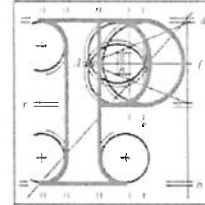


**Our Case Number:** ABP-317660-23

**Your Reference:** Our Lady's Hospice and Care Services



**An  
Bord  
Pleanála**

Tom Phillips Associates  
c/o Hugh Kelly  
80 Harcourt Street  
Dublin 2  
D02 F449

**Date:** 15 November 2023

**Re:** Busconnects Kimmage to city centre core bus corridor scheme  
Kimmage, Dublin

Dear Sir / Madam,

An Bord Pleanála has received your recent submission in relation to the above-mentioned proposed road development and will take it into consideration in its determination of the matter.

Please note that the proposed road development shall not be carried out unless the Board has approved it or approved it with modifications.

The Board has also received an application for confirmation of a compulsory purchase order which relates to this proposed road development. The Board has absolute discretion to hold an oral hearing in respect of any application before it, in accordance with section 218 of the Planning and Development Act 2000, as amended. Accordingly, the Board will inform you in due course on this matter. The Board shall also make a decision on both applications at the same time.

If you have any queries in relation to this matter please contact the undersigned officer of the Board at [laps@pleanala.ie](mailto:laps@pleanala.ie)

Please quote the above-mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,

Eilíear Reilly  
Executive Officer  
Direct Line: 01-8737184

HA02A

<b>Teil</b>	<b>Tel</b>	(01) 858 8100
<b>Glaó Áitiúil</b>	<b>LoCall</b>	1800 275 175
<b>Facs</b>	<b>Fax</b>	(01) 872 2684
<b>Láithreán Gréasáin</b>	<b>Website</b>	<a href="http://www.pleanala.ie">www.pleanala.ie</a>
<b>Ríomhphost</b>	<b>Email</b>	<a href="mailto:bord@pleanala.ie">bord@pleanala.ie</a>

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

## Lauren Griffin

---

**From:** LAPS  
**Sent:** Wednesday 15 November 2023 15:16  
**To:** Hugh Kelly  
**Subject:** RE: Observation on the proposed Kimmage to City Centre Bus Connects Scheme

A Chara,

We acknowledge receipt of your email; official acknowledgement of your submission will issue in due course.

Kind Regards,

Lauren Griffin

**From:** Hugh Kelly [REDACTED]  
**Sent:** Wednesday, November 15, 2023 2:45 PM  
**To:** LAPS <laps@pleanala.ie>  
**Cc:** Gavin Lawlor [REDACTED]  
**Subject:** Observation on the proposed Kimmage to City Centre Bus Connects Scheme

Dear Sir/Madam,

Please see attached observation made on behalf of our client Our Lady's Hospice Ltd.

As our client owns the land for which is being acquired, no fee is required to be made.

Any submissions/observations must be accompanied by a fee of €50 and must be received by the Board not later than **5.30 p.m. on Friday 8<sup>th</sup> of December 2023**. As with the previous Notice, this fee will not apply to certain prescribed bodies including those specified in section 51(3)(b) of the Roads Act 1993 (as amended) or to landowners and others with a legal interest in land who are objecting to compulsory acquisition of land in which they have such an interest in a compulsory acquisition case. This fee shall also not be payable by any person who had already made and paid the fee for a submission/observation between 1<sup>st</sup> August 2023 and 26<sup>th</sup> October 2023.

Submissions/observations accompanied with a fee can also be made on the An Bord Pleanála website at the following address:  
<https://online.pleanala.ie/en-ie/sid/observation>.

Those who are not required to pay a fee can submit via email to [laps@pleanala.ie](mailto:laps@pleanala.ie).

A copy of the application documentation Environmental Impact Assessment Report and the Natura Impact Statement may be seen at the following locations on working days during the opening hours listed below now to the extended date of **8th December 2023**:

Can you please confirm receipt of our submission.

Regards

**Hugh Kelly**  
Executive Planner

Tel: [REDACTED]

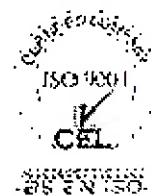
**Tom Phillips + Associates**  
Town Planning Consultants



**Contact**

80 Harcourt Street  
Dublin 2  
D02 F449  
T +353 1 478 6055  
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w [www.tpa.ie](http://www.tpa.ie)  
e [info@tpa.ie](mailto:info@tpa.ie)



**Tom Phillips and Associates Limited:**

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The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01 V902

Wednesday, 15 November 2023  
[By hand]

Dear Sir/Madam

**RE: OBESERVATION IN RELATION TO THE KIMMAGE TO CITY CENTRE CORE BUS CORRIDOR SCHEME APPLICATION (ABP. REF. 317660), INCLUDING COMPULSORY PURCHASE ORDER**

## **1.0 INTRODUCTION**

### **1.1 Introduction**

Our Lady's Hospice & Care Services (Our Ladys Hospice Ltd)<sup>1</sup> has retained Tom Phillips + Associates, Town Planning Consultants<sup>2</sup> in association with Scott Tallon Walker Architects<sup>3</sup> to prepare this Observation for submission to An Bord Pleanála in relation to the proposed Kimmage to City Centre Core Bus Corridor Scheme Compulsory Purchase Order 2023.

Please see the accompanying Legal Opinion prepared by Oisín Collins SC<sup>4</sup>, which reinforces the grounds for objection made in this Observation. (See also Appendix A of this Observation.)

### **1.2 The site/land in question**

This Observation concerns a site (and adjoining private land rights) in the ownership of our Client, Our Ladys Hospice & Care Services, labelled on the National Transport Authority's (NTA) Deposit Map (No. 4) as 1019(1).1a, 1019(2).1f, 1019(3).2a, and 1019(4).2f, submitted with the Application pursuant to Section 51 of the Roads Act 1993. (See Appendix B and C.)

### **1.3 The use of the site/land proposed by the NTA**

The NTA has proposed the site/land as a "car park", which will include "boundary treatment and gate". The site is also proposed to be used as "construction compound K2" for a period of 15 months. (See Appendix B and C.)

### **1.4 The problems with the use of the site/land and the CPO proposed by the NTA**

The Hospice has real and immediate plans to expand the facility, which is now at risk due to Bus Connects proposal. The site in question has been earmarked for future expansion in an

<sup>1</sup> Our Lady's Hospice & Care Services, Dublin 6W, D6W RY72.

<sup>2</sup> 80 Harcourt Street, Dublin 2, D02 F449.

<sup>3</sup> 19/20 Merrion Square N, Dublin, D02 VR80.

<sup>4</sup> Law Library, Four Courts, Inns Quay, Dublin 7, D07 N972.

TOWN PLANNING CONSULTANTS



*Expansion Feasibility Report*, prepared by Scott Tallon Walker Architects in July 2023, commissioned by the Hospice.<sup>5</sup>

We have reviewed all submitted drawings and reports, while also reviewing the expansion options set out by Scott Tallon Walker Architects, and objectively conclude that the NTA's proposed use for the site as a car park (and construction compound for a period of 15 months) will have significant, negative, short-, medium-, and long-term impacts on the Hospice, and is contrary to Local and National Planning Policy and Objectives.

There are also legal issues regarding compliance with the *EIA Directive* and *EPA EIAR Guidelines* and the constitutionality of the proposed land acquisition (the constitutionality concerns are reinforced in the accompanying Oisín Collins SC Legal Opinion). In summary, there are five major problems with the use of the site/land and the CPO of the Hospice's lands proposed by the NTA:

1. There will be significant, negative long-term impacts on the future expansion of the Hospice (which is at full capacity) due to the loss of a strategic expansion site.
2. There will be significant, negative short- and medium-term impacts on the existing operation of the Hospice due to use of the site as a construction compound for 15 months at the only access point to the entire Hospice.
3. A car park at this edge of City Centre location is contrary to all Local and National Planning Policy and Objectives, which seek to encourage walking, cycling, and public transport usage while actively seeking to discourage private car usage.
4. There has been no proper assessment of the impacts of the proposed car park (and construction compound for a period of 15 months), on *inter alia* the Hospice's future expansion and access/traffic/transport to and from the Hospice, within the submitted Environmental Impact Assessment Report (EIAR).
5. The proposal does not meet the '4-part Proportionality Test' that must be satisfied in order for the CPO to be considered constitutional, as determined by the Courts i.e. the CPO is an unjust attack on the rights of the Hospice as laid out in Articles 40 and 43 of the Irish Constitution.

Therefore, we seek a fair and proper assessment of the following: the impacts of the proposed scheme on the Hospice's future expansion, current operation, and constitutionally protected rights; adherence to the *EIA Directive* and *EPA EIAR Guidelines*; and also the proper planning and sustainable development of the wider area in accordance with Local and National Planning Policy and Objectives.

As such, we also ask for An Bord Pleanála to utilise the provisions made available to them within Sections 51(1) and 51(6) of the *Roads Act 1993* (as amended) and approve the 'Kimmage to City Centre Core Bus Corridor Scheme' "with modifications" i.e. *inter alia* without the proposed car park (and construction compound for a period of 15 months) on Our Lady's Hospice lands. We detail the above five problems identified, and the reasons for why An Bord Pleanála should approve the Scheme "with modifications", in Section 2, below.

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<sup>5</sup> That *Expansion Feasibility Report* is a sensitive/private document recently received by our Client; as such we only include select screengrabs from that document within this Observation.)

## 2.0 THE FIVE MAJOR PROBLEMS WITH THE PROPOSED SCHEME AND CPO

### 2.1 There will be significant, negative long-term impacts on the future expansion of the Hospice

Using the last remaining developable site in the ownership of the Hospice for a car park will have significant negative impacts on the future expansion of the Hospice.

At the outset, we must address an objectively incorrect statement contained within the 'Alternatives' Chapter of the EIAR prepared by the NTA:

*"Following consideration of several possible locations, proposals for a small public car park at Our Lady's Hospice were confirmed, with the location selected at the front of the site nearest Harold's Cross Road. **This location has the least impact for the future development and operation of the hospice, while compensating for the loss of some existing public parking on the street nearby**". (Page 22 of the 'Alternatives' Chapter.)*

[Our emphasis.]

The impacts on Population are stated as follows in Chapter 10:

*"The location of the proposed car park is on the grassed area rather than land used in the operation of the facility (i.e. access / existing private right of way to the hospice will be maintained at all times during the Construction Phase) and therefore **the land take effect is expected to be a Positive, Slight and Long-term**." (Page 24 of Chapter 10).*

[Our emphasis.]

This is either ignorance of the fact that the large area of land to the rear of the Hospice is in separate ownership of the Sisters of Charity or an attempt to intentionally mislead the public and An Bord Pleanála. (See Figure 2.1, below, prepared by Scott Tallon Walker in their, July 2023, *Expansion Feasibility Report*, which illustrates the separate ownerships of the lands.)

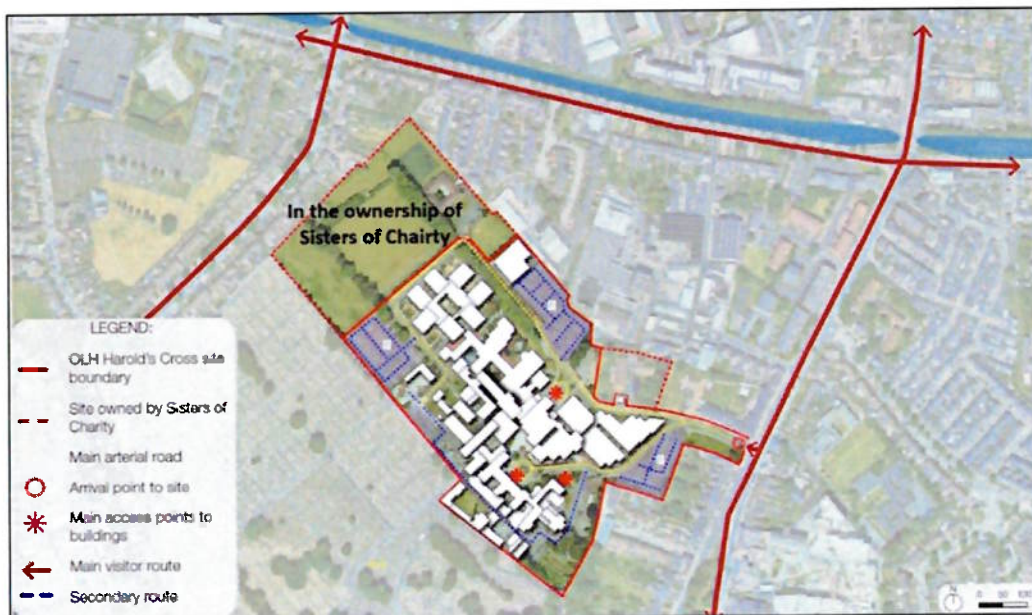


Figure 2.1: Site Plan and Ownership Boundaries. (Source: Figure 4.10 of STW Architects *Expansion Feasibility Report*, July 2023.)

With the knowledge that the large area of land to the rear is not in the ownership of Our Lady's Hospice & Care Service, it is clear to see that the site in question is the last remaining undeveloped piece of land in the ownership of the Hospice and is the most strategic site available to it.

It cannot be presumed that the land to the rear of the Hospice will be gifted to the Our Lady's Hospice & Care Service.

As such, at present, the proposal will have "the most impact" on the future development and operation of the Hospice and not "the least impact" on the future development and operation of the Hospice as incorrectly stated in the 'Alternatives' Chapter of the EIAR. It is also incorrect to state that there will be a "positive, slight and long-term" effect when it is clear that there will be a negative, significant and long-term effect.

