

# **Statement of Material Contravention of Draft Dublin City Development Plan 2022-2028**

*In respect of*

**Site located to the north-west corner of the Omni Park  
Shopping Centre, Santry and at Santry Hall Industrial  
Estate**

*Prepared by*

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*On behalf of*

**Serendale Ltd.**

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## 1.0 INTRODUCTION

- 1.1. This statement outlines the justification for the material contraventions of the Draft Dublin City Development Plan 2022-2028 for the proposed mixed-use development on lands located at the north-west corner of the Omni Park Shopping Centre, Santry and at Santry Hall Industrial Estate.
- 1.2. The current Dublin City Development Plan 2016-2022 is under review and a draft version of the Plan has been published, with the final plan expected to come into operation in December 2022. Therefore, this statement also includes assessment of contravention of policies in the published draft City Development Plan 2022-2028 including **density, plot ratio and site coverage, community space, universal design, EV charging provision, and separation distances** with a justification set out herein. Dublin City Council had published 'Proposed Material Amendments' to the draft Plan at the time of submission. In the situation that these proposed alterations are adopted as part of the final version of the Plan, this document includes an assessment of a potential material contravention of the identified policies.
- 1.3. Permission for a 7-year duration is sought by Serendale Limited for the development that will comprise of:

*"The demolition of the existing industrial / warehouse buildings northwest of Omni Park Shopping Centre, Santry, Dublin 9 and the construction of 457 no. apartments across 4 no. blocks, ranging in height from 4-12 storeys (over basement). The proposal includes 2 no. retail/café/restaurant units, 1 no. community building, 1 no. childcare facility, 1 no. residential amenity space and 5 no. ESB substations.*

*The development also provides for a basement carpark of 213 no. spaces and 7 no. motorcycle spaces with 7 no. creche drop-off parking spaces and 6 no. carshare parking spaces located in newly reconfigured surface carpark. The proposal provides for 768 no. bicycle parking spaces.*

*The proposal includes the provision of a new public open space plaza, with consequential revisions to existing commercial car parking areas, to integrate the proposals with the wider District Centre.*

*The proposal includes the provision of pedestrian and cycle connections and improvements through Omni Park Shopping Centre, including a plaza and cycle/pedestrian link substantially in the form permitted as part of the Omni Living Strategic Housing Development (Ref. ABP-307011-20).*

*Access to the proposed 213 no. basement car parking spaces is via the existing Omni Park Shopping Centre. A secondary servicing and emergency access is via the existing service road to the rear of existing retail premises at Omni Park Shopping Centre and accessed from the Swords Road.*

*The development provides for all associated and ancillary site development, demolition and clearance works, hoarding during construction, revisions to car parking within the Omni Park Shopping Centre, soft and hard landscaping, public realm works, public lighting and signage, ancillary spaces, plant including photovoltaic panels, water infrastructure, utilities and services.*

- 1.4. In summary, this Material Contravention Statement outlines and addresses the following potential material contraventions:

**Draft Dublin City Development Plan 2022-2028**

- **Section 15.5.5 / Appendix 3 - Density**
- **Section 12.5.3 (CUO 22) – Provision of Community & Cultural Space**
- **Section 15.9.2 – Unit Size/Layout & Section 5.5.5 – Housing for All – Objective QHSNO10 Universal Design**
- **Section 15.13.1.4 – Car Parking (EV Charging)**
- **Section 15.9.17 – Separation Distances**

- 1.5. For the reasons set out in a later section of this Statement, the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provision of Section 37(2)(b) of the Planning and Development Act 2000, as amended.
- 1.6. The Statement of Consistency and Planning Report accompanying this application demonstrates compliance with other relevant policies and objectives of the draft Development Plan 2022-2028. Significantly, the proposed SHD does not contravene the draft Development Plan, or any Local Area Plan, in relation to the zoning of land, as the uses proposed are permissible under the Z4 zoning objective.

***Legislative Context***

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

*‘(6) (a) Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under Section 4 even where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned.*

*(b) The Board shall not grant permission under paragraph (a) where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of land.*

*(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if Section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development’.*

- 1.8. Section 37(2)(b) of the Planning and Development Act 2000, as amended, (‘the 2000 Act’) states:

*“2) (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.*

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

- (i) *the proposed development is of strategic or national importance,*
- (ii) *there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) *permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (iv) *permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”*

## 2.0 DEVELOPMENT IS OF NATIONAL IMPORTANCE

- 2.1 The section below demonstrates how the proposed development is justified by reference to sub-paragraph (i) *‘the proposed development is of strategic or national importance’* of Section 37(2)(b). It is respectfully submitted that the proposed development is of national importance for the reasons set out below. This justification applies to all of the potential material contraventions identified within this statement.
- 2.2 The Government’s *‘Housing for All – A New Housing Plan for Ireland 2021’* contains a range of actions and measures to ensure over 300,000 new social, affordable, cost rental and private homes are built by 2030. The actions outlined in the Plan are backed by over €4 billion in annual guaranteed State investment in housing over the coming years, including through Exchequer funding, the Land Development Agency and Housing Finance Agency investment. The plan commits to over €20 billion in State investment in housing over the next five years. The plan is set out across four pathways to address the pressing housing challenges facing the State:
- “Pathway to supporting homeownership and increasing affordability;  
Pathway to eradicating homelessness, increasing social housing delivery and supporting social inclusion;  
Pathway to increasing new housing supply;  
Pathway to addressing vacancy and efficient use of existing stock.”*
- 2.3 These pathways are underpinned by long-term actions to address systemic challenges. It aims to create a housing system which has environmental, social and economic sustainability at its heart, and which meets the needs of all.
- 2.4 The proposed development will support the achievement of this Plan by providing housing at an appropriate scale and location including social housing. While the detail of this plan has yet to be fully developed, this application is in accordance with the intention and ambition of the plan.
- 2.5 The significant shortfall in housing output to address current and projected demand is a widely documented national issue, and this is particularly evident in the Dublin City area. The proposed development consists of 457 no. new apartments as part of a mixed-use scheme which will include 2 no. retail/café/restaurant units, 1 no. community building, 1 no. childcare facility and 1 no. residential amenity space, which will help to alleviate the demand for housing within the local area and within Dublin City as a whole. We would therefore submit that the proposed development is of national importance, as it will deliver on national objectives to deliver housing by increasing housing supply.

## Rebuilding Ireland – Action Plan for Housing and Homelessness

- 2.6 Rebuilding Ireland was launched in 2016 with the objective to double the annual level of residential construction to 25,000 homes and deliver 47,000 units of social housing in the period to 2021, while at the same time making the best use of the existing stock and laying the foundation for a more vibrant and responsive private rented sector.

- 2.7 Rebuilding Ireland is set around 5 no. pillars of proposed actions summarised as follows:

***Pillar 1 – Address Homelessness: Provide early solutions to address the unacceptable level of families in emergency accommodation; deliver inter-agency supports for people who are currently homeless, with a particular emphasis on minimising the incidence of rough sleeping, and enhance State supports to keep people in their own homes.***

***Pillar 2 – Accelerate Social Housing: Increase the level and speed of delivery of social housing and other State – supported housing***

***Pillar 3 – Build More Homes: Increase the output of private housing to meet demand at affordable prices.***

***Pillar 4 – Improve the Rental Sector: Address the obstacles to greater private rented sector delivery, to improve the supply of units at affordable rents.***

***Pillar 5 – Utilise Existing Housing: Ensure that existing housing stock is used to the maximum degree possible – focusing on measures to use vacant stock to renew urban and rural areas.***

- 2.8 The proposed development is consistent with Pillars 2 and 3 to accelerate social housing and build more homes. The provision of 457 no. residential units will substantially contribute to the residential accommodation availability in the Dublin 9 area and cater for the increasing housing demand. The proposed development will contribute to the quantum of new social housing units available to the Council through the Part V agreement which is consistent with Pillar 2. The scheme therefore delivers on the national objectives of Rebuilding Ireland and is of national importance.

