



THORNTON O'CONNOR
TOWN PLANNING

Material Contravention Statement

Material Contravention Statement

In respect of a Strategic Housing
Development at

'Karuna' and 'Glenina' Sandyford Road,
Dublin 18, D18 C2H6 and D18 X5T7

Submitted on Behalf of
Midsal Homes Limited

April 2022



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1.0 INTRODUCTION

1.1 Summary of the Proposed Development

The subject planning application is categorised as a Strategic Housing Development as defined in Section 3 of the *Planning and Development (Housing) and Residential Tenancies Act 2016* (as amended) ("The SHD Act"), which states that Strategic Housing Development means:

- a) ***the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses,***
- b) *the development of student accommodation units which, when combined, contain 200 or more bedspaces, on land the zoning of which facilitates the provision of student accommodation or a mixture of student accommodation and other uses thereon.*
- c) *development that includes developments of the type referred to in paragraph a) and of the type referred to in paragraph b), or*
- d) *the alteration of an existing planning permission granted under section 34 (other than under subsection (3A)) where the proposed alteration relates to development specified in paragraph a), b) or c).' [Our Emphasis]*

As the proposed development comprises 137 No. residential units (with no commercial development), it is therefore considered to be a Strategic Housing Development and the application must be lodged directly to An Bord Pleanála.

1.2 Detailed Description of the Subject Development

The following description of development has been provided for the subject planning application:

Midsal Homes Limited intend to apply to An Bord Pleanála for permission for a strategic housing development at a site of 0.829 Ha approx. comprised of the properties known as 'Karuna' and 'Glenina' at Sandyford Road, Dublin 18, D18 C2H6 and D18 X5T7 respectively. The site is generally bound by a residential development known as 'Coolkill' to the east, a detached dwelling known as 'The Pastures' to the south, Sandyford Road (R117) to the west and a residential development known as 'Cul Cuille' to the north. Works are also proposed at Sandyford Road, which include the removal of a wall and the creation of a new pedestrian connection to the existing cul-de-sac adjacent to 'Cul Cuille' to the north (0.016 Ha approx.) and at the footpath at Sandyford Road to provide a new multi-modal entrance, pedestrian/cycle entrances and landscaping (0.015 Ha approx.). In addition, works are proposed for water services (0.05 Ha approx.): water supply to be sourced by way of a new connection to the existing 250 mm diameter water main across from the proposed main entrance at Sandyford Road; surface water drainage network to discharge to the existing 525 mm diameter surface water sewer located to the north of the site at Sandyford Road via a new 150 mm surface water sewer; and foul water to discharge to the 225 mm diameter foul sewer under construction at Sandyford Road. An additional 0.01 Ha has been assigned for Dún Laoghaire-Rathdown County Council to undertake road works to upgrade Sandyford Road. The residential development site, pedestrian

connection, entrance works, water services and road works area will provide a total application site area of 0.92 Ha.

The proposed development principally consists of the demolition of the existing dwelling and ancillary buildings known as 'Glenina', the existing dwelling known as 'Karuna' and the existing boundary wall fronting Sandyford Road, and the construction of a residential development principally comprising 137 No. apartments (32 No. 1-bed units, 78 No. 2-bed units and 27 No. 3-bed units) in 4 No. blocks ranging in height from part-1 No. storey to part-6 No. storeys with a part-basement/part-undercroft level (at Blocks B, C and D).

The proposed development which has a gross floor space of 13,144 sq m (over a part-basement/part-undercroft level measuring 4,508 sq m, principally providing car and cycle parking and plant) also includes: internal communal amenities and support facilities (404 sq m); 137 No. car parking spaces, which include 127 No. spaces and 6 No. GoCar spaces located at basement level (accessed beneath Block B) and 4 No. set down spaces located at surface level adjacent to Block A; motorcycle parking spaces; cycle parking spaces; bin store; substation; switch room; meter rooms; plant rooms; new telecommunications infrastructure at rooftop level including microwave link dishes concealed in shrouds; hard and soft landscaping, including communal amenity space; private amenity space with balconies facing north, south, east and west; boundary treatments; and all associated works above and below ground.