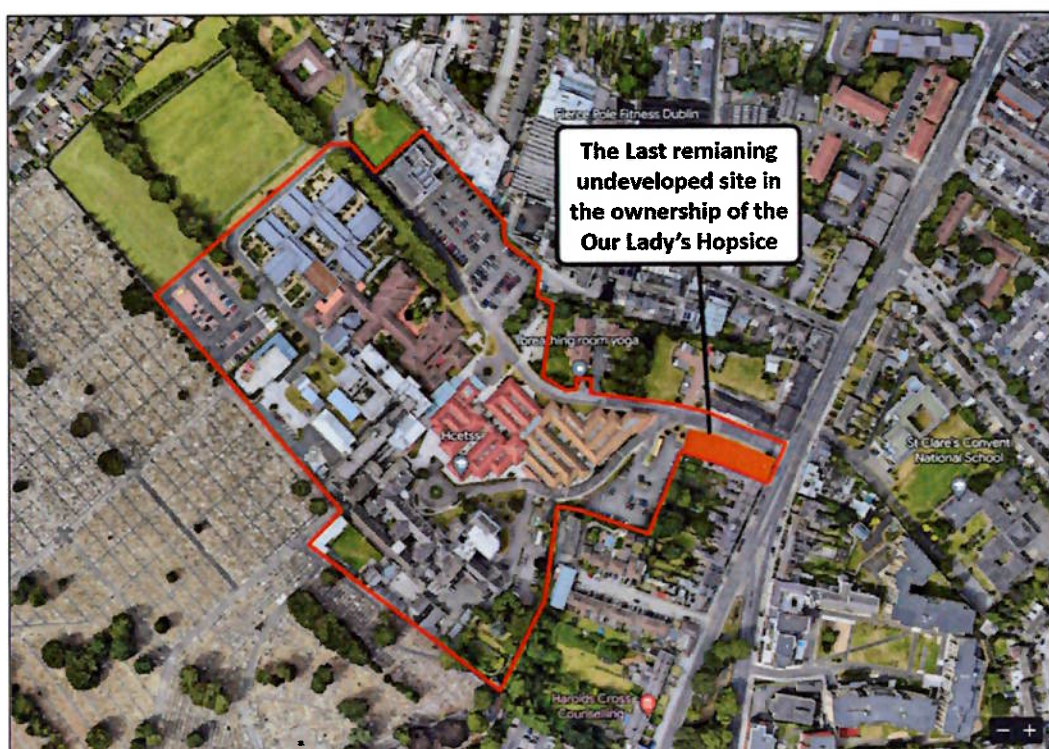


Figure 2.2: Hospice ownership outlined in red, with the site in question highlighted in orange. (Source: Google Earth; annotated by TPA.)

By using the last available site for use as a car park, it will severely limit the Hospice's ability to expand its facilities and offer additional services to accommodate growing demand.

Ireland has an aging population and as we, as a population, grow older, we will experience more complex health and social care needs. It is estimated that by 2026, the numbers of those over 65 will have increased by 30%. This also comes at a time when Government funding is facing significant financial pressures.

It is essential that Our Lady's Hospice & Care Services plays an important role in responding to these diverse challenges and growing demand. Everyone living in the community should be able to access high quality care when they need it.

The developable site could be used for a future Hospice building, including critical medical facilities, which would enhance the quality of care and services offered to patients.

The *Dublin City Development Plan 2022-2028* states that:

*“outside of the canal ring, in the suburban areas of the city, in accordance with the guidelines, heights of 3 to 4 storeys will be promoted as the minimum”. (Appendix 3 of the DCC Development Plan.)*

As such, it can be assumed that at least a 3-4 storey expansion building could be provided on the site. Subject to adequate setbacks, healthy placemaking, and other planning requirements, we estimate, using modelling prepared by Scott Tallon Walker, that a c. 1,800 sq m expansion building could be permitted and built. (The example provided by Scott Tallon Walker demonstrates that 15 No. key worker accommodation units could be provided. See Appendix D of this document.)



Figure 2.3: Modelling prepared by Scott Tallon Walker showing a key worker accommodation building of 1,800 sq m and 15 No. units could be proposed at the site.

The financial and knock-on implications of losing such a strategic expansion site must also be considered. If the Hospice needs to acquire the additional land to the rear for expansion in the future, it will likely result in higher costs, potentially diverting resources away from patient care. Utilising, first, land currently in the ownership of the Hospice is the most practical and economical strategy available.

In summary, using the last developable site in the Hospice’s ownership as a car park will significantly constrain the Hospice’s ability to adapt to future needs, expand its services, and provide adequate care to an increasing number of patients. We contend that the ‘common good’ approach would safeguarding the expansion of the Hospice, which has served the community for almost 140 years, rather than provision of a car park for private transport ancillary to a national public transport scheme.





## 2.2 There will be significant, negative short-to-medium-term impacts on the existing operation

Using the only access point to the Hospice as a construction compound for 15 months will have significant, negative short-to-medium-term impacts on the existing operation of an essential care service.

The construction compound will likely disrupt the normal operations of the Hospice, potentially affecting the care and comfort of terminally ill patients who require specialised and uninterrupted attention.

The construction activity will likely restrict and complicate access for staff, visitors, and emergency services, making it difficult to provide essential care and respond to needs and emergencies promptly.

The Hospice also has major safety concerns. Construction sites can pose safety hazards, such as noise, dust, and heavy machinery, which may negatively impact the well-being of patients and staff. Furthermore, there is bound to be psychological impacts. Patients and their families are already dealing with a difficult emotional situation. The stress and anxiety caused by ongoing construction activities at the entrance to the facility, for 15 months, could exacerbate the emotional distress of scores of patients.

It is clear that using the site/access point for construction has been unjustifiably and unethically prioritised over the needs and comfort of the vulnerable patients attending and living within the Hospice.

We question why an alternative solution that minimises the disruption to the Hospice hasn't been considered, such as using Compounds K1 or K3 to construct the small section of road for which Compound K2 has been proposed?

## 2.3 The proposal is contrary to Local and National Planning Policy and Objectives

Notwithstanding the impact on the Hospice, provision of a car park completely contradicts the entire purpose of the proposed Bus Connects Project, which seeks to deliver public transport infrastructure and discourage car dependency:

*"The primary objective of the Proposed Scheme, therefore, is the facilitation of modal shift from car dependency through the provision of walking, cycle, and bus infrastructure enhancements, thereby contributing to an efficient, integrated transport system and to facilitate a shift to a low carbon and climate resilient city."*

As such, given the objective of Bus Connects is to "shift from car dependency", the provision of a car park within the scheme on a vital site for the Hospice is entirely contrary to the objective.

NSO 4 of the *National Planning Framework* states that that is an objective to:

*"Expand attractive public transport alternatives to car transport to reduce congestion and emissions and enable the transport sector to cater for the demands associated with longer term population and employment growth in a sustainable manner through the following measures:*

- *Deliver the key public transport objectives of the Transport Strategy for the Greater Dublin Area 2016-2035 by investing in projects such as New Metro Link, DART Expansion Programme, BusConnects in Dublin and key bus-based projects in the other cities and towns;*

[Our emphasis.]

Section 8.5.3 of the DCC Development Plan 2022-2028 states that:

*“Quality public realm and healthy place making are core principles of the NPF and the RSES, improving quality of life through the creation of healthy and attractive places for all. Dublin City Council recognises the importance of reducing car dominance and that encouraging walking, cycling and use of public transport as a sustainable travel mode requires improving the attractiveness of the environment and public realm within our City and urban villages.”*

[Our emphasis.]

The car park is essentially marketed as a park and ride facility in Dublin City Centre, which does not make any logical sense. Park and ride facilities are sought at peripheral transport nodes, which allow residents within hinterland locations to drive a short distance and then use public transport for the majority of their commuting journey.

Regarding park and ride facilities, the *Greater Dublin Area transport Strategy 2022-2028*, prepared by the NTA themselves, states that:

*“Caution must be exercised in the planning of Park & Ride facilities to ensure that unintended consequences do not arise as a result of their provision, such as:*

- *Encouraging more dispersed development patterns by enabling longer distance commuting;*
- *Allocating excessive public transport capacity to motorists and thereby promoting local car trips, including outbound trips, to the facility; and*
- *The opportunity cost of developing land for extensive uses in a highly accessible location.”*

[Our emphasis.]

It is clear that the opportunity cost of developing the land as a car park was not considered when designing the scheme. The site is in a highly accessible area and is a complete waste of strategic expansion lands, which could accommodate a c. 1,800 sq m extension.

It must also be questioned who will actually use this facility? If it is to be used as a genuine park and ride facility, it will either be used by people driving from long distances into the city centre to park and take a minor bus trip to their destination or local residents who will drive a completely unnecessary short distance by car to park and take a bus trip to their destination. Both scenarios make zero sense in the context of the Bus Connects objective which seeks to discourage car use, particularly in the city centre.

Interestingly, the EIAR states that:



*“Between Harold’s Cross Park and the entrance to Our Lady’s Hospice (a distance of 85m) there is on-street parking in indented bays with 10 spaces on the western side in front of No. 66 to 84 Harold’s Cross Road, and seven spaces on the eastern side in front of No.75 to 85 Harold’s Cross Road. The existing 10 parking spaces on the western side of the street will be removed to accommodate the proposed northbound cycle track. The existing seven parking spaces on the eastern side of the street will be retained. **To compensate for the loss of the 10 on-street parking spaces**, it is proposed to provide a new public car park with 22 spaces on the grounds of Our Lady’s Hospice where there is a lawn area just inside the entrance. There will be a **net additional 12 parking spaces available in this car park for the other residents along R137 Harold’s Cross Road where there is a general shortage of parking in the local area.**”*

**[Our emphasis.]**

In our opinion, it is clear that the car park is only ostensibly a park and ride facility as, although labelled as a “public car park”, it has been proposed entirely for the benefit of local residents who will be losing parking due to the introduction of cycle lanes on Harold’s Cross Road. As the car park was not included in the initial proposal prior to public consultation, we surmise that local residents made objections to the NTA, at the public consultation stage, and the NTA, as compensation and to mitigate against likely objections, included the car park in the next iteration of the proposal for the sole benefit of those residents.<sup>6</sup>

Furthermore, for a project that is seeking to discourage car usage, why is there a net addition of car parking spaces proposed on lands within walking distance to the city centre, and lauded? The proposal flies in the face of all Local and National Planning Policy and Objectives and is illegal; the proposal should be seeking to eliminate as much car parking as possible, not add to congestion.

Regardless of the Hospice’s pressing expansion needs, at the very least, this site could provide for residential accommodation. Taking the average SHD density of c. 100-150 No. units per hectare, the site (c. 0.1 hectare) could theoretically support c. 10-15 No. houses.<sup>7</sup> In our professional town planning opinion, expansion of the Hospice, or much needed housing, are far superior development options than a car park, which is contrary to all Local and National Planning Policy and Objectives.

## **2.4 There has been no proper assessment of the impacts on the Hospice in the EIAR**

The EIA Directive 2014, states that there needs to be:

*“A **description of the likely significant effects of the project on the environment resulting from, inter alia:***

*(a) **the construction and existence of the project, including, where relevant, demolition works.**”*

**[Our emphasis.]**

<sup>6</sup> The NTA Public Consultation Reports confirm that “objections to the loss of parking spaces” were made by local residents.

<sup>7</sup> As shown in *SHDs & SDZzz: Fast-track planning in Ireland, and other oxymorons*, a research report prepared by Tom Phillips + Associate, 28 May 2021 - <https://tpa.ie/resources/>.



There has been no assessment of impacts of the project on future expansion of the Hospice.

As outlined in Section 2.1, above, it's clear that the NTA misidentified the lands to the rear of the Hospice as being in its ownership. With the knowledge that the land to the rear is not in the ownership of the Hospice, it is objectively clear that the site in question is the last remaining undeveloped piece of land in the ownership of the Hospice and is likely to have significant negative effects on the Hospice, if acquired by the NTA. As is a requirement of EU Law, these likely significant effects legally must be described. They weren't<sup>8</sup>, and, as such, the EIAR is a legally flawed document.

Furthermore, the effects from the construction compound have not been properly assessed in the EIAR. The only statement regarding the impact on population and human health comes within Chapter 11:

*"Chapter 10 (Population) reports impacts in relation to accessibility. Notably, one of the areas where major works and disruption to traffic is predicted (along R137 Harold's Cross Road) would affect the access road to Our Lady's Hospice, Harold's Cross. Access would be maintained to the hospice, but it is likely that there would be journey delays for visitors due to the predicted traffic disruption on Harold's Cross Road. Construction Compound K2 is proposed on an area of amenity grass in the grounds of the hospice. Works in this area are predicted to last up to 15 months, so while they are temporary to short-term in line with the EPA Guidelines (EPA 2022), in the context of a hospice which deals with end of life care and would involve very vulnerable people (both patients and visitors), the predicted impact on health outcomes relating to accessibility will be Negative, Significant and Short-term, affecting this local community."*

Although there is acknowledgement of the negative, significant impacts on the Hospice, overall, the NTA provides an insufficient and weak assessment of serious health effects relating to a piece of critical community infrastructure.

For example, how long will the stated "journey delays" be? Is it possible that an ambulance could be held up from attending to patients in urgent need of care? How is An Bord Pleanála, the competent authority responsible for completing the Environmental Impact Assessment, supposed to be able to undertake a proper assessment of clear significant negative environmental effects when such little information is given regarding such effects?

## **2.5 The '4-part Proportionality Test' has not been satisfied meaning the CPO is unconstitutional**

Property Rights are protected under Articles 40 and 43 (Fundamental Rights) of the Irish Constitution.

In *In re the Health (Amendment)(No.2) Bill 2004*, the Supreme Court held that the "right to the ownership of property has a moral quality which is intimately related to the humanity of each individual. It is also one of the pillars of the free and democratic society established under the Constitution".

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<sup>8</sup> The effects should have been assessed within the population (Chapter 10) and human health (Chapter 11) chapters of the EIAR.



Regarding Compulsory Acquisition of property, the Courts<sup>9</sup> have held that the objective of a proposal must be of sufficient importance to warrant the overriding of constitutionally protected rights for the “common good”. The Courts, as such, have created the ‘Proportionality Test’, which determines whether a CPO is constitutional or not. As stated in the Law Reform Commission’s review of CPOs in its, 2017, *Issues Paper: Compulsory Acquisition of Land*, to be constitutional, proposals must:

1. Balance the ‘common good’ with the ‘individual’ and not solely benefit private parties;
2. Be rationally connected to the objective and not be arbitrary, unfair or based upon irrational considerations;
3. Impair the right as little as possible; and
4. Be such that their effects on rights are proportional to the objective.

The Supreme Court in, *In re the Planning and Development Bill 1999* and *In re the Health (Amendment)(No.2) Bill 2004*, has made it clear that no proportionality assessment would be required in the absence of an established ‘common good’.

Please see the accompanying Oisín Collins SC Legal Opinion, which reinforces how the above **has not been satisfied**, therefore making the proposed CPO **unconstitutional**.

#### **Part 1: Balance of the ‘common good’ with the ‘individual’ (the Hospice)**

The balance of the ‘common good’ with the ‘individual’ is the first hurdle in determining whether an action constitutes a disproportionate interference with property rights or an unjust attack on the same.

The High Court, in *Blascaod Mór Teo v Commissioners of Public Works in Ireland*, following on from the Supreme Court Decision in *Dreher v Irish Land Commission*, held that any state action that is authorised by Article 43 and that passes the tests in that Article must be necessary for the ‘common good’ and cannot, by definition, constitute an unjust attack on property rights under Article 40.3.2.