## National Planning Framework

- 2.9 The National Planning Framework (NPF) is the Government's plan to cater for the extra one million people that will be living in Ireland, the additional two-thirds of a million people working in Ireland and the half a million extra homes needed in Ireland by 2040.
- 2.10 As a strategic development framework, Ireland 2040 sets the long-term context for our country's physical development and associated progress in economic, social and environmental terms and in an island, European and global context.
- 2.11 The compliance of the proposed development with specific criteria of the NPF is detailed below, with responses provided for each objective.
- 2.12 National Policy Objective 3a aims to deliver "at least 40% of all new homes nationally, within the built-up footprint of existing settlements."
- 2.1 The proposed development will deliver residential units on an accessible and well-serviced site in Santry that is within the existing urban envelope of Dublin.

2.13 We also note Objectives 32, 33 and 35.

2.14 NPO 32 aims to:

*“Target the delivery of 550,000 additional households to 2040.”*

2.15 NPO 33 aims to:

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

2.16 NPO 35 aims to:

*“Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.”*

2.17 The full title of the Planning and Development (Housing) and Residential Tenancies Act 2016 is as follows:

*“An Act to facilitate the implementation of the document entitled “Rebuilding Ireland – Action Plan for Housing and Homelessness” that was published by the Government on 19 July 2016, and for that and other purposes to amend the Planning and Development Acts 2000 to 2015, the Residential Tenancies Acts 2004 to 2015 and the Housing Finance Agency Act 1981, to amend the Local Government Act 1998 in relation to the Local Government Fund and to provide for connected matters.”*

2.18 Due to the national and strategic importance of larger housing developments designated as SHDs, the Government moved to introduce legislation under the 2016 Act, which would see such developments assessed in a similar manner to Strategic Infrastructure Developments.

2.19 The significant shortfall in housing output to address current and projected demand is a national problem, with lack of housing in the Metropolitan Dublin Area, having social and economic implications for sustainable national growth. The proposed development will enhance the housing tenure in the surrounding area and contribute social housing to the community. Recent ESRI figures (Quarterly Economic Commentary Summer 2022) noted in respect of housing completions state that *“what is notable from the geographic breakdown is that the Dublin and Mid-East region has experienced a notable moderation in the number of units completed while the rest of the country has experienced quite a pick-up in investment levels. Given the requirements for housing units in the capital city and surrounding areas, it is notable that these areas have experienced quite a slowdown over the past 12 months.”*

2.20 The subject site is located in a suitable area and constitutes the re-use of an under-utilised site that is suitable for such development and will provide for much-needed residential units on a site well served by high-capacity public transport.

### 3.0 JUSTIFICATION OF MATERIAL CONTRAVENTION – DRAFT DUBLIN CITY DEVELOPMENT PLAN 2022-2028

- 3.1 This section of the Material Contravention Statement addresses the draft Dublin City Development Plan 2022-2028 (hereinafter referred to as the ‘draft Development Plan’), and the Proposed Material Alterations which are currently on public display, and provides a justification for potential material contraventions of the draft Plan in the event that a decision on the application is made subsequent to the new City Development Plan 2022-2028 coming into effect, and the Board is of the view that the proposed development contravenes the following aspects of the new Plan:

#### **Draft Dublin City Development Plan 2022-2028**

- **Section 15.5.5. / Appendix 3** – Density (in excess of 60 – 150 units per hectare)
- **Appendix 3 Section 3.2** – Plot Ratio and Site Coverage
- **Section 12.5.3 (CUO 22)** – Provision of Community & Cultural Space
- **Section 15.9.2** – Unit Size/Layout & Section 5.5.5 – Housing for All – Objective QHSNO10 Universal Design
- **Section 15.13.1.4** – Car Parking (EV Charging)
- **Section 15.9.17** – Separation Distances

#### **Density**

#### **Material Contravention**

- 3.2 Appendix 3, Section 3.2 relates to proposed densities, and Table 1 outlines the net density range permitted for each specific location. As the subject site is located within a ‘Key Urban Village’ as per the draft Plan, permitted densities as quoted range between 60 – 150 units per hectare. The draft Plan considers that ‘*as a general rule, the following density ranges will be supported in the city*’:

**Table 1: Density Ranges**

<b>Location</b>	<b>Net Density Range (units per ha)</b>
City Centre and Canal Belt	100-250
SDRA	100-250
SDZ/LAP	As per SDZ Planning Scheme/LAP
Key Urban Village	60-150
Former Z6	100-150
Outer Suburbs	60-120

- 3.3 It is noted that the text of the draft Plan says, “*as a general rule*” and that the range set out will supported. It does not say that higher densities will not be permitted (although there is a presumption against densities of over 300 units per hectare). Therefore, An Bord Pleanála may not consider it to be a Material Contravention. However, should An Bord Pleanála consider it to be a Material Contravention of the Plan a full justification for the proposed density is provided below.
- 3.4 The residential density of the proposed development is 295 no. units per hectare. This density of development is considered to be suitable for the subject site, having regard to its strategic location adjacent to existing and planned public transport provision, its location within a Key Urban Village and proximity to the range of services and



amenities available within the immediate vicinity. This density seeks to optimise the developable potential of the site, while providing for a mix of uses and also paying due respect to the residential amenity of the adjacent permitted and proposed developments. The draft Plan notes that proposals for higher densities must demonstrate how the proposal contributes to healthy place making, liveability and the identity of an area, as well as the provision of community facilities and/or social infrastructure to facilitate the creation of sustainable neighbourhoods. The proposed development and the plans and particulars submitted with this application demonstrate that the proposal will contribute positively to the local area through the provision of public and communal open space, a mix of apartment typology and uses at the site which will generate footfall to the area and is compatible with adjoining sites.

- 3.5 A justification for a material contravention in terms of density is set out below, under the relevant parts of Section 37(2)(b)(iii) and (iv) of the 2000 Act.

***Part (iii) development should be granted having regard to regional planning guidelines for the area, guidelines under [section 28](#), policy directives under [section 29](#), the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government***

- 3.6 The following section demonstrates how the proposed density is justified in the context of Section 37(2)(b)(iii) of the 2000 Act for the reasons set out below in the context of current National Planning Policy, namely the National Planning Framework.

#### **National Planning Framework (NPF) 2040**

- 3.7 The National Planning Framework is the Government's plan to cater for the extra one million people that will be living in Ireland, the additional two thirds of a million people working in Ireland and the half a million extra homes needed in Ireland by 2040.
- 3.8 As a strategic development framework, Ireland 2040 sets the long-term context for our country's physical development and associated progress in economic, social and environmental terms and in an island, European and global context.
- 3.9 The compliance of the proposed development with specific criteria of the NPF is detailed below, with responses provided for each objective.
- 3.10 National Policy Objective 3a of the NPF states that it is a national policy objective to *'deliver at least 40% of all new homes nationally within the built-up envelope of existing urban settlements.'*
- 3.11 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.'*
- 3.12 The proposed development will implement a high-quality scheme which integrates appropriately with the established land uses in the area and promote increased densities and population growth in urban areas. The proposal is intended to assist with

the development of the subject site by providing a suitable mix of residential units along with retail/café/restaurant uses that will contribute to the sustainable development of the area.

- 3.13 Objective 32: *'To target the delivery of 550,000 additional households to 2040'*. The residential aspect of the proposal consists of 457 no. apartment units at an urban infill site which will assist in achieving the target delivery of 550,000 additional households to 2040 and is compliant with the NPF in this respect.

- 3.14 Objective 35 states that it is an objective to:

*'Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.'*

- 3.15 The proposed development for a mixed-use scheme incorporating a significant proportion of residential development on this under-utilised infill site represents an excellent opportunity to provide for much needed housing and commercial development. The existing brownfield site has the potential to provide for much needed housing that is in line with the goals of the National Planning Framework.