1.3 Purpose of this Material Contravention Statement

The purpose of this Material Contravention Statement is to set out the justification for aspects of the proposed development which may be considered to materially contravene the *Dún Laoghaire-Rathdown County Development Plan 2022-2028* ("Development Plan")

The scheme as proposed may be determined to materially contravene the *Development Plan* with regard to the following matters:

- **Building Height with reference to Appendix 5 of the *Development Plan*;**
- **Car Parking with reference to Table 12.5 of the *Development Plan*;**
- **Public Open Space with reference to Table 12.5 of the *Development Plan*;**
- **Separation Distances with reference to Section 12.3.5.2 of the *Development Plan*;**
- **Daylight and Sunlight with reference to Section 12.3.4.2 of the *Development Plan*;**
- **External Storage with reference to Section 12.3.5.3 of the *Development Plan*; and**
- **5% Variation to Dimensions / Room Sizes with reference to Section 12.3.4.2 of the *Development Plan*.**

This document will provide justification regarding the possible contravention of the provisions of the *Development Plan* as outlined above.

2.0 STATUTORY BASIS FOR MATERIAL CONTRAVENTION

Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended)* sets out the following in relation to developments which materially contravene the policies and objectives of a Development Plan:

- (a) *'Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 even where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned.*
- (b) *The Board shall not grant permission under paragraph (a) where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the land.*
- (c) *Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development.'* [Our Emphasis]

TOC Comment:

The subject site is zoned Objective 'A' in the Dún Laoghaire – Rathdown County Development Plan 2022 – 2028 ("Development Plan") where the objective is 'to provide residential development and improve residential amenity while protecting the existing residential amenities'. Under Objective 'A', residential development is permitted in principle.

The provision of a residential development consisting of 137 No. apartment units is fully in accordance with the zoning objective. The subject scheme will result in the appropriate densification of an underutilised site, providing additional accommodation in lieu of the existing single storey dwelling (with ancillary garage) and 2 No. storey dwelling (to be demolished) which are not considered to be of architectural merit.

This Material Contravention Statement relates to building height, car parking, public open space, daylight and sunlight, separation distances, external storage and 5% variation to room areas/widths which we consider appropriate and justified for the subject lands. We consider that the design, scale and massing of the proposed development is appropriate at this location and justifiable for the subject lands having regard to recently adopted National Policy as detailed throughout this report.

Section 37(2) of the *Planning and Development Act 2000 (as amended)* (Act of 2000) states the following in relation to material contravention:

- (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.'*

In the event that the Board were to grant permission, the Board's "reasons and considerations" would have to reference the matters under Section 37(2)(b) of the 2000 Act upon which it relies to justify the granting of permission in material contravention of the Development Plan. It is apparent from Section 10(1)(3)(b) of the 2016 Act that such reasons and considerations must appear in the Board decision itself. Section 10(3) provides as follows:

'(3) A decision of the Board to grant a permission under section 9(4) shall state-

....

(b) where the Board grants a permission in accordance with section 9(6)(a), the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be.'

In considering material contravention issues, it is also necessary to consider the requirements of Specific Planning Policy Requirements (SPPRs) under relevant ministerial guidelines issued pursuant to section 28 of the Act of 2000. Such guidelines include in particular:

- *The Urban Development and Building Heights Guidelines for Planning Authorities (December 2018)*
- *The Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, 2020*
- *The Guidelines for Planning Authorities on the Sustainable Residential Development in Urban Areas (May 2009)*

Section 9(3) of the SHD Act refers to SPPRs and provides:

'(3) (a) When making its decision in relation to an application under this section, the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000.

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

(c) In this subsection "specific planning policy requirements" means such policy requirements identified in guidelines issued by the Minister to support the consistent application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development.'
[Our Emphasis]

On one legal view, the effect of subsection (3)(b) above is that if the SPPRs apply instead of conflicting provisions of the Development Plan, then no issue of material contravention can arise in relation to conflicting provisions of the Development Plan. However, this Material Contravention Statement has adopted a more conservative approach and has treated any material breach of any such conflicting provisions of the Development Plan, even where disapplied by the provisions of the relevant SPPR, as material contravention issues.

Having regard to the analysis set out below of the compliance with the proposed development with national planning policy and Section 28 Guidelines, and having considered the strategic nature of the site and the proposed development, it is considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the *Development Plan*, by reference to sub-paragraphs (i), (ii), (iii) and (iv) of Section 37(2)(b) for the reasons set out below in Section 3.0.