The High Court went on to state that a restriction of an individual’s property rights that is manifestly unjust is unlikely to be regarded as consistent with the requirements of the ‘common good’. It is critical to remember, that when assessing the balance of the ‘common good’ and the ‘individual’, the latter is often a member of the former. This is certainly the case when it comes to the requirements of the Hospice and the role it and its staff play in supporting the ‘common good’.

For almost 140 years, Our Lady’s Hospice & Care Services has provided high quality care to those who need it in the local community.

As such, it is clear that, as the last remaining developable site in the ownership of the (at full capacity) Hospice, the action in favour of the ‘common good’ is for the land to remain in the

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<sup>9</sup> E.g. *Iarnród Éireann v Ireland*, *Heaney v Ireland*, and *Cox v Ireland*.



ownership of Our Lady's Hospice & Care Service for future expansion of the existing facility and not as a car park facilitating unnecessary private car usage.

We further contend that use of the site as a construction compound for 15 months is also contrary to the common good, due to the severe impacts that this could have on the operation of the Hospice, which provides such critical care to the community, 24 hours a day, 365 days a year.

### **Part 2: Rationally connected to the objective and not be arbitrary, unfair or based upon irrational considerations**

As addressed in Section 2.3, above, the proposal for a car park on the site is completely contrary to Local and National Policy and Objectives. As such, it is objectively arbitrary, unfair and based upon irrational considerations. Please see Section 2.3 for an analysis of how the proposal is contrary to Local and National Policy and Objectives.

Furthermore, the decision to use the only access point for the Hospice as a construction compound for 15 months is utterly unfair. Please see Section 2.2, above, for an analysis of how the proposal unfairly prioritises construction over the operation of the Hospice, without any assessment of impacts or possible alternatives.

### **Part 3: Impair the right as little as possible**

Brian Foley, in a 2008 article within the *Judicial Studies Institute Journal*, titled *The Proportionality Test*, explains Part 3 of the 'Proportionality Test' in relation to impacts on constitutional rights as follows:

*"Assume that the legislative objective "O" may be achieved in two ways – by measure 1 "M1" and measure 2 "M2". Achieving O by any measure will involve the infringement of a right, which can be represented as "R". However, as between M1 and M2 it is M2 which, whereas remaining consistent with O, restricts R to a lesser extent than M1. The legislature, however favour M1 as the best means of achieving O. Therefore, the legislature believes that it is constitutionally permissible for M1 to be used. The minimum restriction test allows the court to reject this interpretation and hold that M2 should have been employed. Failing to use M2 means that the legislation is unconstitutional." (Page 70.)*

As such, in regard to the proposed impacts on the Hospice's constitutional rights by the proposed car park, the least impactful option was not employed. The options available to the NTA when planning the Scheme were as follows:

1. Not include the car park within scheme because it is not critical to the Bus Connects Objective and arguably contrary to Local and National Planning Policy and Objectives (this is what was initially proposed at public consultation stage).
2. Propose a car park within an edge of city centre location on the Hospice's lands.
3. Propose a car park within an edge of city centre location on other third-party lands.



The NTA chose Option 2 when it could have chosen Option 1 or 3. According to the common law laid out by the Courts, the NTA should have chosen Option 1 because it is Option 1 that, whereas remaining consistent with the Objective of Bus Connects to provide for public transport, restricts the constitutional rights of the Hospice to a lesser extent than Option 2.

Regarding construction, the options available to the NTA when planning the Scheme were as follows:

1. Use Construction Compound K1 or K3 to construct the small section of road labelled "Section 2" (Yellow) instead of requiring Compound K2 at all. (See Figures 2.3 and 2.4, below.)
2. Use Construction Compound K2 to construct the small section of road labelled "Section 2" (Yellow).
3. Use an alternative location on other third-party lands to construct the small section of road labelled "Section 2" (Yellow).

The NTA chose Option 2 when it could have chosen Option 1 or 3. According to the common law laid out by the Courts, the NTA should have chosen Option 1 because it is Option 1 that, whereas remaining consistent with the Objective to construct the Bus Connects Scheme, restricts the constitutional rights of the Hospice to a lesser extent than Option 2.

In our opinion, the small Section of Road labelled Section 2 could easily be included within the remit of Compounds K1 or K3 given the large extent of road that is already included within their remit. In the grand scheme of the project, there will likely be significantly more negative impacts caused by using the Hospice's entrance as a construction compound for 15 months than to have Section 2 subsumed into the remit of either of other two compounds.

In both instances, the NTA has chosen Option 2, which negatively impact on the future expansion and daily operation needs of the Hospice. How is this fair?

(Please see Figure 2.3 and 2.4, below, showing Figures 5.1 and 5.2 of the EIAR showing the proposed phasing sections and construction compounds for the proposed Bus Connects Scheme.)

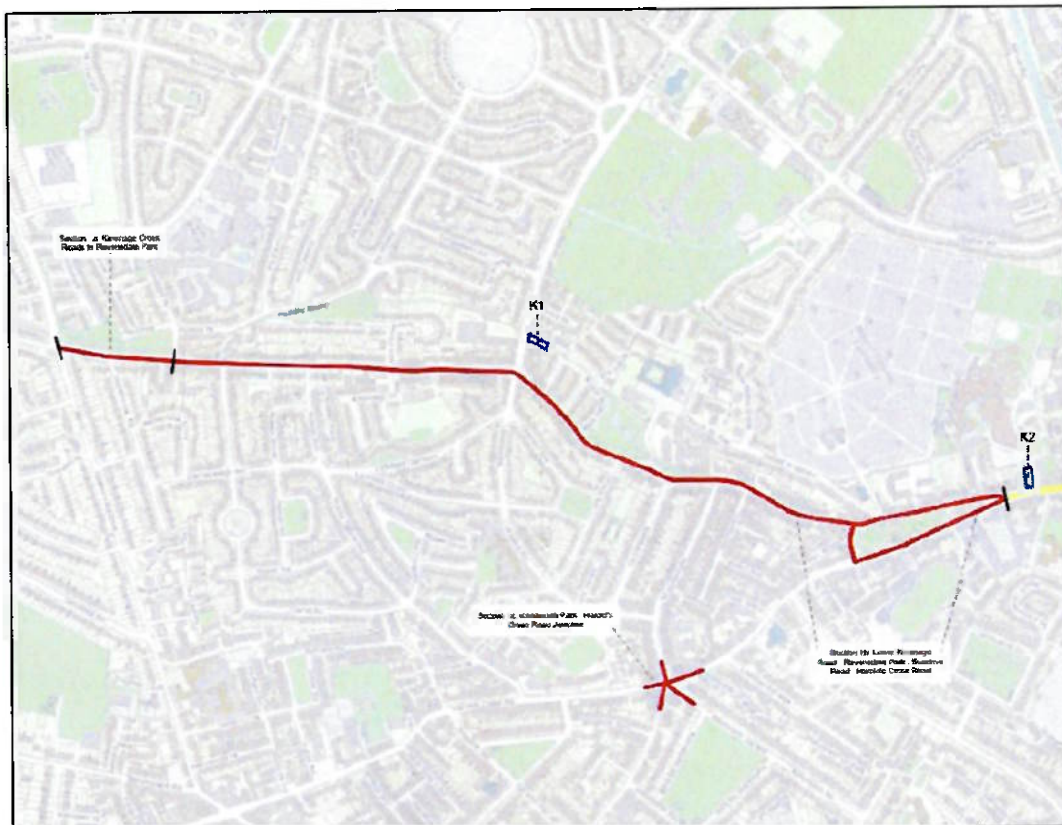


Figure 2.3: Figure 5.1 of the EIA showing Phasing sections and construction compounds.

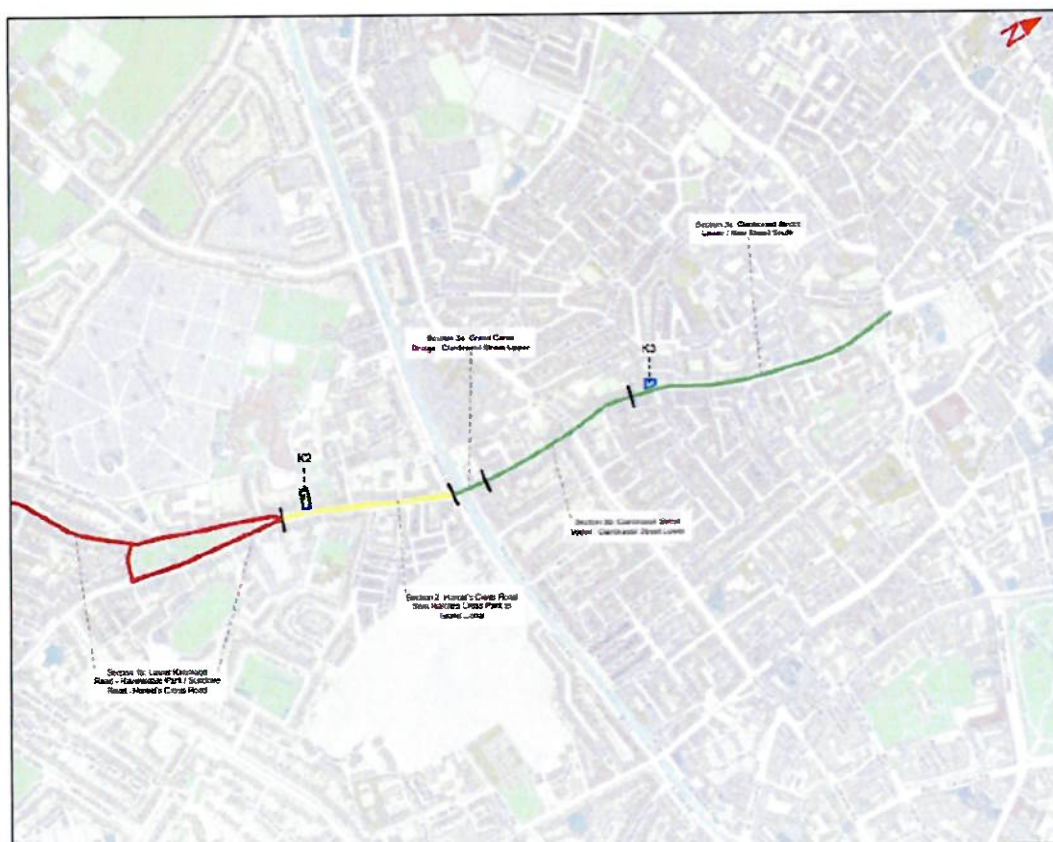


Figure 2.4: Figure 5.1 of the EIA showing Phasing sections and construction compounds.





**Part 4: Be such that their effects on rights are proportional to the objective**

Similar to Part 2, we have addressed Part 4 in Section 2.3, above. The proposal for a car park on the site is completely contrary to Local and National Policy and Objectives:

*“The primary objective of the Proposed Scheme, therefore, is the facilitation of modal shift from car dependency through the provision of walking, cycle, and bus infrastructure enhancements, thereby contributing to an efficient, integrated transport system and to facilitate a shift to a low carbon and climate resilient city.”*

As such, given the objective of Bus Connects is to “shift from car dependency”, the provision of a car park within the scheme and on a vital site for the Hospice is entirely disproportionate to the Objective.

Please see Section 2.3 for an analysis of how the proposal is contrary to Local and National Policy and Objectives and the above ‘primary objective’ of Bus Connects.

### 3.0 CONCLUSION

We have comprehensively outlined how the proposed NTA acquisition and use of the Hospice's land will have significant, negative, and long-term impacts on the Hospice's future expansion, current operation, and local and national planning policy and objectives. Furthermore, the submitted material does not adhere to the *EIA Directive* and *EPA EIAR Guidelines*. Lastly, and arguably most significantly, the proposed acquisition does not meet any of the 4-part proportionality test meaning it illegally infringes on the constitutionally protected property rights of our client.

As such, we ask for An Bord Pleanála to utilise the provisions made available to them within Sections 51(1) and 51(6) of the *Roads Act 1993* (as amended) and approve the 'Kimmage to City Centre Core Bus Corridor Scheme' "with modifications" i.e. *inter alia* without the proposed car park (and construction compound for a period of 15 months) on Our Lady's Hospice lands.

We would be happy to discuss this submission in greater detail should the opportunity arise.

Yours faithfully



**Gavin Lawlor**  
**Director**  
**Tom Phillips + Associates**

**Encl.**

**Appendix A:** Oisín Collins SC Legal Opinion.

**Appendix B:** Dwg. No. 0011-DM-0004, Lands to be Compulsorily Acquired Deposit Map.

**Appendix C:** Location, Extent and, Layout of Construction Compound K2.

**Appendix D:** Modelling prepared by Scott Tallon Walker showing a key worker accommodation building of 1,800 sq m and 15 No. units could be proposed at the site.



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**Appendix A (Following Pages)**

## OPINION OF COUNSEL

Querist: Our Lady's Hospice Ltd.

Agent: Tom Phillips and Associates.

Matter: Kimmage to City Centre Core Bus Corridor Scheme CPO.

I am asked to advise in respect of issues arising in connection with the Kimmage to City Centre Core Bus Corridor Scheme Compulsory Purchase Order 2023. Querist owns lands at Harold's Cross that it operates as a Hospice. Most of the lands owned by Querist at this location have already been developed for this purpose. A portion of the site has been identified for the purposes of acquisition by the NTA as part of the Kimmage Road Bus Corridor project.

The portion of the site that is the subject of the acquisition comprises a green area at the eastern area of the site adjoining Harold's Cross Road. This is the last area of land on the site that has not been developed.

I am briefed with a submission to An Bord Pleanála that has been drafted by Agent. This submission is opposing the proposed CPO on a number of grounds. Included in these grounds are legal matters and an analysis of the law in respect of compulsory purchase with which I concur.

The lands will be acquired on a permanent basis to be used as a "car park", which will include "boundary treatment and gate". Before that however, the lands will be temporarily acquired to be used as "construction compound K2" for a period of 15 months.

I am instructed that the Hospice has active expansion plans. These plans include expansion over the lands the subject of the proposed CPO. An 'Expansion Feasibility Report', prepared by Scott Tallon Walker Architects was commissioned by the Hospice in July 2023. Having regard to the zoning of the lands, the report concludes that a 4 storey expansion building

could be provided on the site. The report concludes that a c. 1,800 sq m expansion building could be permitted and built.