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

- 3.16 Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

- 3.17 We note that An Bord Pleanála granted permission on 3 September 2020 for the demolition of existing structures at lands to the north-east of Omni Park Shopping Centre including a vacant warehouse at Swords Road, Santry, Dublin 9 (ABP Reg. Ref. 307011). Permission was granted for the construction of 324 no. apartments, creche and all associated site development works. The permitted development ranged between 5 to 12 no. storeys in height and provided for a density of 250 units per hectare.

Floors	2 Beds	1 Beds	Studio	TOTALS
Block A	78	45	7	130
Block B	54	69	12	135
Block C	47	12	0	59
<b>TOTALS</b>	<b>179</b>	<b>126</b>	<b>19</b>	<b>324</b>
<b>%</b>	<b>55%</b>	<b>39%</b>	<b>6%</b>	<b>100%</b>

ZONING - Z4	
PLOT RATIO - 2.5:1	
SITE COVERAGE - 32%	
PUBLIC OPEN SPACE - 2020 SQM	
HEIGHT -	BLOCK A = 8 TO 12 STOREY
	BLOCK B - 7 TO 11 STOREY
	BLOCK C - 5 TO 9 STOREY
MIX -	324 APARTMENTS
	81 APARTHOTEL ROOMS

**Development statistics of SHD approved at Swords Road, Santry, Dublin 9 (ABP Ref. 307011).**

- 3.18 The proposed density on the subject site is 295 no. units per hectare. It is considered that the proposed density is appropriate given the National Policy objective to increase residential density in existing urban infill and under-utilised brownfield sites. Comparable or higher densities have also been granted permission by An Bord Pleanála since the adoption of the National Planning Framework.
- 3.19 The intention of national and regional policy in this regard is clear and the proposal will increase residential density on a brownfield site within a district centre and adjacent to high-quality public transport. As set out in the documentation submitted with this application the proposed development also meets the locational criteria set out in the Apartment Design Standards.
- 3.20 We note nearby permitted developments have achieved similar densities. We also note a number of developments located in similar district centre contexts, as set out below:

Scheme	Proposed Density	No. Units
Omni Living 307011-20	250 u / ha.	324
Swiss Cottage 303358-19	233 u / ha	112
James Street 308871-20	343 u / ha	189
Beach Road 310299-21	291 u / ha	112
Former Eason's Warehouse 310112-21	228 u / ha	282
Former Heidelberg / Miller Building, S.C.R Garage sites,309627-21	330 u / ha	188



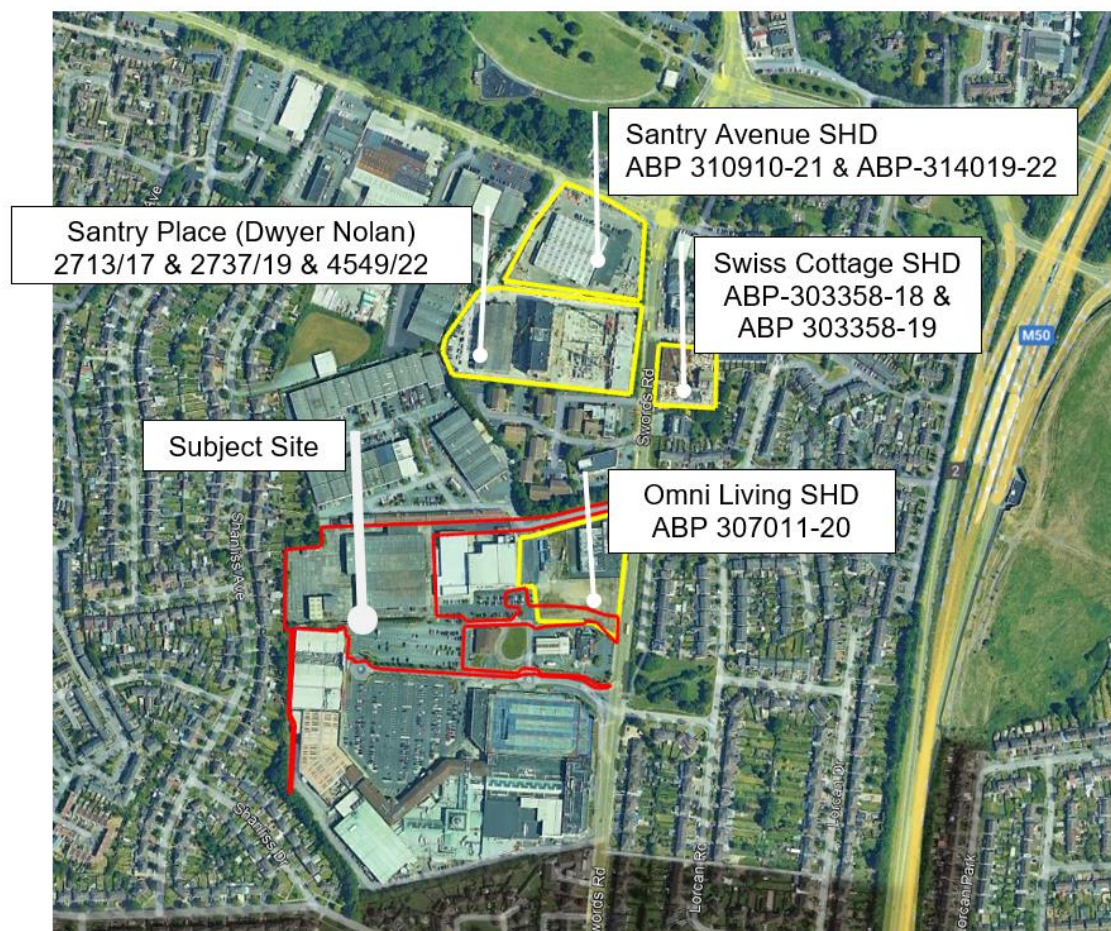
**Approved Development at Omni Living (ABP Reg. Ref. 307011-20)**

- 3.21 In relation to Swiss Cottage ABP found the density acceptable stating: With regard to density, the proposal is to provide approx. 233 units per hectare. The site is located along a quality bus corridor and in close proximity to existing employment centres such as industrial estates, the airport and other strategic routes in Dublin Metropolitan Area and as such the density proposed is considered acceptable.
- 3.22 In regard to the adjacent Omni Living scheme, the Inspector stated: *“The proposed development is located in a Metropolitan area, with excellent accessibility to high frequency bus routes into the city centre and to Dublin Airport. Within the immediate area surrounding the site there are a range of largescale retail, business and other*



*institutions that will also provide employment opportunities and services to future residents of the development. I consider that the site can sustainably support the scale and density level proposed. I consider that the proposal does not represent over-development of the site and is acceptable in principle on these lands."*

- 3.23 Proposals for increased density should promote the highest quality of urban design and open space. The proposed development respects the existing character, context and urban form of the area and seeks to protect the existing and future residential amenity. As set out within the Architectural Design Statement prepared by JFA the proposed development is of a high-quality architectural design, its scale and massing has been varied to create a building which does not dominate the local context. It is also noted that the surrounding area is generally comprised of 3-bedroom, semi-detached houses and this mix seeks to address the current imbalance of housing mix provided in the area.



**Approved developments in the local area.**



**Elevation drawing showing comparison between approved Omni Living scheme and proposed development.**

- 3.24 With regard to the above, it is respectfully submitted that the proposed material contravention of the 2016-2022 Development Plan in terms of unit mix is acceptable,

when viewed in the context of the overall development and the provisions of Section 37(2)(b) of the 2000 Planning and Development Act.

