approach to land development is also recognised by the Guidelines within Section 2.3 which notes that, *"the Department's Development Plan Guidelines (DoEHLG, 2007) specifies that zoning shall extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, encouraging infill opportunities and that areas to be zoned shall be contiguous to existing zoned development lands."*

The subject site is zoned 'RA – Residential Area' within the Fingal Development Plan 2017-2023. The site is located on appropriately zoned lands to the south-west of Malahide and will be contiguous to existing residential developments, including Ashwood Hall (to the west of the north site of the proposal and to the north of the southern site), the Hazelbrook and Castleway housing developments to the west, and Brookfield (to the southwest of the north site of the proposal and to the north of the southern site). As such, the proposal prevents 'leapfrogging' of developments and urban/suburban

sprawl, particularly into greenfield and high amenity lands and represents a sustainable, compact development within appropriately zoned lands located within an existing settlement boundary.

The Guidelines also recognise the need to plan for sustainable neighbourhoods. In this regard, the proposed strategic housing development provides for a range of community facilities for residents in the form of a childcare facility and high-quality amenity spaces for the enjoyment of the local community including play equipment as well as public access and connectivity to open space areas. The proposed land uses are in accordance with the 'RA - Residential Area' zoning objective designation on the site. It is important to note that the wider area of Malahide provides a wealth of services and amenities for the use and enjoyment of the community including local shops, supermarkets, schools, healthcare facilities, churches, community centres, public parks (including Malahide Castle located off Back Road), swimming pool, etc. It is thus submitted that the proposed development is in accordance with the proper planning and sustainable development of the area.

Also, there is precedent for residential development being granted on lands designated for the preparation of a masterplan where such a plan has not been prepared or adopted by the Council and indeed there is precedent on the surrounding lands subject to the same Broomfield Masterplan.

Developments granted and/or currently under construction within the Broomfield lands include Reg. Ref. F13A/0459 (ABP Ref. PL06F.243863), Reg. Ref. F13A/0459/E1, and Reg. Ref. F13A/0460 (ABP Ref. PL06F.243821), Reg. Ref. F13A/0460/E1, and subsequent amendments under Reg. Ref. F20A/0113, with Ashwood Hall to the west of the northern site which comprises 56 no. dwellings and a neighbourhood centre and Brookfield which comprises 80 no. dwellings and a childcare facility. Other permissions granted within the masterplan lands include permissions Reg. Ref. F19A/0579, F19A/0580, F19A/0581, and Reg. Ref. F20A/0507. This indicates conflicting policy and implementation of the Development Plan, and thus indicates that planning permission could be granted in the absence of the preparation of the Broomfield Masterplan.

As it stands, there are numerous precedents across Fingal where planning permission has been granted in the absence of the preparation of Masterplans by Fingal County Council, including the nearby lands designated as the Streamstown masterplan lands (Reg. Refs. F17A/0208, F18A/0151, F17A/0177 and F19A/0541 refers). Other residential developments within the county which have been granted without the existence of an adopted masterplan for the pertaining lands include Reg. Ref. F17A/0374, Reg. Ref. F17A/0648, and Reg. Ref. F18A/0423.

- **Reg. Ref. F17A/0374** – By Order dated 25<sup>th</sup> September 2017, Fingal County Council granted permission to Targeted Investment Opportunities ICAV for alterations to previously approved development Reg. Ref. F15A/0437, which permitted 129 two storey dwellings on site. The proposed alterations consist of alterations to previously approved house types and house mix to increase the number of dwellings from 129 to 130 no. The proposed residential development consists of 130 no. two storey dwellings (48 no. four bedroom, 72 no. three bedroom, and 10 no. two bedroom units) with curtilage car parking, private open space, also to make minor alterations to part of the new internal access roads and footpaths, together with all associated site works and landscaping as previously approved under Reg. Ref. F15A/0437 at lands to be known as Taylor Hill which is located off the Naul Road and north of St. George's National

School, west of Moylaragh housing estate, northwest of Hampton Gardens housing estate and south of Martello housing estate, Balbriggan, Co. Dublin.