This would provide substantial staff accommodation resolving ongoing difficulties with care provision being offered by the Hospice in the medium to long term. As is also set out in Agent's submission, with Ireland's aging demographic, there is an increasing demand for hospice services and staff resources are scarce and decreasing.

It is well established on the authorities that the making and confirming of a compulsory purchase order to acquire a person's land entails an invasion of constitutionally protected property rights. The power conferred on an administrative body such as the NTA or An Bord Pleanála to compulsorily acquire land or approve the acquisition of lands must be exercised in accordance with the requirements of the Constitution. In particular, this must be done while respecting the property rights of the affected landowner (*East Donegal Co-Operative v. The Attorney General* [1970] I.R. 317).

Accordingly, a balance must be struck between the rights of the individual and the broader needs of the public at large. The private property rights of the individual and the exigencies of the common good. This is the test that must be applied.

In this regard in *O'Brien v. Bord na Móna* [1983] I.R. 255, Keane J. stated:

*"In each case, the person exercising the function is determining whether the constitutionally guaranteed rights of the citizen in respect of his private property should yield to the exigencies of the common good. The decision of the Supreme Court reversing the decision of Keane J. that portions of the Turf Development Act, 1946 were unconstitutional did not address the standard to be applied by an administrative body when considering the making of a CPO."*  
[Emphasis added]

The same thinking is implicit in the judgment of Costello P. in *Crosbie v. Custom House Dock Development Authority* wherein Costello P. stated:

*“The making of an order compulsorily to acquire an objector’s property rights results in an interference with the objector’s constitutionally protected property rights.... the Oireachtas has in effect concluded that the public good which is to be achieved by urban renewal requires the limitations on the objector’s constitutionally protected rights.” [Emphasis added]*

It is therefore the ‘public good’ that operates to limit constitutionally protected property rights. In other words, in order for an acquisition to be lawful, the development must be in the public good. The body confirming the CPO must address its mind as to whether or not the proposed acquisition is or is not in the common good.

Querist has set out clearly its plans in terms of the expansion of the facility. This will result in the provision of a further 1,800 sqm of much needed hospice accommodation. On the other hand, if the acquisition goes ahead, as I understand matters, the NTA will be able to provide no more than 22 parking spaces on the same area. Agent has already pointed out the planning policy position on car parking spaces in this location, but it is difficult to see in all of the circumstances how providing 22 parking spaces could be in the greater public interest than 1,800 sqm of much needed hospice staff accommodation.

A similar position exists in the UK where Denning M.R. in *Prest v. Secretary of State for Wales* (1982) 81 L.G.R. 193 at 211 stated:

*“It is clear that no Minister or public authority can acquire land compulsorily except the power to do so be given by Parliament: and Parliament only grants it, or should only grant it, when it is considered necessary in the public interest... I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands; and then only on the condition that proper compensation is paid.” [Emphasis added]*

Here Querist is desirous of providing much needed additional capacity and is being deprived of the opportunity to do so against its will by the threat of the CPO. Again, it is hard to see how the public interest could decisively demand the provision of 22 parking spaces over 1,800 sqm of hospice capacity.

Watkins L.J. said, in the same case at pp. 211 to 212:

*“The taking of a person’s land against his will is a serious invasion of his property rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see that that authority is not abused.”*

Geoghegan J endorsed the above paragraphs in *Clinton -v- ABP* whereupon he stated as follows:

*‘In my view, the procedures at a compulsory purchase hearing must ensure that these principles are observed. The acquiring authority must be satisfied that the acquisition of the property is clearly justified by the exigencies of the common good.’*

Also in *Clinton*, the Court held:

*‘I think it appropriate to make the following further observation. It is axiomatic that the making and confirming of a compulsory purchase order (CPO) to acquire a person’s land entails an invasion of his constitutionally protected property rights. The power conferred on an administrative body such as a local authority or An Bord Pleanála to compulsorily acquire land must be exercised in accordance with the requirements of the Constitution, including respecting the property rights of the affected landowner (East Donegal Co-Operative v. The Attorney General [1970] I.R. 317). Any decisions of such bodies are subject to judicial review. It would insufficiently protect constitutional rights if the court, hearing the judicial review application, merely had to be satisfied that the decision was not irrational or was not contrary to fundamental reason and common sense.’ [Emphasis added]*

It is clear from the above passage that the Board must respect the rights of private property owners and only approve a CPO if it is satisfied that it is in the public good to do so. In order to do so in this instance, the Board would need to be satisfied that the provision of 22 parking spaces is more in the public interest than 1,800 sqm of hospice accommodation. This seems unlikely.

In addition to the foregoing, Querist is a religious organisation and has the additional protections contained in Article 44.2.6 of the Constitution, this states:

*“The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.”*

The provision of 22 car parking spaces would not constitute *public utility* for the purposes of this Article and accordingly, the diversion of their lands by means of CPO would be unconstitutional.

Nothing further occurs.

Oisín Collins SC





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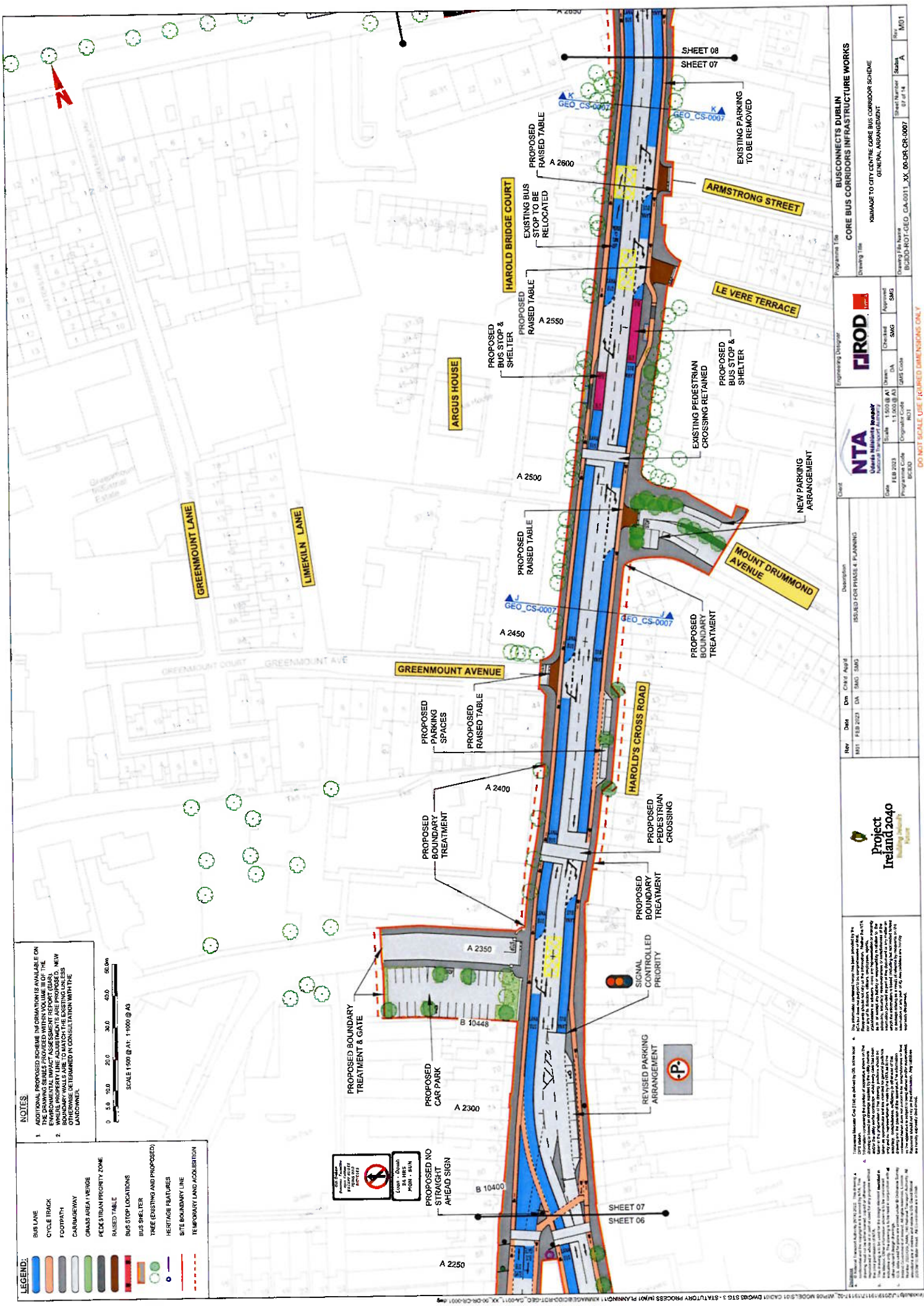
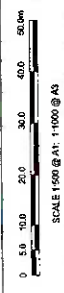
**Appendix B (Following Pages)**



- LEGEND:**
- BUS LANE
  - CYCLE TRACK
  - FOOTPATH
  - CARWEGWAY
  - GRASS AREA (VEIGE)
  - PEDESTRIAN PRIORITY ZONE
  - RAISED TABLE
  - BUS STOP LOCATIONS
  - BUS SHELTER
  - TREE (EXISTING AND PROPOSED)
  - HERITAGE FEATURES
  - SITE BOUNDARY LINE
  - TEMPORARY LAND ACQUISITION

**NOTES**

- ADDITIONAL PROPOSED SCHEME INFORMATION IS AVAILABLE ON THE DRAWING SERIES PROVIDED WITHIN VOLUME 1010. THE PROPOSED SCHEME IS SUBJECT TO APPROVAL BY THE LOCAL AUTHORITY. PROPERTY LINE ADJUSTMENTS ARE PROPOSED. NEW BOUNDARY WALLS ARE TO MATCH THE EXISTING UNLESS OTHERWISE STATED. THE SCHEME IS TO BE DETERMINED IN CONSULTATION WITH THE LANDOWNER.



<p><b>Project Ireland 2040</b> Building Ireland's Future</p>		<p>Client: NTA National Transport Authority</p>		<p>Engineering Designer: FIROD</p>		<p>Programme Title: BUSCONNECTS DUBLIN Drawing Title: CORE BUS CORRIDORS INFRASTRUCTURE WORKS KILMAGE TO CITY CENTRE CORE BUS CORRIDOR SCHEME GENERAL ARRANGEMENT</p>	
Rev	Date	By	Checked	Drawn	Checked	Approved	Sheet Number
M01	FEB 2023	DA	SMG	SMG	DA	SMG	07 of 14
<p>Scale: 1:500 @ A1 1:1000 @ A3</p>							Sheet Name
<p>Programme Code: BCD001 Drawing Code: BCD001-07</p>							Sheet Number
<p>Revision Code: BCD001-07</p>							Revision
<p>Project Reference: CA-0011_XX_00-05-CR-0007</p>							Revision

DO NOT SCALE USE DIMENSIONS ONLY

Appendix C

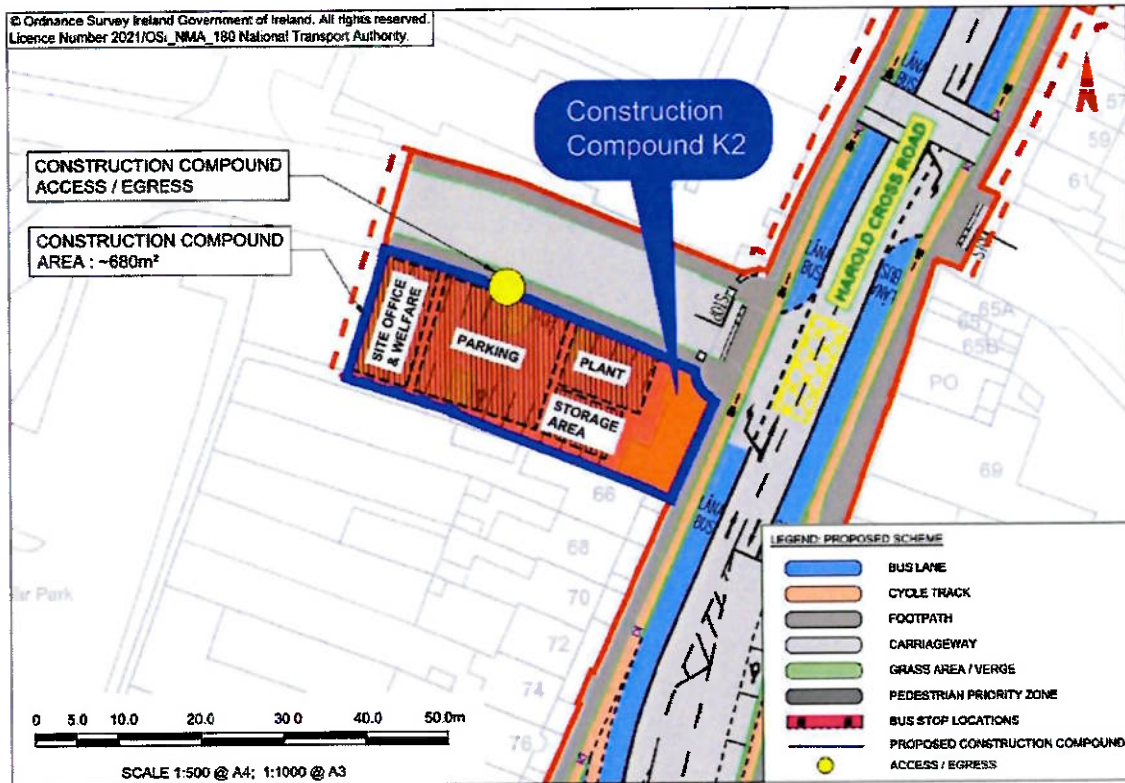


Image 12.2: Location, Extent and Layout of Construction Compound K2



**Appendix D (Following Pages)**



# Our Lady's Hospice Care & Services - Harold's Cross Client | Key Worker Housing Feasibility Report

Doc Ref: 22085-STW-00-XX-FP-A-0002 Date: 03 November 2023



**Project Information**

Client Name OLHCS  
 Client Address Harold's Cross, Dublin D6W RY72  
 Site Address Harold's Cross, Dublin D6W RY72  
 Job Number: 22085  
 File Name: 22085-STW-00-XX-RP-A-00002

**Project Team**

Architects Scott Tallon Walker Architects (STW)

Task	Initials	Signature	Date
Designed by			
Prepared by	II	<i>[Signature]</i>	02.11.2023
Checked by	SC	<i>[Signature]</i>	03.11.2023
Approved by	SC	<i>[Signature]</i>	03.11.2023