3.0 JUSTIFICATION FOR THE MATERIAL CONTRAVENTION

3.1 For each of the Subject Numbers – Strategic or National Importance

The proposed development is of strategic or national importance (Section 37 (2)(b)(i) of the Act)

The proposed development will deliver much needed residential units in response to the *Rebuilding Ireland - Action Plan for Housing and Homelessness* that was published by the Government on 19th July 2016, which identifies that accelerated “delivery of housing for the private, social and rented sectors is a key priority for the Government”. The supply of residential units remains a priority for the current Government. In addition, *Housing for All – a New Housing Plan for Ireland*, which was published on 2nd September 2021 sets out that:

‘Our objective is that everybody should have access to sustainable, good quality housing to purchase or rent at an affordable price, built to a high standard, and located close to essential services, offering a high quality of life’.

The proposed development will assist in achieving this objective by providing a high-quality residential development in proximity to essential services.

The strategic or national importance of the proposed development is reinforced by the contribution it will make to the achievement of the guidelines and policies identified for the purposes of Section 37(2)(b)(iii) of the Act throughout this statement.

In particular, the mix of 1, 2 and 3 No. bed apartments within the proposed development are urgently required in order to provide an appropriate mix of dwelling typologies, as recognised in the *National Planning Framework*, which notes that *‘the 2016 Census indicates that if the number of 1-2-person dwellings is compared to the number of 1-2-person households, there is a deficit of approximately 150%, i.e. there are approximately two and half times as many 1-2- person households as there are 1-2 person homes.’*

The significant shortfall in housing output to address current and projected demand is a national problem, with lack of housing having social and economic ramifications for sustainable national growth. The pressing need for housing development is recognised in the *National Planning Framework* (e.g. National Policy Objective 32: To target the delivery of 550,000 additional households to 2040; National Policy Objective 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location).

In addition, the proposed development will contribute towards achieving the following 10 No. National Strategic Outcomes identified in the *NPF*:

- 1) Compact Growth;
- 2) Enhanced Regional Accessibility;
- 3) Strengthened Rural Economies and Communities;
- 4) Sustainable Mobility;
- 5) A strong Economy supported by Enterprise, Innovation and Skills;
- 6) High Quality International Connectivity;
- 7) Enhanced Amenity and Heritage;
- 8) Transition to a Low Carbon and Climate Resilient Society;

- 9) Sustainable Management of Water, Waste and other Environmental Resources; and
 10) Access to Quality Childcare, Education and Health Services.

Consistency with National Strategic Outcomes			
No.	Objective?	How it is Addressed by this development?	Meet criteria?
1:	Compact Growth;	Sustainable and efficient redevelopment of a key underutilised site in an existing residential area.	Yes
2:	Enhanced Regional Accessibility;	The subject site is located within c. 1.5 kilometres to Beacon Hospital and c. 1.6 kilometres – c. 2 kilometres to Sandymount Business Park, a significant employment district area containing over 500 No. companies. The closest LUAS station to the site is the Glencairn Station, which is 1.9 kilometres away (20-25 minute walk or 7 minute cycle), providing access to light rail services north to Dublin City and south towards Cherrywood and connecting the subject site with the city centre and the wider region.	Yes
3:	Strengthened Rural Economies and Communities;	N/A – Urban Area	N/A
4:	Sustainable Mobility;	Promoting active and sustainable transport due to a reduced car parking provision (1 No. space per unit including 6 No. car share spaces), proximity of public transport and provision of 340 No. bicycle spaces.	Yes
5:	A Strong Economy supported by Enterprise, Innovation, and Skills;	Sandymount Business Park, a significant employment district area containing over 500 No. companies, is easily accessible from the subject site and therefore the proposed development is in close proximity to significant employers.	Yes
6:	High Quality International Connectivity;	N/A –Relates to Ports and Airports	N/A
7:	Enhanced Amenity and Heritage;	The scheme provides high quality amenity space for future residents with the provision of internal communal amenity space (404 sq m) and external open space (1,299 sq m).	Yes
8:	Transition to a Low Carbon and Climate Resilient Society;	Sustainable modes of transport are encouraged through the large provision of bicycle parking, car share spaces and new links onto Sandymount Road. Green Roofs and SUDS infrastructure have been included within the design of the subject scheme to	Yes

		achieve a high energy rating and compliance with building standards.	
9:	Sustainable Management of Water, Waste and other Environmental Resources; and	Sustainable modes of transport encouraged, and sustainable management of water use and waste output, as detailed in accompanying reports.	Yes
10:	Access to Quality Childcare, Education, and Health Services.	The subject site is located c. 1.5 kilometres to the Beacon Hospital, c. 2.5 kilometres to Dundrum Town Centre, proximate to the M50 and within easy reach of Dublin City Centre via public transport. There are therefore a wide range of Childcare, Education, Hospitals and Healthcare facilities within a short distance from the subject site. The Social Infrastructure Audit prepared by KPMG Future Analytics confirms that the existing social infrastructure provision identified in the area is capable of serving the existing population and potential demand generated by the proposed development scheme.	Yes

Therefore, having regard to the details provided in this section, the proposed development is of both strategic and national importance.