### Plot Ratio and Site Coverage

#### Material Contravention

- 3.25 The proposed development has a Plot Ratio and Site Coverage of 2.6 and 28% respectively. Plot Ratio in the Draft Dublin City Development Plan specifies an indicative Plot Ratio of 1.0 - 2.0 for 'Outer Employment and Residential Areas'. It also specifies a Site Coverage of 45% – 60% for lands in these areas.
- 3.26 It is considered that the proposed development is a slight increase of the indicative Plot Ratio and is not within the indicative level of Site Coverage as provided. As such, the Planning Authority may consider both the Plot Ratio and Site Coverage to be a material contravention of the Draft City Development Plan. The proposed Plot Ratio and Site Coverage have been assessed within the accompanying Planning Report and Statement of Consistency, and its acceptability justified in this regard.
- 3.27 It is noted that Section 3 of Appendix 3 of the Draft City Development Plan sets out circumstances where Plot Ratio may be increased subject to compliance with the following criteria:
- *Adjoining major public transport corridors, where an appropriate mix of residential and commercial uses is proposed.*
  - *To facilitate comprehensive re-development in areas in need of urban renewal.*
  - *To maintain existing streetscape profiles.*
  - *Where a site already has the benefit of a higher plot ratio.*
  - *To facilitate the strategic role of significant institution/employers such as hospitals.*
- 3.28 Whilst the site coverage is below the indicative range set out in the Draft Plan, primarily due to the high level of public open space being provided, the Draft Plan clearly states that these parameters are indicative only and the site coverage is considered to be suitable when the development of the wider area is taken into consideration.
- 3.29 It is noted that the site adjoins a high-quality public transport corridor with high-frequency bus services where an appropriate mix of residential and commercial uses are proposed. Therefore, An Bord Pleanála may consider it is not a material contravention. However, should An Bord Pleanála consider it is a Material Contravention the following justification is provided.

#### Justification

- 3.30 It is considered that the subject site is capable of achieving a higher Plot Ratio due to an appropriate mix of uses being proposed on the subject site that is in close proximity to a Quality Bus Corridor (QBC), which provides access to the city centre via bus in 15-minutes. The proposed development is considered to be a sustainable use for the subject lands that will facilitate the comprehensive redevelopment of lands in need of urban renewal.
- 3.31 The Plot Ratio for the subject proposal is comparable with the permitted Omni Living (2.5:1) and Swiss Cottage (2.6:1) schemes that are in close proximity to the subject site. In addition, we note that even with the benefit of the subject development if

permitted that the overall plot ratio for the district centre lands is low and represents an under-utilisation of scarce land resource.

- 3.32 As previously outlined, the Site Coverage of 28% falls below the indicative range of 45%-60% as set out in the Draft Plan, primarily due to the high level of public open space being provided.
- 3.33 Should An Bord Pleanála consider that a material contravention applies in this instance, it is considered that the Plot Ratio and Site Coverage can be justified under Section 37(2)(b)(iii) of the Planning & Development Act 2000, as amended.

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

- 3.34 The National Planning Framework 2018, requires compact growth, better use of under-utilised land and to regenerate urban areas:

*“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.”*

- 3.35 A core objective of the NPF is achieving compact growth and the Framework targets a *“significant proportion of future urban development on infill/brownfield development sites within the built footprint of existing urban areas.”*
- 3.36 The NPF seeks to achieve *“better use of under-utilised land and buildings, including ‘infill’, ‘brownfield’ and publicly owned sites and vacant and under-occupied buildings, with higher housing and jobs densities, better serviced by existing facilities and public transport.”* National Policy Objective 3a targets the delivery of at 40% of future housing development to be within the footprint of built-up, existing settlements.
- 3.37 National Policy Objective 4 aims to *“ensure the creation of attractive, liveable, well designed, high urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.”*
- 3.38 National Policy Objective 6 seeks to *“regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.”*
- 3.39 National Policy Objective 13 seeks to *“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.”*
- 3.40 We also refer to Section 2.23 of the Apartment Guidelines 2020, which states that *“the National Planning Framework signals a move away from rigidly applied, blanket*

*planning standards in relation to building design, in favour of performance-based standards to ensure well-designed high-quality outcomes.”*

- 3.41 In the event that the Board were to decide to grant permission for the proposed development it is considered that a justification by reference to the objectives and aims of the National Planning Framework as outlined above of what might otherwise be regarded as a material contravention of the development plan should be addressed in the Board’s decision, as the proposal has been demonstrated to be acceptable in accordance Section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended.

### **Cultural and Community Floor Space**

#### **Material Contravention**

- 3.42 Chapter 12, Section 12.5.3 ‘*Supporting Cultural Vibrancy in the City*’ of the draft Development Plan relates to cultural facilities within the city. As part of the preparatory work for the draft Development Plan, a cultural infrastructure study was undertaken of the city, and is published as a background document for the Plan. The study provides a detailed analysis of the extent of cultural infrastructure within the city; where challenges lie; and makes a number of recommendations.
- 3.43 In respect of cultural facilities within SDRAs and Large-Scale Developments, policy objective CUO22 refers, and is as follows:

SDRAs and Large-Scale Developments - *“All new regeneration areas (SDRAs) and large-scale developments above 10,000 sq. m. in total area must provide for 5% community, arts and culture and artist workspaces internal floorspace as part of their development at the design stage. The option of relocating a portion (no more than half of this figure) of this to a site immediately adjacent to the area can be accommodated where it is demonstrated to be the better outcome and that it can be a contribution to an existing project in the immediate vicinity. The balance of space between cultural and community use can be decided at application stage, from an evidence base/audit of the area. Such spaces must be designed to meet the identified need.”*

- 3.44 In terms of delivery of community floorspace, we note that while the “*Dublin City Cultural Infrastructure Study*” (Cultural Infrastructure Study) concludes that Dublin City Council should aspire to a 5% increase in the provision of cultural assets per annum over the lifetime of the Development Plan, it recommends that a mapping exercise is undertaken by the City Council to get an understanding of “*where*” and “*what*” cultural infrastructure is in the City and that infrastructure could be developed in a number of locations where it is found that there are deficits in cultural infrastructure.

- 3.45 The Cultural Infrastructure Study highlights that:

*“Any roadmap for an ever-evolving city like Dublin needs to be agile and responsive. Shifts in the market, and even changing public attitudes, can immediately impact cultural infrastructure, positively and negatively, and policy must be flexible and regularly reviewed to take advantage of what is working and remove what isn’t.”*

- 3.46 And that:

*“Increasingly cities are realising that **it is less about building new infrastructure and more about flexing existing assets** to make them adaptable to behavioural changes and needs through enhancements or change of use. Future use of refined and*

*enhanced data should help with identification or priority action areas, the development of cultural hubs and potentially allow for the repurposing of existing infrastructure to address a shortfall. The city has a huge opportunity to leverage use of vacant buildings in the city for cultural use, possibly under licence through the Council's Arts Office.” (Emphasis added)*

- 3.47 The subject SHD application is primarily a residential development and will facilitate the development of 457 no. apartments along with internal residential amenity space, childcare facility, community building and 2 no. retail/café/restaurant units.
- 3.48 It is recognised that the under-provision of floorspace for cultural/community facilities would not be fully consistent with the draft Development Plan requirements as set out in policy objective CUO22 above. In the event that a decision on the application is made subsequent to the new City Development Plan 2022-2028 coming into effect, the Board may consider that the proposed development constitutes a material contravention of new Development Plan as it relates to cultural facilities as currently set out in Section 12.5.3.