Scale @ Size	First Issue Date
NTS @ A3 Landscape	03.11.2023

Rev	Status	Initials	Date
1	Issued to Client	SC	03.11.2023

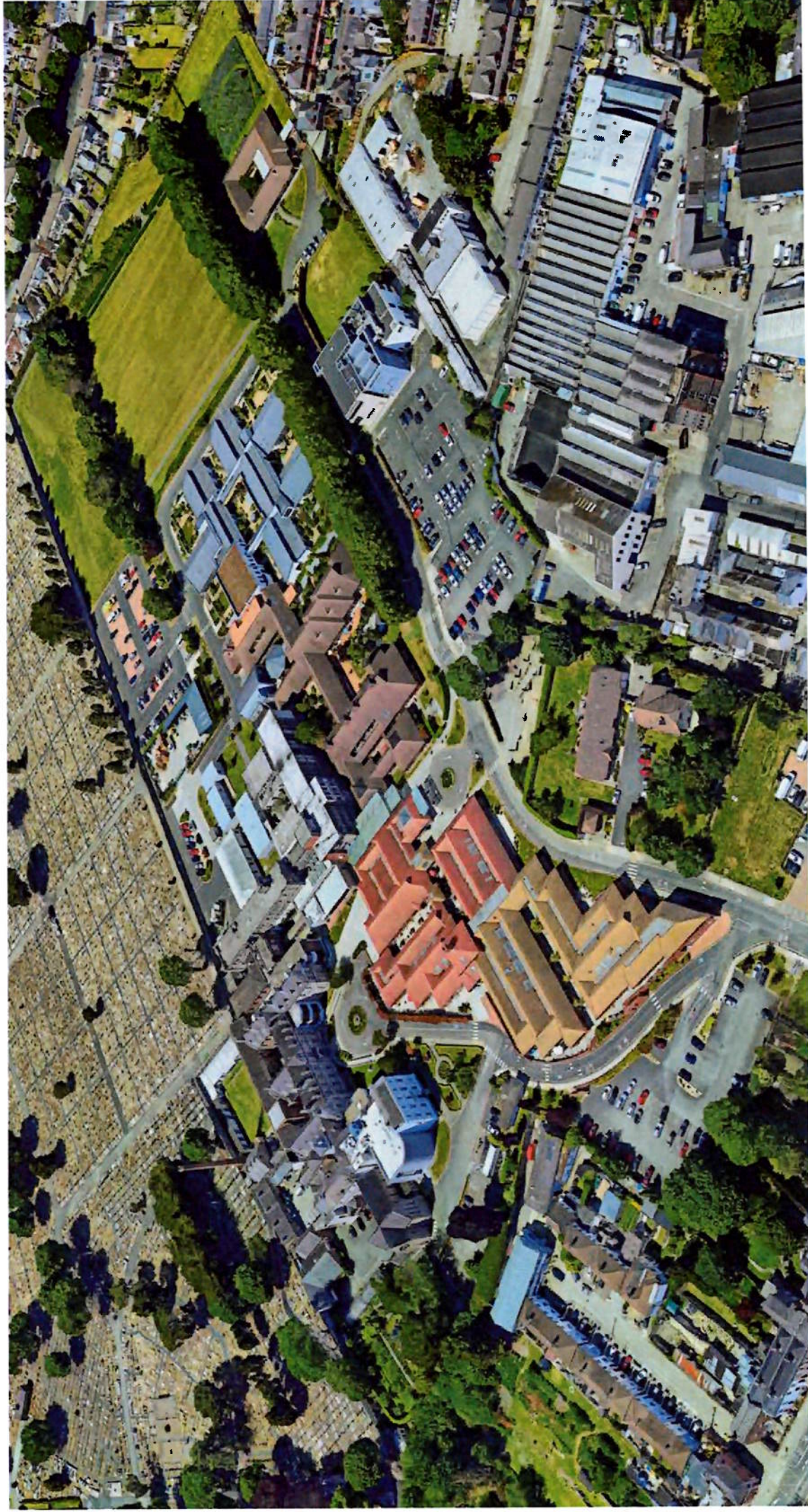
c/o Sheila Carney  
 Belle House (Victoria Station)  
 1 Hudson's Place  
 London SW1V 1JT  
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# 1. Introduction + Concept Sketches



## 1. Introduction + Concept Sketches

### 1.1 Introduction

This feasibility study was prepared to test provision of residential accommodation on the OLH vacant site adjacent to the main entrance off Harold's Cross Road.

The building will provide "key worker housing" for staff of OLH with combined shared facilities at a common ground floor level, opening onto a private landscaped garden area.

Access is via a shared common entrance area, with lifts and staircase to all floors.

Each unit is self contained with its own direct access, bike storage and front door.

Private balconies also provide private outdoor space and visual amenity to occupiers at each level.

We believe a four storey building is achievable, providing a mix of studio type apartments and one bedroom apartments. Refer to aerial views for surrounding context of high rise residential buildings.

The building materials are chosen to reflect the surrounding environment. An opaque glazed/timber screen provides screening and privacy to the adjacent residents.

A schedule of accommodation and areas is provided with the scheme concept design.

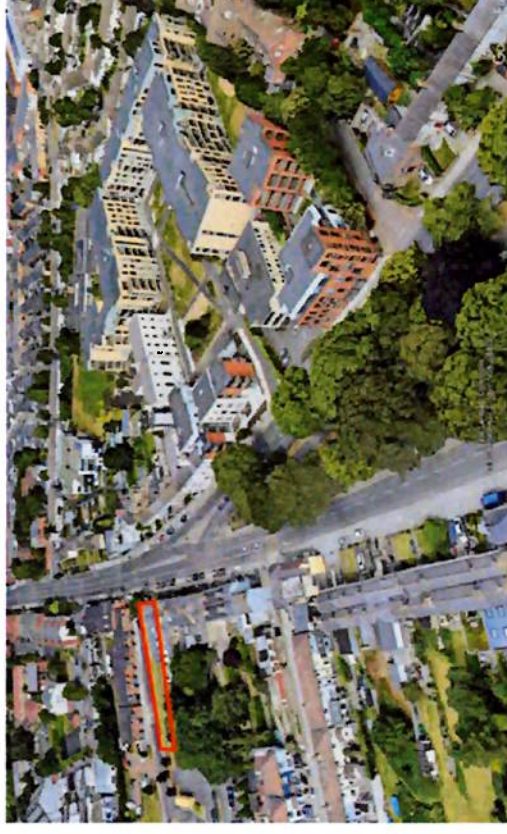


Figure 1.1.1: Aerial views showing high rise residential development adjacent to site (OLH vacant site outlined in red)  
\*Images from Google Earth

# 1. Introduction + Concept Sketches

## 1.2 Existing Site



Figure 1.2.1: Map showing existing site

## 1. Introduction + Concept Sketches

### 1.3 Scale and Massing of existing buildings - in the immediate context

The urban scale pattern of the area surrounding Our Lady's Hospice are low to medium height 1-2 storeys and mostly residential buildings. We observe an increase in building heights, between 3-4+ storeys, along the main roads: Parnell Road, Harold's Cross Road and Rathmines Road Lower - refer aerial images on the following page

This increase in building height can be further identified in newer residential developments adjacent to the site. These vary from 4-6 storeys exemplifying an increase in density and building height in accordance with policy objectives of the Dublin City Development Plan 2022-2028.