- **Reg. Ref. F17A/0648** – By Order dated 1<sup>st</sup> February 2018, Fingal County Council granted permission to Winsac LTD for 16 no. new residential units at the site previously granted permission for a local services centre under the overall development granted under F05A/1818 and subsequently extended under planning reference F05/1818/E1. The development at the site as approved under F05A/1818, consists of an urban centre over two and three stories comprising of a civic plaza, 7 no offices suites, retail units, restaurant, off licence, community centre, gym and medical centre (5,535 sqm). The proposed development at the site provides 16 No. new residential dwelling units (i) 1 No. single storey three bedroom house type E1 (117 sqm) (ii) 1 No. single storey three bedroom house type E2 (117 sqm) (iii) 1 No. single storey three bedroom house type E3 (117m<sup>2</sup>) (iv) 1 No. single storey three bedroom house type E4 (127 sqm) (v) 4 No. two storey semi-detached three bedroom houses Type A-2 blocks (each 109 sqm) (vi) 2 No. two storey semi-detached three bedroom houses Type A1-1block (each 109 sqm) (vii) 3 No. two storey terraced three bedroom houses Type A2 - 1 block (each 109 sqm) (viii) 3 No two storey terraced three bedroom houses Type A3-1 block (each 109 sqm) (ix) New landscaped pocket park with a total area of open space 4,680sq m, pedestrian and cycle routes, foul and surface water drainage site developments works, and all other associated site development works, on lands at Barnageeragh Cove, Kelly's Bay, Skerries, Co. Dublin.
- **Reg. Ref. F18A/0423** – By Order dated 22<sup>nd</sup> October 2018, Fingal County Council granted permission to Winsac Ltd for 16 no. new residential units. This development was previously approved under F17A/0648. The proposed development at the site provides 16 no. new residential dwelling units (i) 1 no. single storey three bedroom house type E1 (117 sqm). (ii) 1 no. single storey three bedroom house type E (117 sqm). (iii) 1 no. single storey three bedroom house type E3 (117 sqm). (iv) 1 no. single storey three bedroom house type E4 (127 sqm). (v) 4 no. two storey semi-detached three bedroom houses type A - 2 blocks (each 109 sqm). (vi) 2 no. two storey semi-detached three bedroom houses type A1 - 1 block (each 109 sqm). (vii) 3 no. two storey terraced three bedroom houses type A2 - 1 block (each 109 sqm). (viii) 3 no. two storey terraced three bedroom houses type A3 - 1 block (each 109 sqm). (ix) New landscaped pocket park with a total area of open space of 4,680 sqm, pedestrian and cycle routes, foul and surface water drainage site development works, and all other associated site development works, on lands at Barnageeragh Cove, Kelly's Bay, Skerries, Co. Dublin.

Therefore, it is evident that this current proposed development could be granted planning permission having regard to the pattern of development in the area and permissions granted in the area and indeed granted since the making of the current Development Plan.

It is respectfully submitted that the above-mentioned justification clearly demonstrates the proposed development is consistent with national policy guidance where it clearly defines the parameters for the appropriate development of the Broomfield lands. The Broomfield lands are located in an accessible suburban location within an existing settlement development boundary on residential zoned lands.



The foregoing justification also indicates that there is definitive local and national policy guidance outlining the appropriateness to develop the remaining Broomfield lands without the requirement for a masterplan to be prepared and adopted by Fingal County Council due to the application site's location within appropriately zoned lands, in a highly accessible location within the development boundary of Malahide, and the policies and objectives set out within the Section 28 Guidelines.

Furthermore, the majority of the masterplan lands are in the ownership of the applicant, and the proposed strategic housing application will result in the completion of the majority of the Broomfield Masterplan lands in accordance with local and national policy guidance. Moreover, the proposed development will not impede the development potential of adjoining lands and the scheme will assimilate into the area, where it is predominately characterised by existing residential development and new residential developments under construction.

In light of the above, it is respectfully requested that An Bord Pleanála have regard to the justification set out within this Material Contravention Statement and permit the potential material contravention of the Fingal Development Plan 2017-2023.

#### 4.0 CONCLUSION

It is respectfully submitted that the justification set out within this Statement, be read in conjunction with the accompanying Statement of Consistency with Planning Policy and the Supporting Planning Statement reports, which clearly demonstrate that the proposed Strategic Housing Development at Broomfield, Malahide, Co. Dublin, is in accordance with the development management standards set out within the Fingal Development Plan 2017-2023, with the possible exception for that of the car parking standards, core strategy and housing targets, masterplan designation, and SuDS provision within public open space objectives. The following provides an overview of the potential material contraventions and the justifications outlined in this Statement:

- 1) With respect to the Dublin Airport Noise Zones in Fingal Development Plan 2017-2023, a small portion of the site in the southern ends is situated within the Noise Zone B, where aircraft noise may give rise to annoyance and sleep disturbance, and therefore, according to the Development Plan, a noise assessment must be undertaken in order to demonstrate good acoustic design has been followed. In this regard, this SHD application is accompanied by a detailed noise assessment prepared by AWN Consulting Ltd. which is contained within the EIAR, which demonstrates that the proposed development is compliant with the relevant standards in the Fingal Development Plan Variation no. 1, also, good acoustic design has been followed in the design process. As an outcome, it is submitted that with regards to the Environmental Resources Management Ireland (2003), the southern portion of the Broomfield SHD application site is restricted to a maximum occupancy of 60 persons in any ½ hectare. Thus, despite the density in the southern portion of the lands may appear as low, this is justified on the grounds of public safety stipulations for lands;
- 2) The underground attenuation storage tank, as part of SuDS provision, comprises of 2,145.4 sqm which is 15.8% of the proposed public space and this exceeds the stated maximum threshold of 10% envisaged for SuDS provision within the public open space. However, it is submitted that the SuDS provision in the form of underground tanks as a design solution represents an efficient,

appropriate use of serviced, zoned residential lands which is in accordance with national and regional policy, and thus accords with the proper planning and sustainable development in the area;

- 3) The proposed development provides for an overall total of 3,010 sqm play area throughout the scheme, which equate to c. 7.2 sqm play area per unit. This is provided in a variety of play opportunities ranging from formal play area to informal playgrounds, and kickabouts. This is submitted to be consistent with Objective DMS75 of the Development Plan and thus accords with the proper planning and sustainable development in the area;
- 4) To facilitate the proposed development, removal of 46 no. trees are required, which as per the technical assessment, it is submitted to be of low and poor quality and their loss will not have a significant visual impact on the landscape character of the local area. In addition, the landscape proposal has taken into consideration the loss of trees and includes substantial replacement tree planting. New tree planting can help to mitigate the loss of trees and potentially, in the future, enhance local biodiversity and canopy cover. This is submitted to not materially contravene the requirements of the Development Plan;
- 5) The subject site should be considered for development with the reduced quantum of car parking provision since this reduced rate of car parking space per apartment/duplex unit reflects the location of the development in relation to public transport services. This is noted to be in line with national policy, particularly the Design Standards for New Apartments (2020);
- 6) Objectives within Fingal Development Plan 2017-2023 which requires the preparation of a Masterplan which has not yet been formerly prepared and adopted and the timeline for which is not available contradicts national policy which seeks to ramp up the delivery of housing on suitable zoned lands. The Government's guidelines on Development Management specifically deal with this issue in paragraph 7.16.1 and state '*development which is premature because of a commitment in a development plan to prepare a strategy, Local Area Plan or framework plan not yet completed should only be used as a reason for refusal if there is a realistic prospect of the strategy or plan being completed within a specific stated time frame*'. It is also noted that there are conflicting objectives in the Development Plan with regards to Masterplans. The Development Plan notes that Masterplans are subsidiary to their parent plan (i.e. Local Area Plan, County Development Plan) and their associated zoning strategies and objectives. The masterplan is not a statutory plan under the Planning and Development Act 2000. Masterplans are subsidiary to the Development Plan and would not typically have a statutory process albeit the current Fingal Development Plan provides for same. As such, conflicting objectives exist within Fingal Development Plan 2017-2023 insofar as the proposed development is concerned. Furthermore, the making of this application effectively constitutes the completion of the masterplan lands as the lands comprise the majority of the remaining lands available for development under the Broomfield Masterplan. In addition, the subject application complies with the specific objectives for the Masterplan as set out in the Fingal Development Plan 2017-2023 and the making of this application does not prejudice the objective of the development plan to prepare a masterplan for the overall lands as the subject application ensures that the

nature and form of the development does not prejudice the development of the surrounding lands into the future; and,

- 7) With respect to the timing and sequencing of planning applications in the area, there may be a possible material contravention of the proposed scheme with the Core Strategy of the Development Plan by over-provision for housing. However, an overview of the applications on housing provision in the area indicates that there is still a remaining capacity of 310 no. residential units to be delivered in the area. Moreover, the activation rate of planning permissions in the County over 2017-2020 stands at c. 60% which adds to the remaining capacity for housing provision in the County. And therefore, it is submitted that the proposed development of 415 units is still within the projected housing demand for the area and complies with the objectives of the Development Plan to promote sustainable development through densification of the existing urban form.

In light of the foregoing, it is respectfully requested that An Bord Pleanála have regard to the justification set out within this statement and permit the development and the potential material contraventions of the Fingal Development Plan 2017-2023 as detailed within this Statement, having consideration to section 37(2)(b) (i), (ii), (iii) and (iv) of the Planning and Development Act, 2000 (as amended), specifically the policies and objectives set out within the Section 28 Guidelines and noting the national importance of delivering housing and sustainable neighbourhoods given the current housing crisis, as well as planning precedent within the surrounding area, which have been approved during the lifetime of the current Development Plans.