#### Justification

- 3.49 Notwithstanding the above, the proposed residential scheme is considered to be justified in the context of the Cultural Infrastructure Study undertaken as part of the draft Development Plan process, and the existing provision of community floorspace within the local area. The Cultural Infrastructure Study did not identify the subject area as having a deficit of community facilities or as a priority action area. As demonstrated in the Santry Community and Local Needs Audit submitted with this application, there is a range of social and community infrastructure serving this area of the city. It should be noted that proposed development does provide for 195.3 sq.m of community space in the ground floor of Block D.
- 3.50 An allocation of 5% of the floor area of the proposed scheme for community, arts and culture and artist workspaces would effectively displace proposed apartments retail/café/restaurant units (5% of the proposed 40,231.3 sq.m equals 2,011.57 sq.m, which is approximately equal area to 44 no. 1 bedroom apartments, or more than double the entirety of the proposed retail/café/restaurant area (852 sq.m), and to increase delivery of housing from its current under supply as set out in the Rebuilding Ireland Action Plan for Housing and Homelessness (2016), and consequently the 2016 Act, which recognise the strategic importance of larger residential developments (including developments of over 100 residential units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply. Pillar 3 of Rebuilding Ireland – Action Plan focuses on the delivery of housing stock as a key objective to tackle homelessness and support a growing population.
- 3.51 As outlined above, the Government's Housing for All: A New Housing Plan for Ireland, published in September 2021, seeks to increase new housing supply to an average of at least 33,000 new units per year over the next decade.

#### **Justification in relation to Section 37(2)(b)(iii)**

- 3.52 The following section demonstrates how the provision of cultural and community floor space proposed is justified in the context of Section 37 (2)(b)(iii) of the 2000 Act for the reasons set out below in the context of current National Planning Policy, namely the National Planning Framework.



**National Planning Framework (NPF) 2040**

- 3.53 The National Planning Framework is the Government's plan to cater for the extra one million people that will be living in Ireland, the additional two thirds of a million people working in Ireland and the half a million extra homes needed in Ireland by 2040.
- 3.54 As a strategic development framework, Ireland 2040 sets the long-term context for our country's physical development and associated progress in economic, social and environmental terms and in an island, European and global context.
- 3.55 The compliance of the proposed development with specific criteria of the NPF is detailed below, with responses provided for each objective.
- 3.56 National Policy Objective 3a of the NPF states that it is a national policy objective to *'deliver at least 40% of all new homes nationally within the built-up envelope of existing urban settlements.'*
- 3.57 The proposed development is a strategically located in an under-utilised site in close proximity to public transport connections and proposed strategic transport links, within the existing built-up envelope. The proposed development is therefore compliant with the objective of the NPF.
- 3.58 Objective 11 of the National Planning Framework states that *'there will be a presumption in favour of development that encourages more people, jobs and activity within existing urban areas, subject to development meeting appropriate planning standards and achieving targeted growth'.*
- 3.59 The proposed development will implement a high-quality scheme which integrates appropriately with the established land uses in the area and promote increased densities and population growth in urban areas. The proposal is intended to make efficient use of this brownfield site by providing a suitable mixed-use development comprised of residential and commercial uses which will contribute to the sustainable development of the area. This will intensify employment opportunities and creation at the location.
- 3.60 Objective 32: *'To target the delivery of 550,000 additional households to 2040'.* The residential aspect of the proposal consists of 457 no. apartment units at an urban infill site which will assist in achieving the target delivery of 550,000 additional households to 2040 and is compliant with the NPF in this respect.
- 3.61 Objective 35 states that it is an objective to:
- 'Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.'*
- 3.62 The proposed development for a mixed-use scheme incorporating a significant proportion of residential development on this under-utilised infill site represents an excellent opportunity to provide for much needed housing and commercial development. The subject site at present consists of a vacant, brownfield site and as such the proposal represents a strategic re-use of these lands to intensify the subject site while providing for additional, much needed housing, in line with the goals of the National Planning Framework.

- 3.63 There is no suggestion in the NFP that residential development should provide a significant element of cultural/community floorspace within individual schemes.
- 3.64 It should also be noted that *‘Housing for All – A new Housing Plan for Ireland’* or the *Apartment Guidelines (2020)* do not mention a need for community/cultural uses.

#### **Apartment Guidelines 2020**

- 3.65 The proposed development has been designed in accordance with the Apartment Guidelines 2020 as set out in the accompanying Statement of Consistency prepared by JSA. It is noted that the Apartment Guidelines do not require the provision of *‘community, arts and culture and artist workspaces internal floorspace as part of their development at the design stage.’* In this regard, Policy Objective CUO22 of the draft Plan conflicts with published Section 28 Guidelines and is inconsistent with Government guidance in this respect.
- 3.66 The proposed development provides high-quality communal amenity space for residents in the form of c.3,552 sq. m. of communal open space which exceeds the total required (2,802 sq. m). The proposed development will also include play facilities for children in the form of 2 no. playgrounds (312 sq. m for young children and 205 sq. m for older children), a creche playground (210 sq. m) and a Public Plaza (2,028 sq. m). This meets the requirement of the Apartment Guidelines which are submitted to take precedent over the Development Plan in this regard. A 195.3 sq.m community space is also provided at ground floor level in Block D.
- 3.67 Having regard to this policy, legislative and local context, the proposed development is considered to be of strategic importance for the purposes of Section 37(2)(b)(iii) of the 2000 Act, as well as Section 37(2)(b)(i) as set out in Section 2 of this document.
- 3.68 Therefore, it is submitted that, with regard to Section 37(2)(b)(iii), the proposed development is in accordance with the definition of Strategic Housing Development, as set out in Section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended, and delivers on the Government’s policy to increase delivery of housing from its current under supply as set out in Rebuilding Ireland Action Plan for Housing and Homelessness (July 2016), and Housing for All – A New Housing Plan for Ireland (2021). It is also of importance in terms of delivery of housing in accordance with the Development Plan. Under S.37(2)(b)(i), the proposed development is in accordance with the definition of Strategic Housing Development, as set out in Section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended, and delivers on the Government’s policy to increase delivery of housing from its current under supply as set out in Rebuilding Ireland Action Plan for Housing and Homelessness (July 2016), and Housing for All – A New Housing Plan for Ireland (2021). Under S. 37(2)(b)(iv) the pattern of development and recent permissions in the area does not result in a requirement for community / cultural or artists uses on the subject site, as evidenced by the *“Dublin City Cultural Infrastructure Study”* produced as a background paper to the Draft City Development Plan and which does not identify the subject area as having a deficit of community facilities or as a priority action area.

#### **Section: 5.5.5 Housing for All – Objective QHSNO10 Universal Design and Section 15.9.2 – Unit Size / Layout**

##### Material Contravention

- 3.69 Section 5.5.5 of the Draft Plan includes the following objective:

***“Objective QHSNO10 Universal Design - It is an Objective of Dublin City Council: To require that a minimum of 10% of dwellings in all schemes over 100 units are designed to accommodate people with disabilities and older people in accordance with the Universal Design Guidelines for Homes in Ireland 2015.”***

- 3.70 The proposed Material Alteration seek to alter this objective as follows:

***“Objective QHSNO10 Universal Design - It is an Objective of Dublin City Council: To ensure that 50% of apartments in any development that are required to be in excess of minimum sizes should be designed to be suitable for older people/mobility impaired people, people living with dementia and people with disabilities in accordance with the guidelines set out in the Universal Design Guidelines for Homes in Ireland 2015, the DHLG&H’s Design Manual for Quality Housing 2022 and the DHP&LG & DH’s Housing Options for Our Ageing Population Policy Statement 2019.”***

- 3.71 In addition, Section 15.9.2 of the Draft Plan relates to unit size / layout and requires the following:

***“The majority of all apartments in any proposed scheme of 10 or more apartments (excluding Build to Rent accommodation) shall exceed the minimum floor area standard for any combination of the relevant 1-, 2- or 3-bedroom unit types, by a minimum of 10% (any studio apartments must be included in the total but are not included as units that exceed the minimum by at least 10%). The layout of the larger units of each type should be designed in accordance with the guidance set out in Universal Design Guidelines for Homes in Ireland 2015.”***

- 3.72 It is noted that the Proposed Material Amendments to the draft Plan, published in July 2022, include an alteration to Section 15.9.2 of the draft Development Plan relating to “Unit Size/Layout”. In the event that this alteration forms part of the adopted Plan, we have included reference to this within the material contravention statement. The proposed alteration states the following:

***“The majority of all apartments in any proposed scheme of 10 or more apartments (Excluding Build to Rent accommodation) shall exceed the minimum floor area types, by a minimum of 10% (any studio apartments must be included in the total but are not included as units that exceed the minimum by at least 10%). In accordance with the Housing Options for an Ageing Population Policy Statement 2019, 50% of the apartments that are in excess of the minimum sizes should be designated in accordance with the guidance set out in the Universal Design Guidelines for Homes in Ireland 2015 to ensure that they are suitable for older people, mobility impaired people and people with disabilities.”***

- 3.73 While the proposed development fully accords with the requirement to have the majority of units at least 10% greater than the minimum sizes (50.1% of units exceeding the minimum requirement by 10% or more), we note that the proposed development may be assessed as not meeting the requirement of the draft Development Plan or Proposed Material Alterations outlined above in respect to Universal Design requirement. If An Bord Pleanála are of such an opinion it should be noted that, as required under current Building Regulations, all of the proposed units within the development have been designed to be compliant with Technical Guidance Document M of the Building Regulations 2010, and the Apartment Guidelines 2020, which is in conflict with the aforementioned policy. Further details relating to the approach adopted is included in the Universal Design Statement that is submitted with this application under separate cover. Details include external environment and

approach, independently accessible entrances, horizontal and vertical circulation, sanitary facilities, facilities in buildings, adequate aids to communication and design of apartments. The below provides a justification for a material contravention of these aspects of the new Plan, should they be adopted, in respect of the proposed development.

#### Justification

- 3.74 Technical Guidance Document M of the Building Regulations 2010 relates to Access and Use, and provides the general criteria required for building design in relation to access, including fire safety, access ramps and alignment with the Disability Act 2005. The proposed development shall adhere to the relevant standards which are contained within this technical document and as such this is respectfully submitted as an acceptable standard to which the proposed development will adhere.
- 3.75 A justification for a material contravention in terms of unit size is set out below, under the relevant parts of section 37(2)(b)(iii) of the 2000 Act.

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

- 3.76 The following section demonstrates how unit sizes proposed are justified in the context of Section 37 (2)(b)(iii) of the 2000 Act for the reasons set out below in the context of current National Planning Policy, namely the Apartment Guidelines.

#### **National Planning Framework (NPF) 2040**

- 3.77 National Planning Framework is the Government's plan to cater for the extra one million people that will be living in Ireland, the additional two thirds of a million people working in Ireland and the half a million extra homes needed in Ireland by 2040.
- 3.78 The compliance of the proposed development with specific criteria of the NPF is detailed below, with responses provided for each objective.
- 3.79 National Policy Objective 3a of the NPF states that it is a national policy objective to *'deliver at least 40% of all new homes nationally within the built-up envelope of existing urban settlements'*.
- 3.80 The proposed development is a strategically located in an underutilised site in close proximity to public transport connections and proposed strategic transport links, within the existing built-up envelope. The proposed development is therefore compliant with the objective of the NPF.
- 3.81 Objective 11 of the National Planning Framework states that 'there will be a presumption in favour of development that encourages more people, jobs and activity within existing urban areas, subject to development meeting appropriate planning standards and achieving targeted growth'.
- 3.82 The proposed development will implement a high-quality scheme which integrates appropriately with the established land uses in the area and promote increased densities and population growth in urban areas. The proposals are intended to assist with the regeneration of this brownfield site and will provide for a suitable mixed-use

development which will contribute to the sustainable development of the area. This will intensify employment opportunities and creation at the location.

- 3.83 Objective 32: *'To target the delivery of 550,000 additional households to 2040'. The residential aspect of the proposal consists of 176 no. apartment units at an urban infill site which will assist in achieving the target delivery of 550,000 additional households to 2040 and is compliant with the NPF in this respect.*

- 3.84 Objective 35 states that it is an objective to:

*'Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.*

- 3.85 The implementation of the proposed amendment to the draft Plan is considered to conflict with national planning objectives which promote compact growth and increased densities at urban locations. The provision of a high proportion of universally accessible apartments will serve to reduce the potential quantum of apartments on individual sites and restrict densities achievable. This is inconsistent with national planning policy.

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

- 3.86 The *'Sustainable Urban Housing: Design Standards for New Apartments'* (Apartment Guidelines 2020) were first published in March 2018 and amended in December 2020 following the Ministerial review of the shared accommodation / co-living aspect contained therein. The guidelines provide for updated guidance on apartment developments in response to the National Planning Framework and Rebuilding Ireland.

- 3.87 Details as to how the proposed development complies with the relevant requirements of the Apartment Guidelines 2020 is outlined below:

#### SPPR 3 – Floor Areas

- 3.88 SPPR 3 of the Apartment Guidelines 2020 states that the following minimum floor areas for apartments apply:

- Studio apartment (1 person) Minimum 37 sq.m
- 1-bedroom apartment (2 persons) Minimum 45 sq.m
- 2-bedroom apartment (4 persons) Minimum 73 sq.m
- 3-bedroom apartment (5 persons) Minimum 90 sq.m

- 3.89 The HQA and drawings prepared by JFA, which accompany this application, demonstrate that the proposed development complies with and exceeds the standards outlined in the Sustainable Urban Housing: Design Standards for New Apartments 2020, with all units in excess of the minimum requirements outlined above. The proposed development includes an extensive emphasis on including larger units, with the vast majority exceeding the minimum standards for area by at least 10%. The below table demonstrates the minimum size of each type of unit proposed.

**Table 5.1: Apartment Guidelines 2020 Minimum Floor Areas**

<b>Apartment Type</b>	<b>Floor Area Requirement</b>	<b>Min. Size Proposed</b>
Studio	37 sq.m	50.8 sq.m
1-bedroom (2 persons)	45 sq.m.	49.5 sq.m
2-bedroom (4 persons)	73 sq.m.	75 sq.m

3-bedroom (5 persons)	90 sq.m	94.5 sq.m
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- 3.90 The Apartment Guidelines 2020 state that *‘the majority of all apartments in any proposed scheme of 10 or more apartments shall exceed the minimum floor area standard for any combination of the relevant 1-, 2- or 3-bedroom unit types, by a minimum of 10% (any studio apartments must be included in the total but are not calculable as units that exceed the minimum by at least 10%)’*. As set out above and illustrated in the HQA prepared by John Fleming Architects, throughout the scheme as a whole, 229 no. individual apartment units, exceed the relevant standard by at least 10%. Accordingly, the proposed development aligns with the requirements under SPPR 3 in addition to the further guidance provided in tandem with that specific requirement.
- 3.91 While we note that the Guidelines permit 3-person, 2-bedroom units which have a smaller size requirement, we note that the proposal does not include any of these unit types, and that all 2-bedroom units adhere to the minimum requirements.
- 3.92 The Apartment Guidelines do not suggest or set out any requirement for the provision of a defined quantum of units to adhere to the Universal Design Guidelines as proposed by Dublin City Council, which conflicts with Section 28 Guidelines implemented the Department of Housing, Planning & Local Government. Section 4.1 of the Apartment Guidelines references Part M of the Building Regulations which sets out standards to ensure that buildings are accessible and usable by everyone, including children, people with disabilities and older people. Compliance with this policy would require apartments significantly in excess of that provided for in the apartment guidelines. Furthermore, the policy is in compliance with the requirements of Part M of the Building Regulations as set out in this proposal. The proposed development is fully compliant with the Guidelines in this regard.
- 3.93 As demonstrated above, the proposed unit sizes are consistent with the Apartment Guidelines 2020 and are appropriate for the subject site / location. Having regard to the above and the provisions of the Apartment Guidelines and SPPR3, it is respectfully submitted that the Board can approve the proposed development under section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended), notwithstanding any potential conflict with Section 5.5.5, Objective QHSNO10 Universal Design and Section 15.9.2 of the City Development Plan.