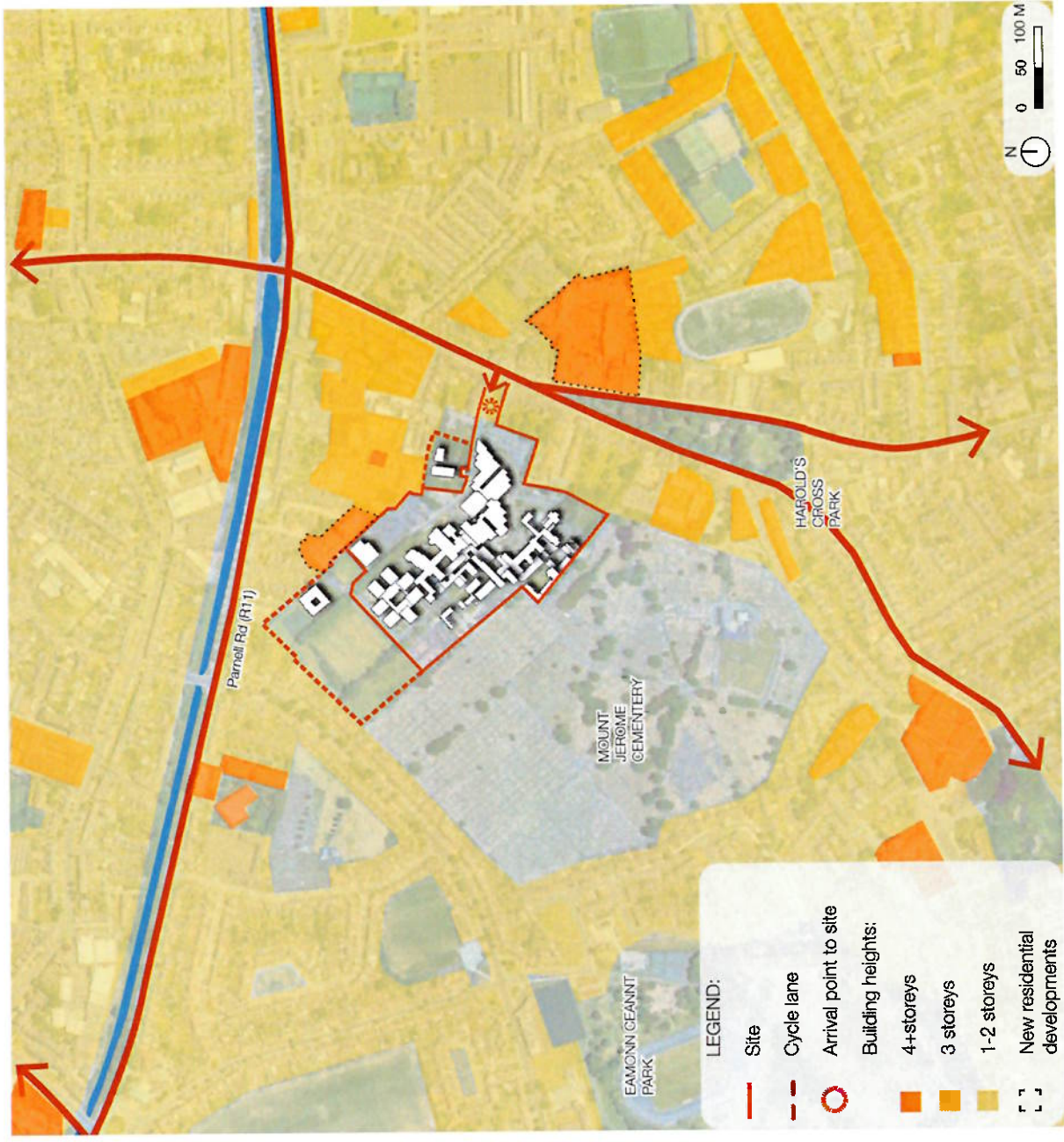


Figure 1.3.1: Map illustrating building heights in the surrounding context

# 1. Introduction + Concept Sketches

## 1.4 Site Context - Aerial Views - Vacant Site

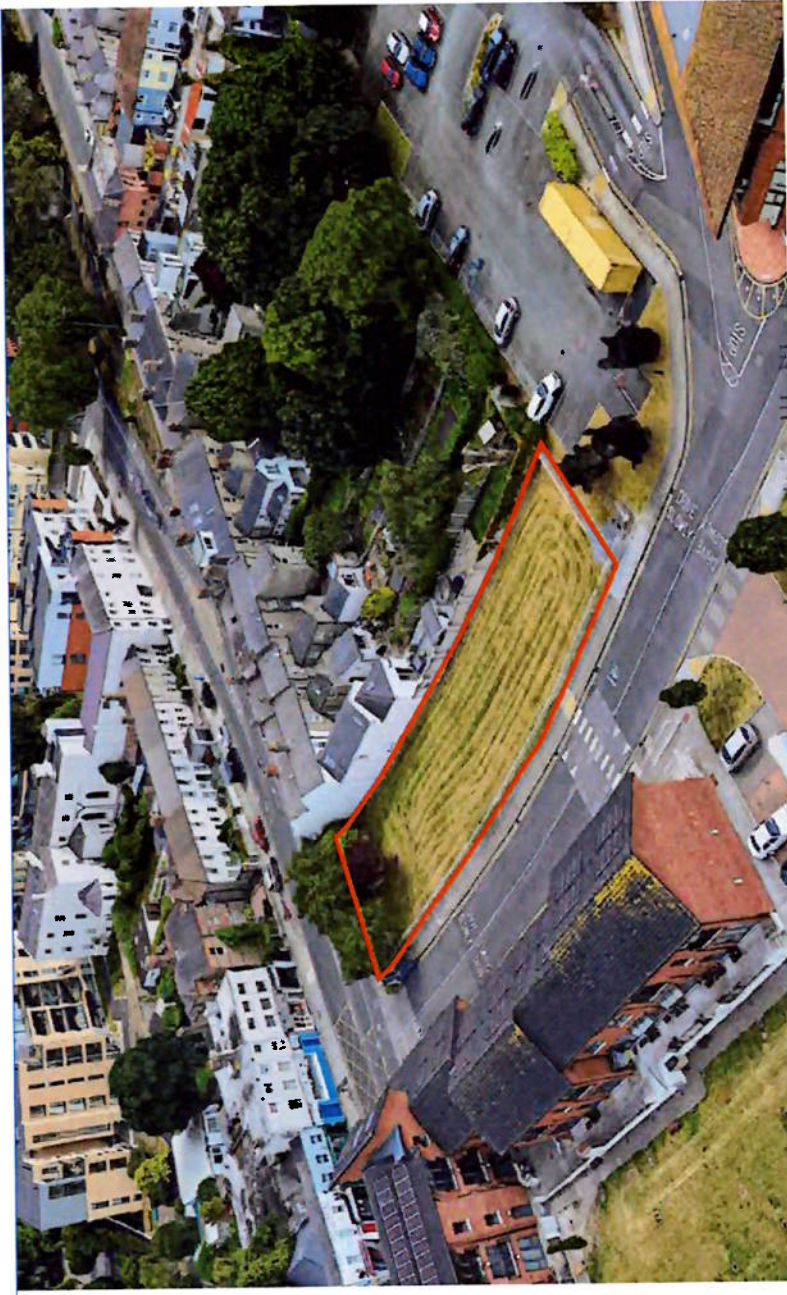


Figure 1.4.1: Aerial View from North - vacant site outlined in red

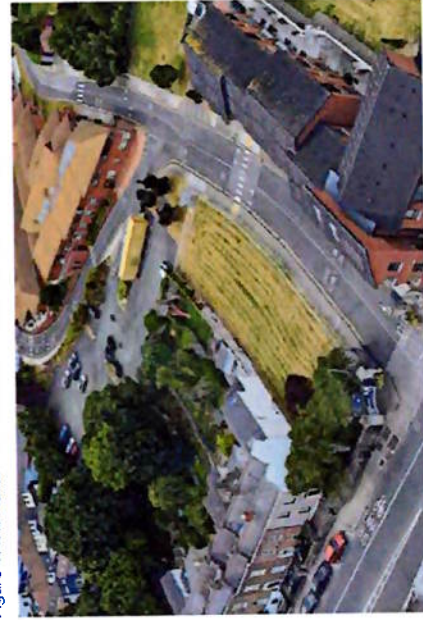


Figure 1.4.2: Aerial View from Harold's Cross Road  
\*Images from Google Earth

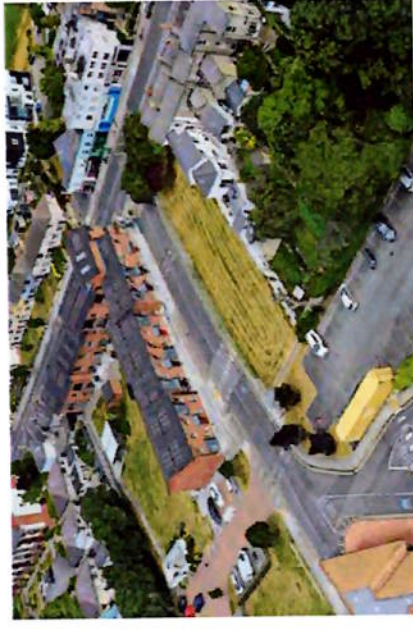
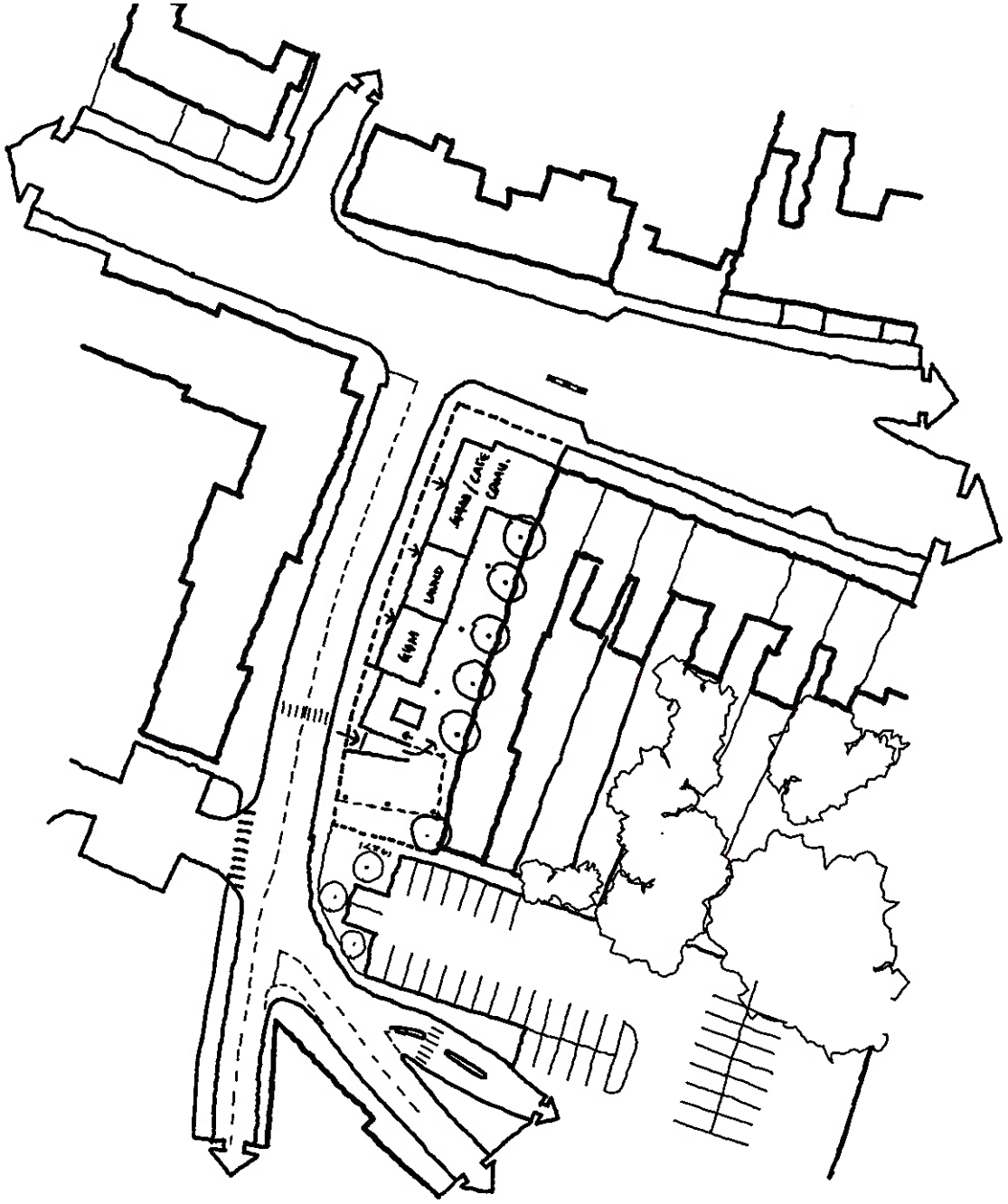


Figure 1.4.3: Aerial View from Southwest

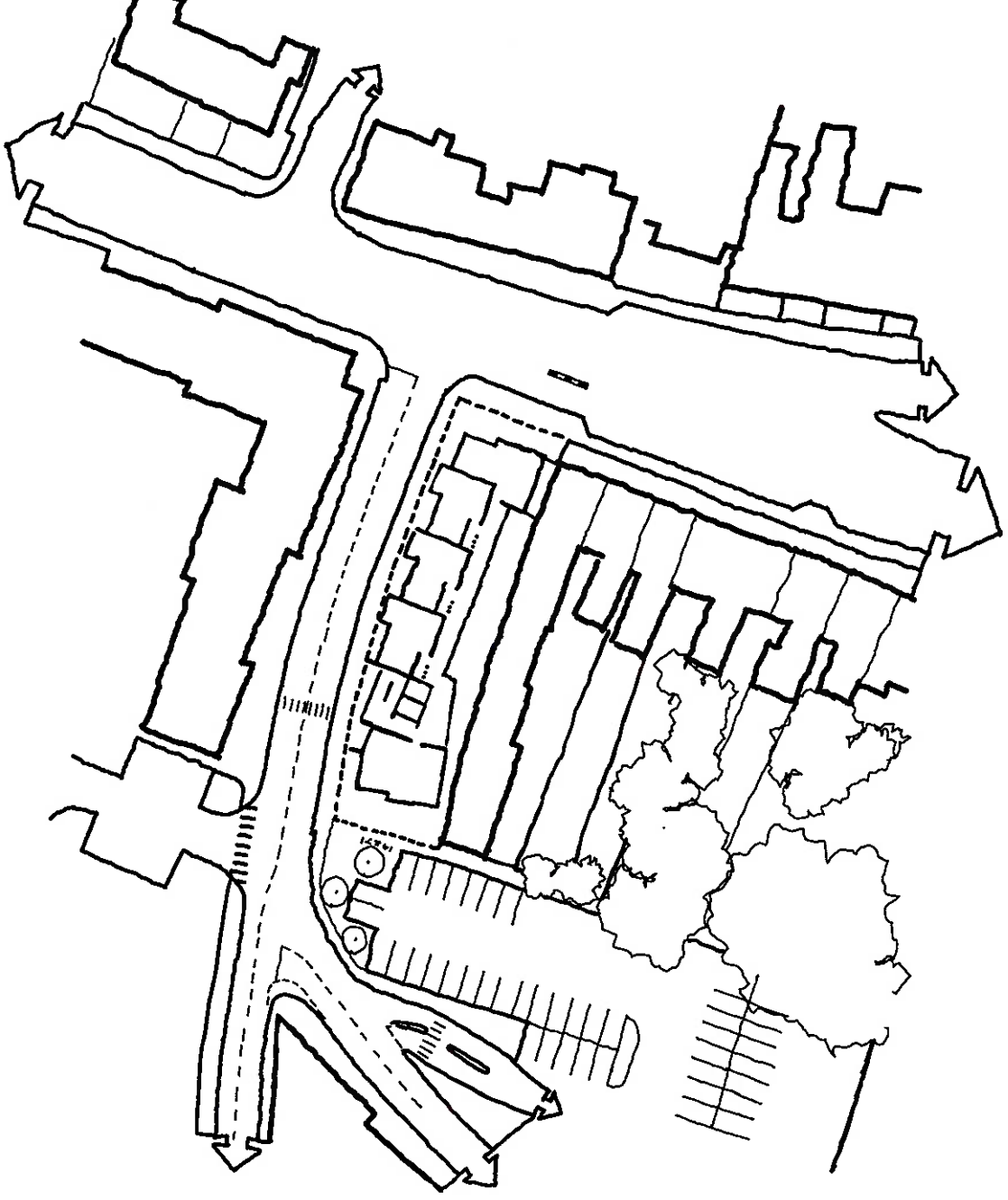
# 1. Introduction + Concept Sketches

## 1.5 Concept Sketch - Site Context - Ground (Common Facilities)



## 1. Introduction + Concept Sketches

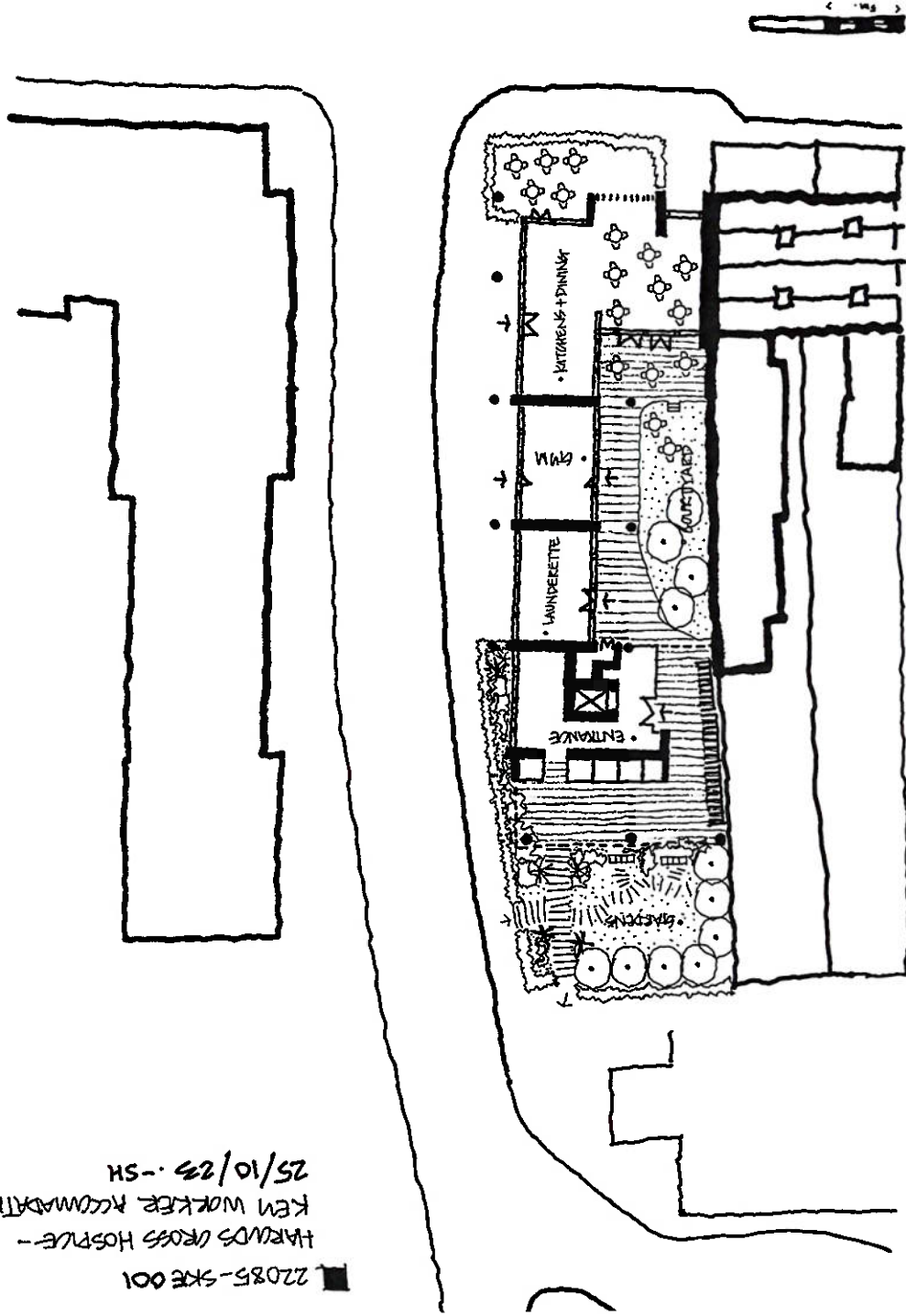
### 1.6 Concept Sketch - Site Context - Upper Floor (Residential Units)