### **EV Car Parking Provision**

#### Policy Provision

- 3.94 We note that Appendix 5 of the draft County Development Plan states that:

*In accordance with Policy SMT27, EV charging stations on public and private land will be supported in this Plan.*

*All new developments must be future proofed to include EV charging points and infrastructure. In all new developments, a minimum of 50% of all car parking spaces shall be equipped with fully functional EV Charging Point(s). The remaining spaces shall be designed to facilitate the relevant infrastructure to accommodate future EV charging. Space for EV charging infrastructure shall be clearly detailed in planning applications.*

- 3.95 It should be noted that, contrary to the draft Development Plan, the proposed development provides for 22 no. Electric Vehicle Charging spaces (10.3%) However,

the proposed development does provide ducting for all spaces (100%) to be converted to EV Charging for future connectivity.

#### Justification for Material Contravention

3.96 The following section demonstrates how the EV charging proposed have been considered an appropriate design response and therefore are justified in the context of Section 37 (2)(b)(iii) of the 2000 Act for the reasons set out below in the context of current National Planning Policy and regional spatial planning policy for the area, namely Technical Guidance Document L 2021 Conservation of Fuel and Energy – Dwellings, the Climate Action Plan 2019, the Climate Action Plan 2019 and the RSES for the EMRA.

3.97 We note the Building Regulations ‘Technical Guidance Document L 2021’ Conservation of Fuel and Energy – Dwellings states:

*‘For a new building (containing one, or more than one, dwelling), where there are more than 10 car parking spaces, **ducting infrastructure, consisting of conduits for electric cables, should be provided for every parking space**, to enable the subsequent installation of recharging points for electric vehicles where:*

- the car park is located inside the building, e.g., a basement car park; or*
- the car park is physically adjacent to the building, i.e., the car park is within the curtilage of the site.’*

3.98 The proposed development provides ducting infrastructure, consisting of conduits for electric cables, for every parking space and as such is in accordance with the above standard.

3.99 Furthermore, we note the wider strategy for the State as set out in the Climate Change Action Plan 2019, which sets out specific goals for Ireland including: “*developing the electric vehicle network to sustain at least 800,000 cars by 2030.*”

3.100 We note the following objective within the RSES ‘Decarbonising Transport’ RPO 7.42 which states:

*“Local authorities shall include proposals in statutory land use plans to facilitate and encourage an increase in electric vehicle use, including measures for more recharging facilities and prioritisation of parking for EVs in central locations.”*

3.101 In regard to planning standards the NPF provides for flexibility. Objective 13 of the NPF states that:

*“In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria enabling alternative solutions that seek to achieve well-designed high quality and safe outcomes in order to achieve targeted growth and that protect the environment”.*

3.102 Both the RSES and the Climate Action Plan 2019 set out general goals for encouraging and promoting EV Charging however do not set out specific percentage requirement for EV Charging points while the NPF provides for flexibility in planning standards including car parking. On this basis it is submitted that the EV Charging provision applied is an appropriate design response and therefore it is justified in the context current National Planning Policy and the RSES.

- 3.103 A further justification as to the provision of EV Charging is set out in Traffic and Transportation Assessment that is submitted with this application under separate cover:

*"Whilst there are a total of 22 spaces currently designed as fully EV, all car parking spaces can easily be upgraded to allow conversion for Electric Vehicles. In the case of a residential development of the nature proposed, with specific spaces likely dedicated to specific apartments, it is considered appropriate to facilitate the retrofitting of spaces, based on demand following occupation, rather than a percentage of spaces being defined as such and provided from the outset. The entire car park of the subject scheme can therefore be ducted to accept future cabling to serve a charging point for every car space as demanded. Within the basement area, conduits can be provided where charging points may be mounted in future."*

- 3.104 In the event that the Board were to decide to grant permission for the proposed development it is considered that a justification by reference to the objectives and aims of the National Planning Framework as outlined above of what might be otherwise be regarded as a material contravention of the development plan should be addressed in the Board's decision, as the proposal has been demonstrated to be acceptable in accordance with Section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended.

### **Separation Distances**

#### **Policy Provision**

- 3.105 Section 15.9.17 of the draft Development Plan states that:

*Traditionally a minimum distance of 22m is required between opposing first floor windows. In taller blocks, a greater separation distance may be prescribed having regard to the layout, size, and design. In certain instances, depending on orientation and location in built-up areas, reduced separation distances may be acceptable. Separation distances between buildings will be assessed on a case-by-case basis.*

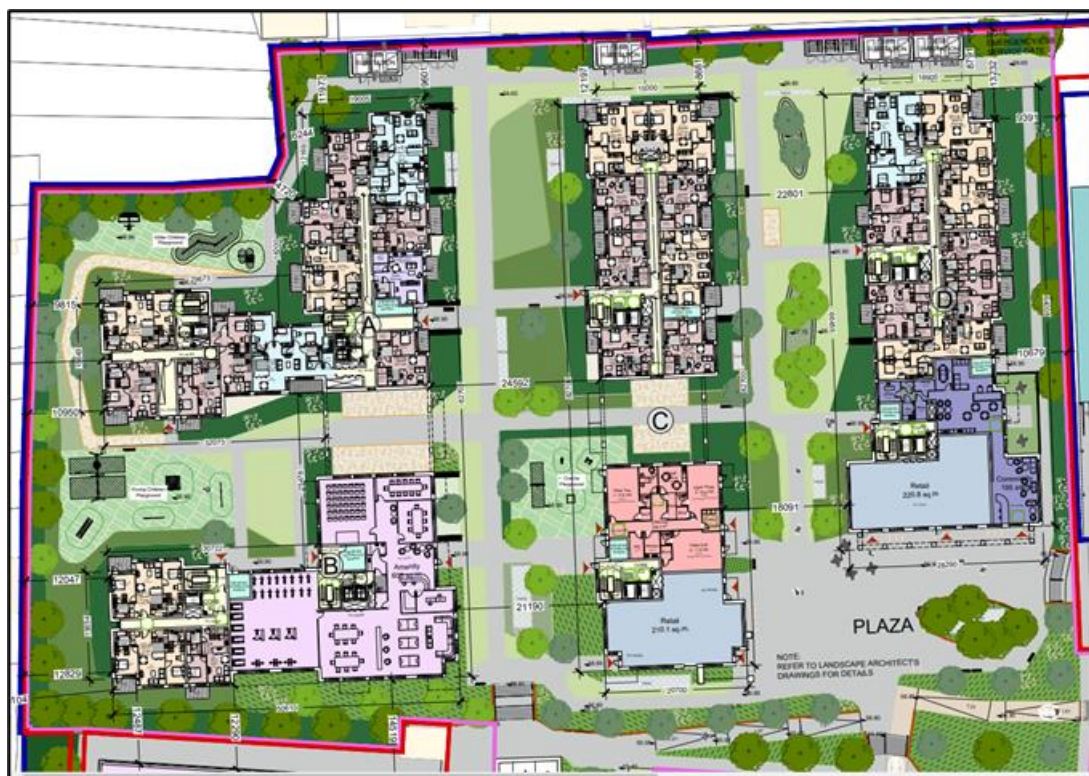
*In all instances where the minimum separation distances are not met, each development will be assessed on a case-by-case basis having regard to the specific site constraints and the ability to comply with other standards set out within this chapter in terms of residential quality and amenity.*

- 3.106 The proposed development provides for adequate separation distances on site with the 22m separation distance between proposed apartment buildings being satisfied at a number of locations. However, in a few instances the separation distance between apartment blocks is less than the required 22m with the narrowest point between proposed blocks being identified as 18.09m. Where this occurs, the multi-discipline design team have ensured that appropriate mitigation measures have been incorporated into the design such as the staggering of opposing windows to ensure privacy and use of opaque window glazing. This maintains a high level of privacy and amenity obtained by residents and reduces the level of potential overlooking and overshadowing.
- 13.1. As set out within the JFA Design Statement, the design team have taken great care in ensuring that the residential amenities of the neighbouring houses will not be negatively impacted by the proposal., further detail provided by JFA states:



- 01 The distance between existing houses and gardens and the proposed new buildings has been increased to a minimum of 29m, which gives a considerable distance between buildings, preserving privacy and limiting overshadowing.
- 02 All windows facing west toward the boundary are limited to high level windows in bedroom spaces, this limits overlooking and preserves privacy while ensuring excellent sunlight & daylight conditions for the new apartments.
- 03 Blocks A&B have been lowered along their western legs, reflecting the lower scale development to the west and acting as a buffer to the higher density blocks towards the east of the site.
- 04 Higher density blocks are concentrated toward the east of the site, toward less sensitive boundaries. The additional distance ensures that sunlight, daylight and privacy is retained for the existing gardens along the western boundary.
- 05 The western boundary will be extensively planted, reflecting the mature trees in existence outside of the site along this boundary. Care will be taken to ensure existing trees will be protected during construction.