# 1. Introduction + Concept Sketches

## 1.7 Concept Sketch - Floor Plan (Ground Floor)

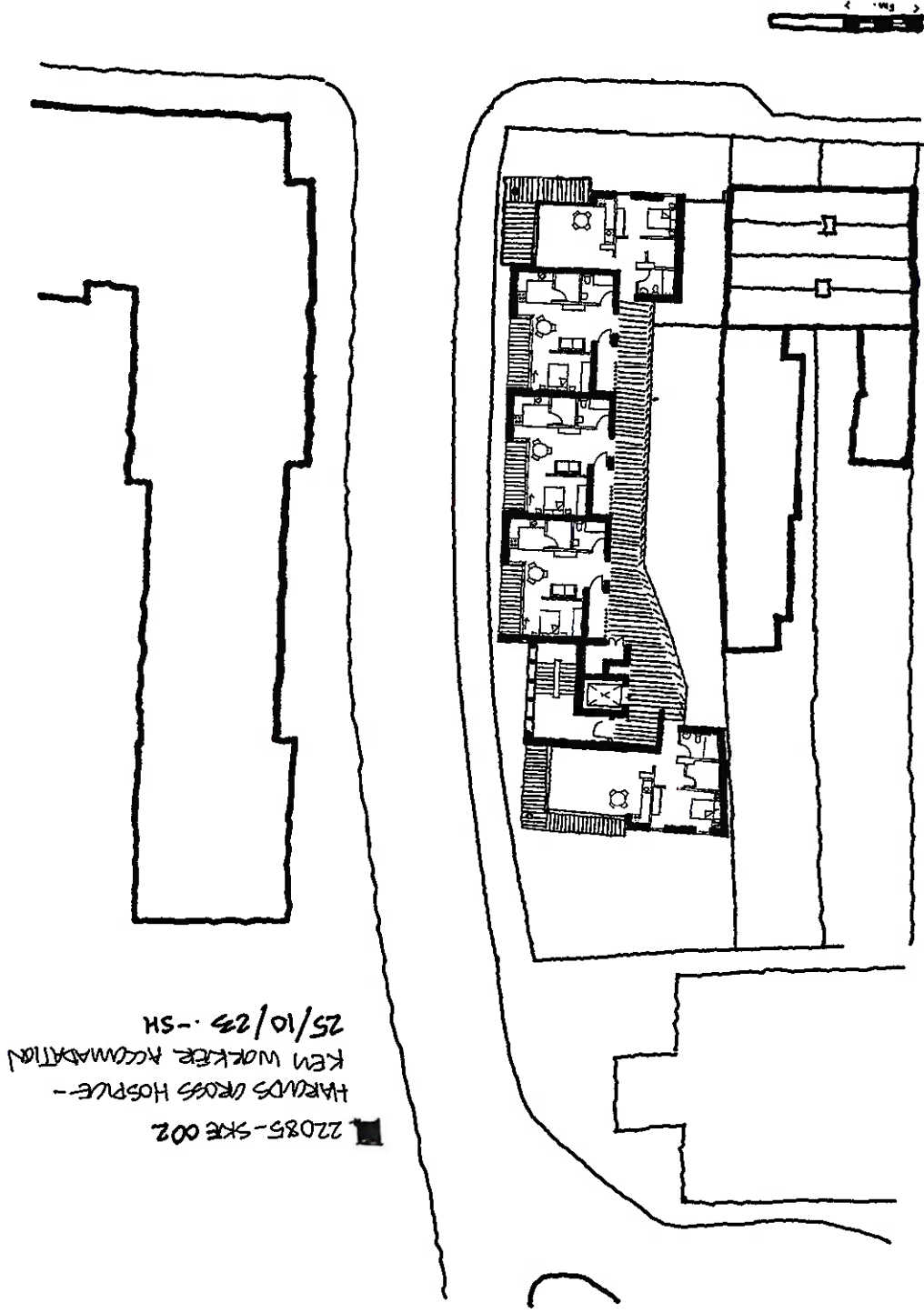
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# 1. Introduction + Concept Sketches

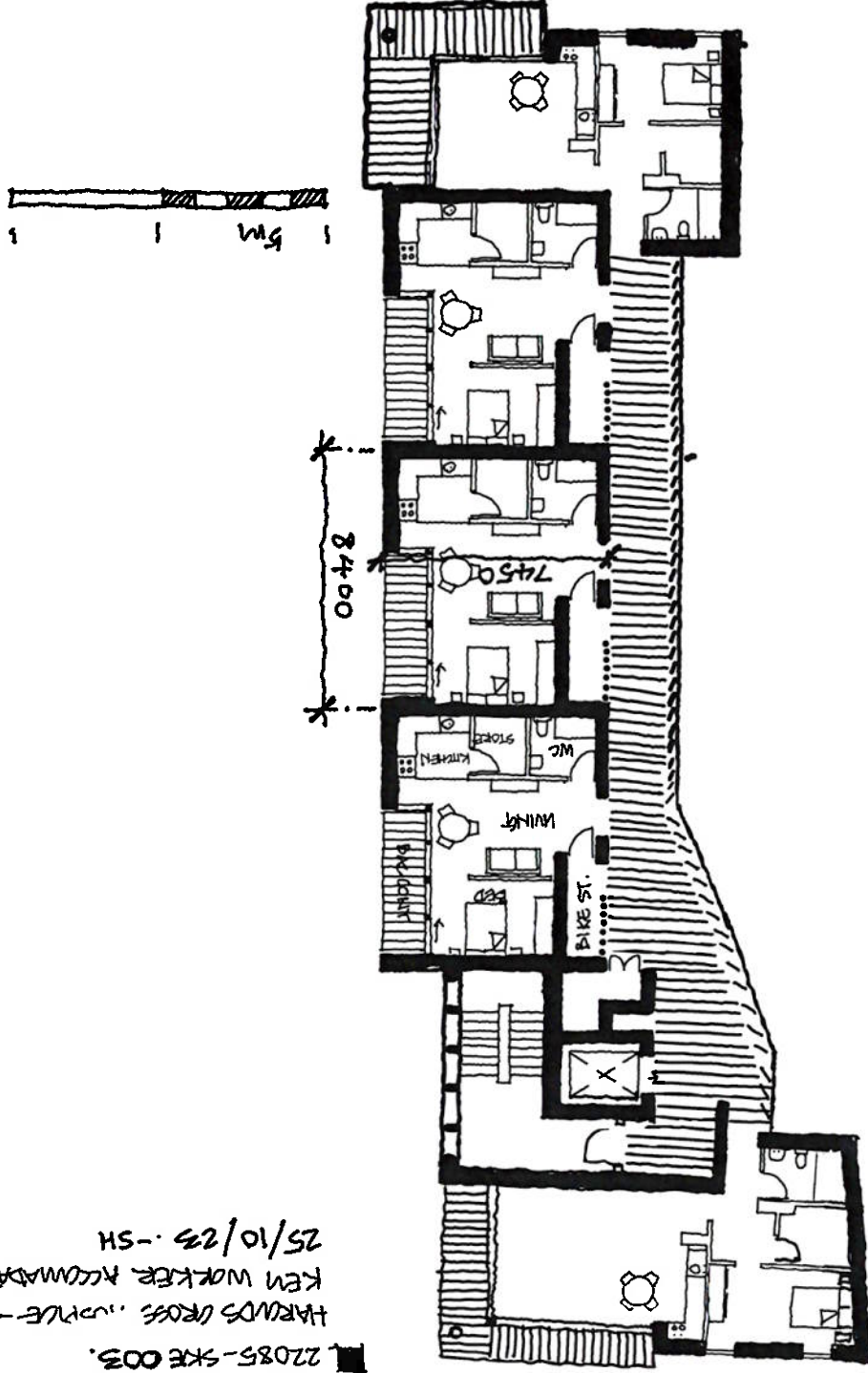
## 1.8 Concept Sketch - Floor Plan (Upper Floors)



# 1. Introduction + Concept Sketches

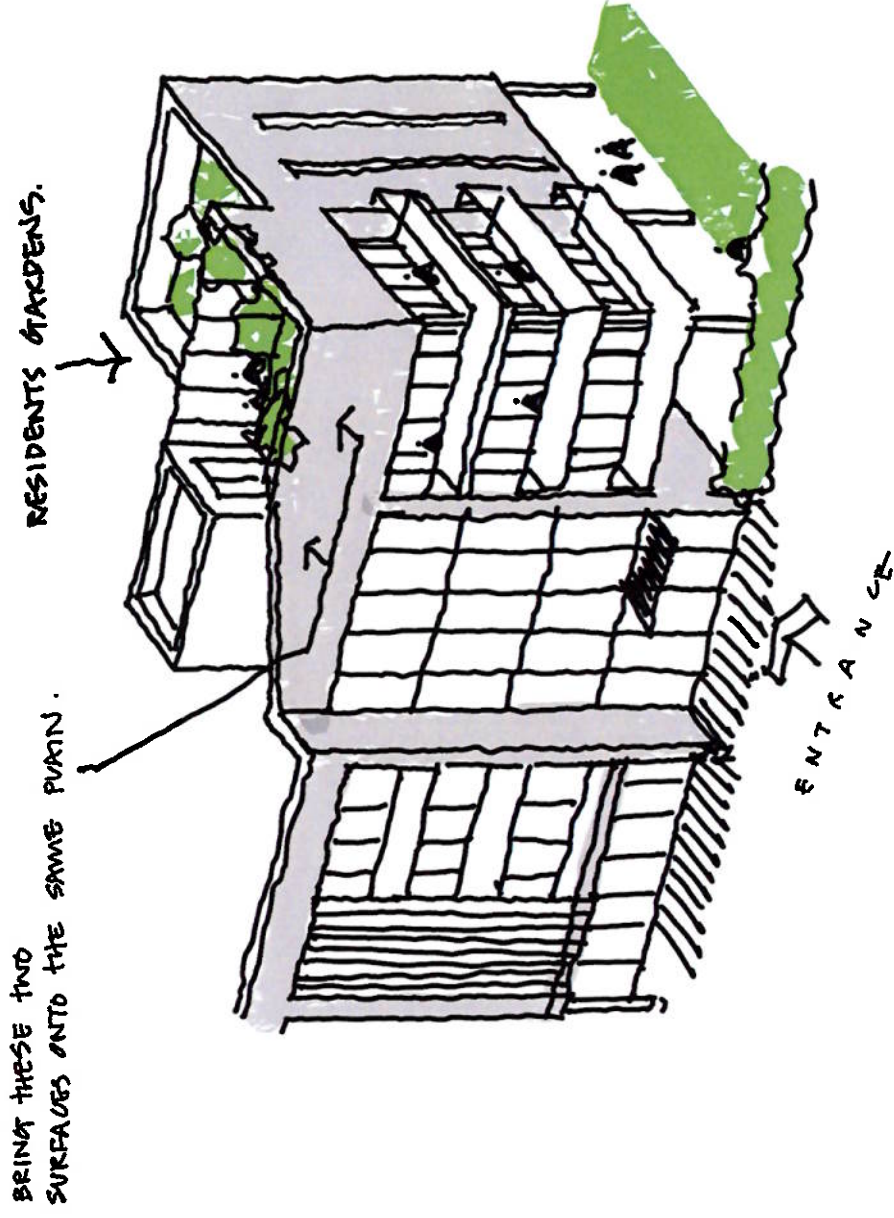
## 1.9 Concept Sketch - Apartment Layout Plan

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HANDS CROSS SERVICE -  
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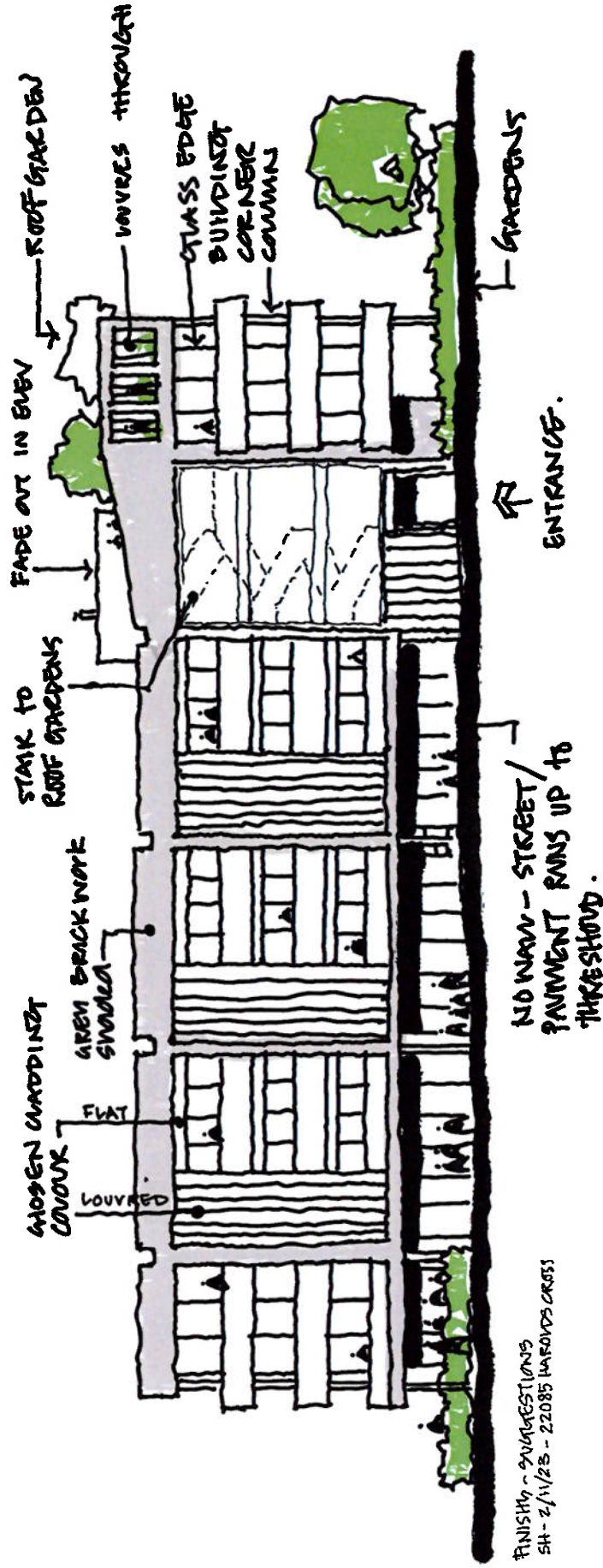
# 1. Introduction + Concept Sketches

## 1.10 Concept Sketch - 3D

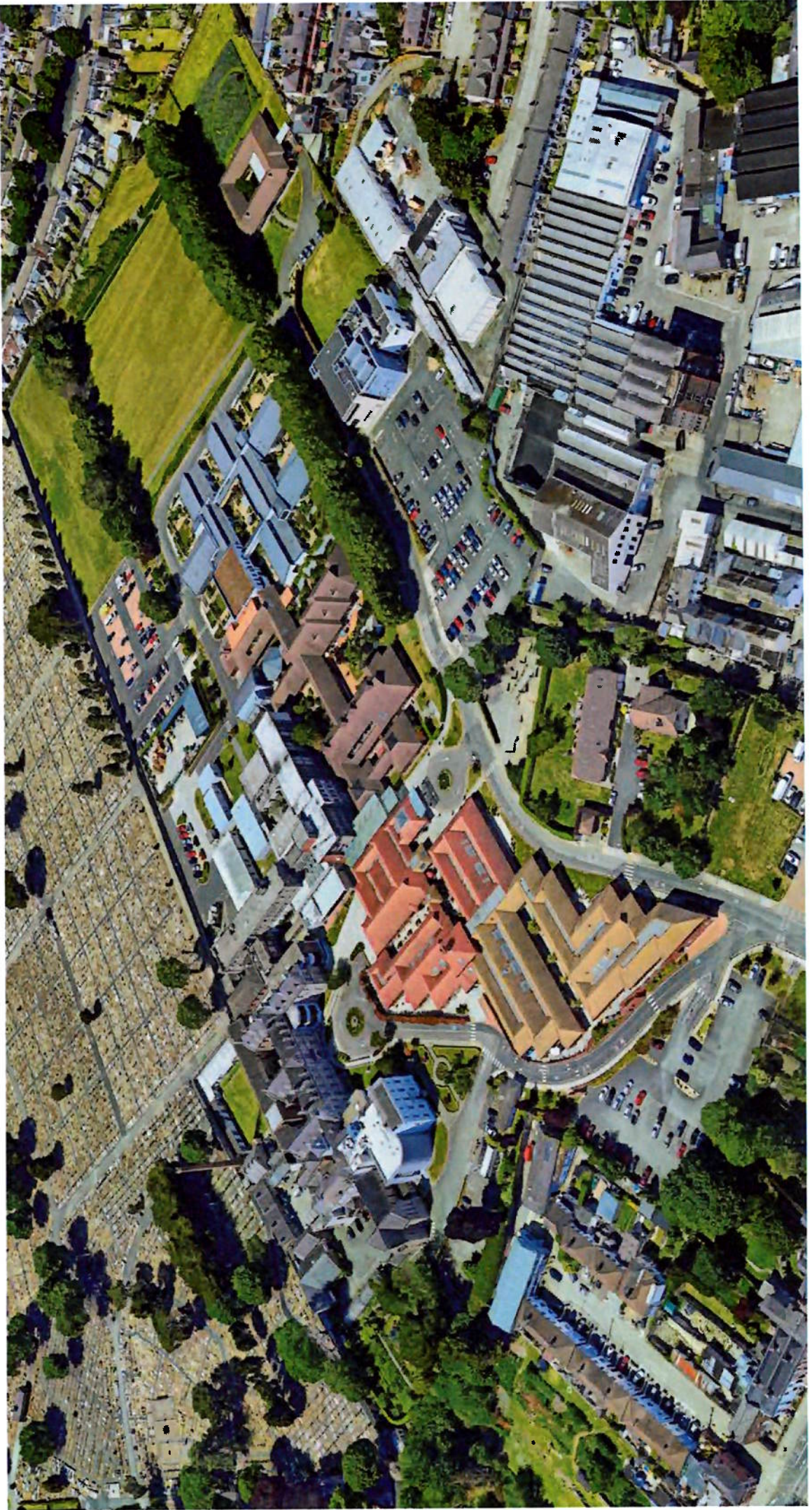


# 1. Introduction + Concept Sketches

1.11 Concept Sketch - Elevation

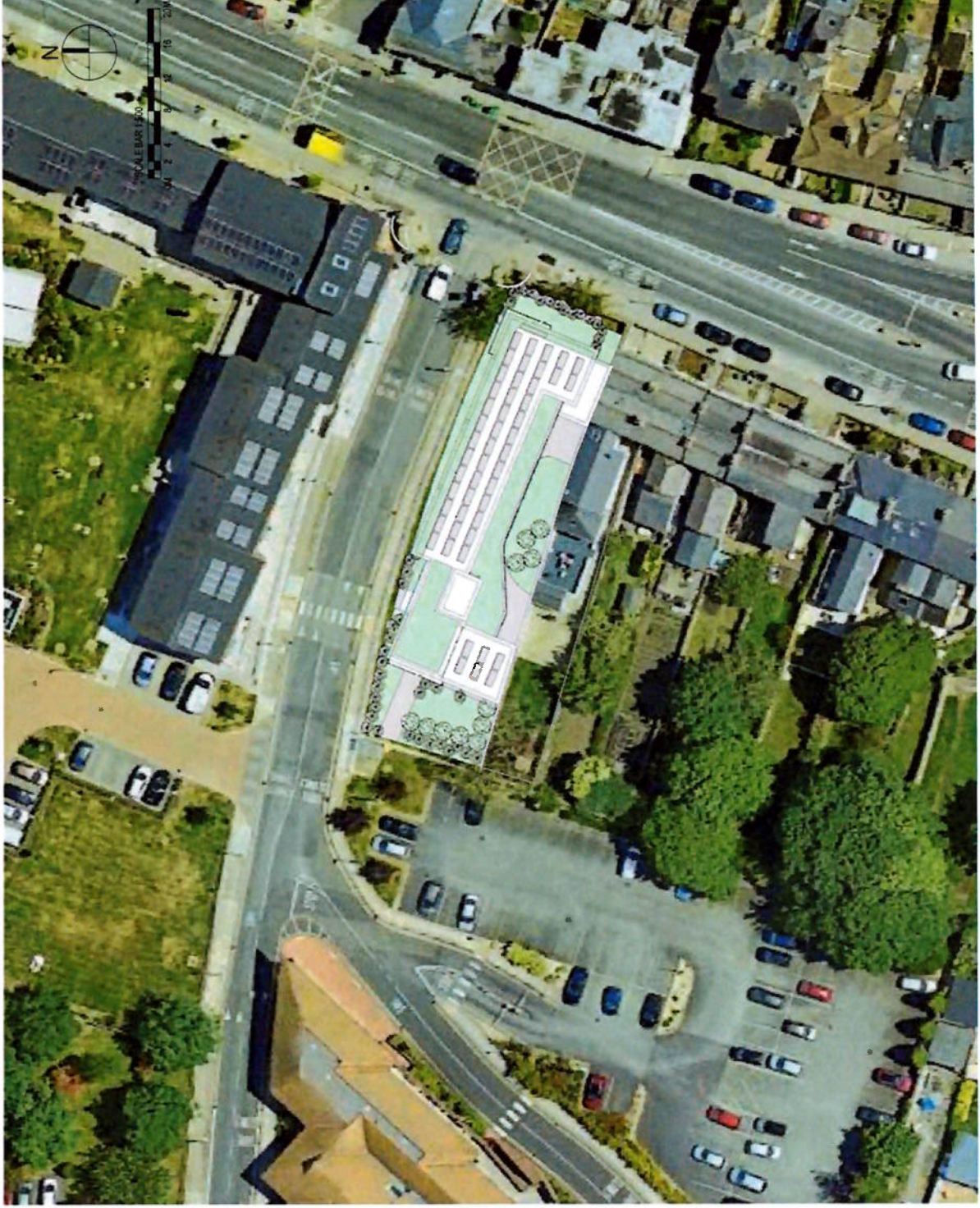


## 2. Design



## 5. Design

### 2.1 Site Plan



# 5. Design

## 2.2 Ground Floor

Room Number	Rooms	GIA
G.01	Laundrette	42
G.02	Gym	42
G.03	Kitchen & Dining	110
G.04	Entrance	46
G.05	Lift	6
G.06	Store	4
<b>Proposed GIA</b>		<b>250</b>

**Proposed GFA Ground Floor**

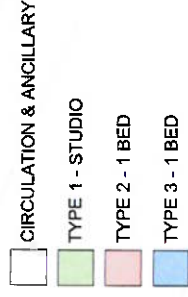
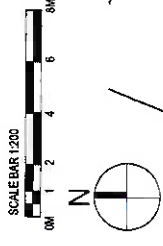


# 5. Design

## 2.3 Level 1

Room Number	Rooms	GIA
1.01	Apartment	61
1.02	Apartment	41
1.03	Apartment	41
1.04	Apartment	41
1.05	Apartment	50
1.06	Stair	27
1.07	Lift	6
1.08	Store	4
1.09	Walkway	104
Proposed GIA		375

Room Number	Rooms	GIA
1.01	Apartment	61
1.02	Apartment	41
1.03	Apartment	41
1.04	Apartment	41
1.05	Apartment	50
1.06	Stair	27
1.07	Lift	6
1.08	Store	4
1.09	Walkway	104
Proposed GIA Level 1		445





# 5. Design

## 2.4 Level 2

Room Number	Rooms	GIA
2.01	Apartment	61
2.02	Apartment	41
2.03	Apartment	41
2.04	Apartment	41
2.05	Apartment	50
2.06	Stair	27
2.07	Lift	6
2.08	Store	4
2.09	Walkway	104
<b>Proposed GIA</b>		<b>375</b>

Room Number	Rooms	GIA
2.01	Apartment	61
2.02	Apartment	41
2.03	Apartment	41
2.04	Apartment	41
2.05	Apartment	50
2.06	Stair	27
2.07	Lift	6
2.08	Store	4
2.09	Walkway	104
<b>Proposed GIA Level 2</b>		<b>445</b>



**CIRCULATION & ANCILLARY**

- CIRCULATION & ANCILLARY
- TYPE 1 - STUDIO
- TYPE 2 - 1 BED
- TYPE 3 - 1 BED



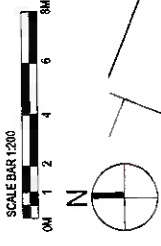
# 5. Design

## 2.5 Level 3

Room Number	Rooms	GIA
3.01	Apartment	61
3.02	Apartment	41
3.03	Apartment	41
3.04	Apartment	41
3.05	Apartment	50
3.06	Stair	27
3.07	Lift	6
3.08	Store	4
3.09	Walkway	104
<b>Proposed GIA</b>		<b>375</b>

445

Proposed GFA Level 3



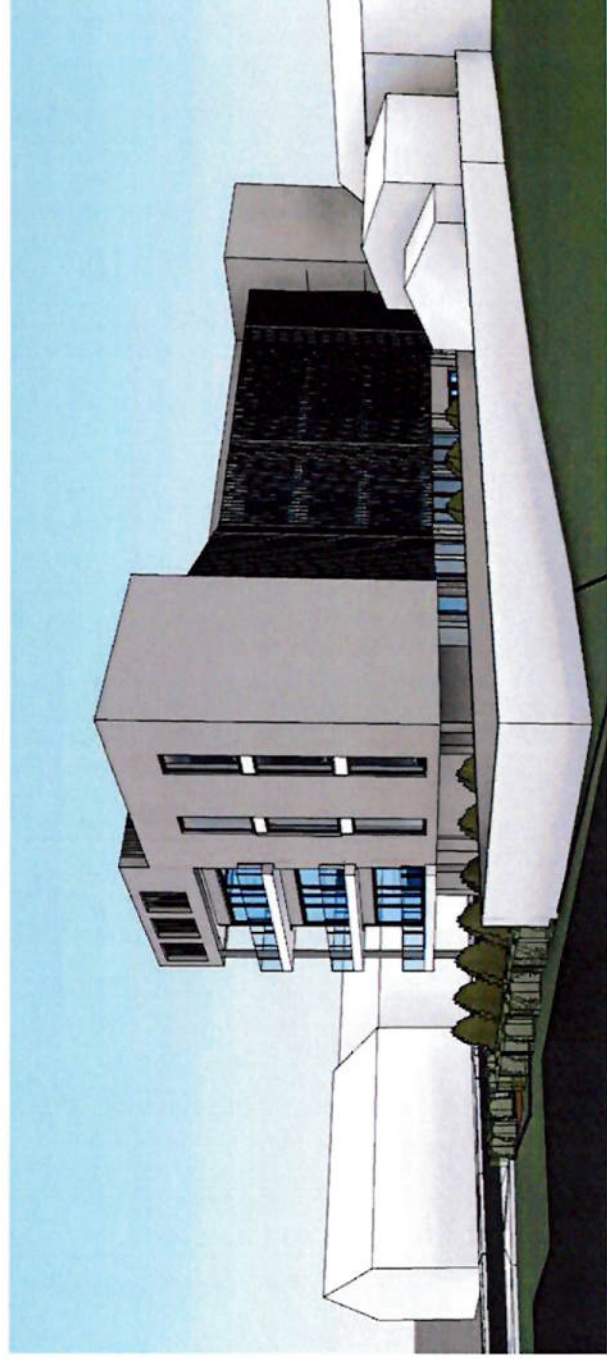
- CIRCULATION & ANCILLARY
- TYPE 1 - STUDIO
- TYPE 2 - 1 BED
- TYPE 3 - 1 BED





## 5. Design

### 2.7 3D Street Views



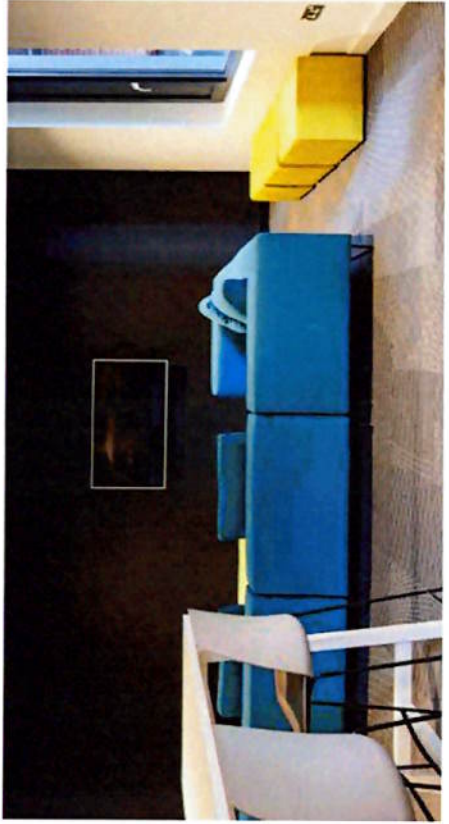
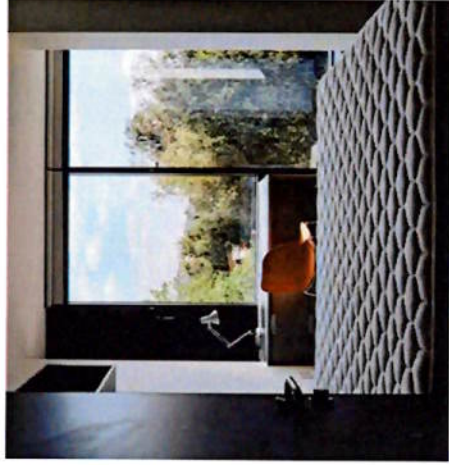
## 5. Design

### 2.8 3D Street Views



## 5. Design

### 2.9 "Look and Feel" References by Scott Tallon Walker Architects Lee Point 'Brewery Quarter Student Accommodation' Cork, Ireland



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