3.107 Full details relating to the separation distances between all apartment blocks, site boundaries and neighbouring properties, is included on the *Proposed Overall Site Plan – Ground Floor Excluding Permitted Developments* (drawing no. P1001) prepared by John Fleming Architects.



#### Justification for Material Contravention

3.108 The following section demonstrates how the separation distances proposed have been considered and how an appropriate design response is applied and therefore are justified in the context of Section 37 (2)(b)(iii) of the 2000 Act for the reasons set out below in the context of current National Planning Policy, namely Sustainable Residential Development in Urban Areas Guidelines (2009) and the National Planning Framework.

- 3.109 Within the scheme where the separation distance of 22m is adhered to where possible, with the narrowest point between blocks being identified as 18.09m. Where this occurs, the multi-discipline design team have ensured that appropriate mitigation measures have been incorporated into the design such as the staggering of opposing windows to ensure privacy and use of opaque window glazing. This maintains a high level of privacy and amenity obtained by residents and reduces the level of potential overlooking and overshadowing.
- 3.110 The proposed development will provide for high-quality residential apartments in accordance with the guidelines on Sustainable Residential Development in Urban Areas (2009). In particular, in relation to criteria no. 10 as part of the Urban Design Manual 'Privacy and Amenity' which states:

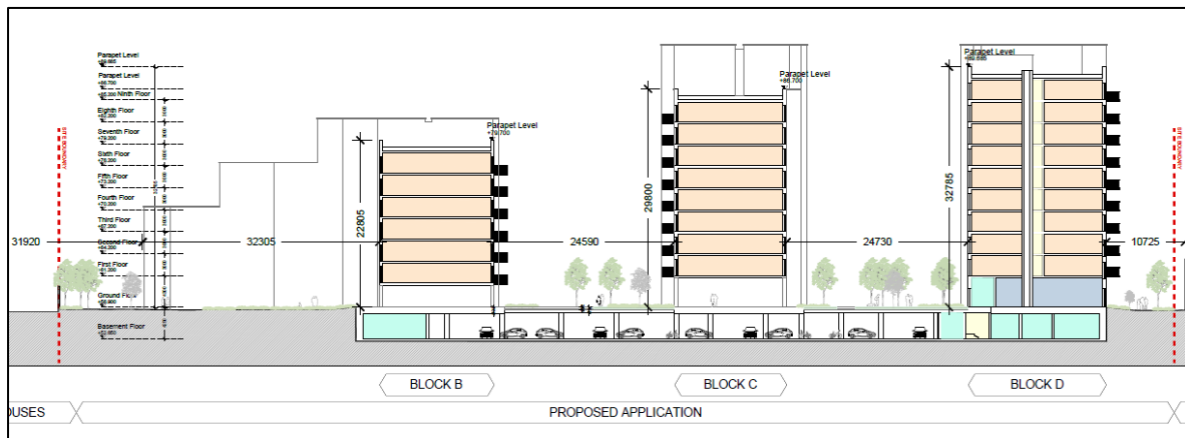
#### 10 PRIVACY AND AMENITY

*How does the scheme provide a decent standard of amenity?*

- *Each home has access to an area of useable private outdoor space*
  - *The design maximises the number of homes enjoying dual aspect*
  - *Homes are designed to prevent sound transmission by appropriate acoustic insulation or layout*
  - *Windows are sited to avoid views into the home from other houses or the street and adequate privacy is affordable to ground floor units.*
  - *The homes are designed to provide adequate storage including space within the home for the sorting and storage of recyclables.*
- 3.111 The development provides for an appropriate design response and adequate separation distances between apartments while the thresholds between private and public spaces have been carefully considered and provided for.
- 3.112 The Guidelines also provide guidance on the core principles of urban design when creating places of high-quality and distinct identity. The Guidelines recommend that planning authorities should promote high quality design in their policy documents and in their development management process. In this regard, the Guidelines are accompanied by a Design Manual discussed below which demonstrates how design principles can be applied in the design and layout of new residential developments, at a variety of scales of development and in various settings.
- 3.113 The National Planning Framework signals a move away from rigidly applied, blanket planning standards in relation to building design, in favour of performance-based standards to ensure well-designed high-quality outcomes. In particular, general blanket restrictions on building height or **building separation distance** that may be specified in development plans, should be replaced by performance criteria, appropriate to location (JSA emphasis added).
- 3.114 Objective 13 of the National Planning Framework states that:
- "In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria enabling alternative solutions that seek to achieve well-designed high quality and safe outcomes in order to achieve targeted growth and that protect the environment".*
- 3.115 The draft Development Plan highlights the importance of finding a balance and protecting residential amenity. The proposed development provides an appropriate response, through careful and considered design and finds, through the creation of a

development at an appropriate scale and density which find a development that does not impact the surrounding residential areas whilst also providing an appropriate layout and urban form on the site.

- 3.116 Providing the draft Development Plan separation distances of 22m at every location would entail a significant reduction in the developability of the site and would weaken the urban form with a layout that does not respond to the surrounding context, while also reducing its density.
- 3.117 It should be noted that the vast majority of proposed units have the recommended level of daylight as shown in the study completed by 3D Design Bureau. 3 D Design Bureau conclude their Sunlight and Daylight Assessment Report by stating *“the proposed development serves as a great example of how proposed urban developments can achieve both high compliance rates for SDA whilst maintaining a high level of density in compliance with national and regional design policy.”*
- 3.118 In conclusion we would respectfully submit that the separation distances proposed are appropriate and, having regard to the Section 28 Guidelines as per Section 37(2)(b)(iii) that permission should be granted for the proposed development.





**Proposed separation distances as per JFA Architectural drawings and 3DDB CGIs.**

#### **4.0 CONCLUSION**

- 4.1. It is respectfully submitted that the justification set out within this statement clearly demonstrates that the proposed development should be considered for increased density, with regard to the proposed provision of community/arts/cultural space and unit size/layout (universal design) and also in relation to the provision of EV charging facilities and separation distances between proposed blocks due to the location of the subject site adjacent to quality public transport corridors and the policies and objectives set out within the Section 28 Guidelines.
- 4.2. In accordance with Section 9(6) of the 2016 Act, the Board may decide to grant a permission for a proposed strategic housing development even where the proposed development, or a part of it, contravenes materially the development plan where it considers that, if section 37(2)(b) of the 2000 Act were to apply, it would grant permission for the proposed development.
- 4.3. Pursuant to Section 37(2)(b), the Board may grant permission for a development that materially contravenes the development plan where it considers that:
- i. the proposed development is of strategic or national importance,*
  - 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.*
- 4.4. The proposed development is considered to be of strategic importance as it will assist with the delivery of urban housing and implementation of the current Government's Action Plan for Housing and Homelessness – Rebuilding Ireland 2016 and Housing for All – A New Plan for Housing in Ireland.

- 6.4 As such, it is respectfully requested that An Bord Pleanála have regard to the justification set out within this statement and permit the proposed contraventions as outlined of the Draft Dublin City Development plan 2022-2028.