3.2 Subject No. 1 – Building Height

Potential Material Contravention in Relation to Building Height - The Proposed Development Can be Facilitated Due to Conflicting Policies in the Development or the Objectives are not Clearly Stated (Section 37 (2)(b)(ii) of the Act), the Proposed Development can be Facilitated Through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act) and Can be Facilitated Having Regard to the Pattern of Development, and Permissions Granted, in the Area since the making of the Development Plan (Section 37 (2)(b)(iv) of the Act)

The guidance with respect to height is defined in the *Building Height Strategy* set out in Appendix 5 of the *Dún Laoghaire-Rathdown County Development Plan 2022-2028* ("Development Plan"), which has been prepared in accordance with the principles espoused in *Urban Development and Building Heights Guidelines for Planning Authorities, 2018* ("Building Height Guidelines"). Whilst the Council recognises the County's historic patterns of low-rise development, it acknowledges the trend towards taller developments and the national policy and environmental factors that drive this in support of more sustainable and resilient urban development and compact growth.

The basis for additional height is driven by the principle of securing an increase in land-use intensities and residential densities, informed by planning policy at all levels that prioritises new development in existing urban areas rather than in greenfield locations. Therefore, with

limited sites and site areas available, it is generally necessary, and indeed more sustainable, to 'build up, not out'.

Of relevance to the proposed development is Policy Objective BHS 3 of Appendix 5 (Building Height in Residual Suburban Areas)¹ of the Development Plan, which states the following:

"It is a policy objective to promote general building height of 3 to 4 storeys, coupled with appropriate density in what are termed the residual suburban areas of the County provided that proposals ensure a balance between the reasonable protection of existing amenities including residential amenity and the established character of the area.

Having regard to the Building Height Guidelines and more specifically in order to apply SPPR 3 there may be instances where an argument can be made for increased height and/or taller buildings in the residual suburban areas. Any such proposals must be assessed in accordance with the criteria set out below in table 5.1 as contained in Section 5. The onus will be on the applicant to demonstrate compliance with the criteria.

Within the built up area of the County increased height can be defined as buildings taller than prevailing building height in the surrounding area. Taller buildings are defined as those that are significantly taller (more than 2 storeys taller) than the prevailing height for the area."

Therefore, to demonstrate the proposed development's compliance and accordance with the provisions of Table 5.1 in the *Development Plan's* Height Strategy, a series of responses to the criteria included in the Table is set out below in Table 3.1 of this Report.

At County Level	
Criterion	<i>"Proposal assists in securing objectives of the NPF, in terms of focusing development in key urban centres, fulfilling targets in relation to brownfield, infill development and delivering compact growth."</i>
Response	<p>The proposed development will strongly support the attainment of the NPF's objectives. The current site is comprised of just 2 No. residential dwellings, equating to an unsustainable residential density of 2.4 uph. However, the proposed development's 137 No. units will yield a significantly more appropriate and sustainable density of 165 uph. This increase in housing delivery and density are supportive of, and in alignment with, the following National Policy Objectives (NPOs) of the <i>NPF</i> (amongst others):</p> <p>NPO 2a – <i>"A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs."</i></p> <p>NPO 3a – <i>"Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements."</i></p>

¹ A "residual area", as defined by the Development Plan in the context of height, is noted as being an area "not covered by an existing or forthcoming Local Area Plan or other guidance/policy as set out in this plan and not falling into objective, B, G or GB are termed residual suburban areas."

	<p>NPO 3b – “Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.”</p> <p>NPO 5 – “Develop cities, towns and villages of sufficient scale and quality to compete internationally and to be drivers of national and regional growth, investment and prosperity.”</p> <p>NPO 35 – “Increased 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.”</p> <p>These NPOs seek to focus future development in existing urban environments, more efficiently using land resources and developing the critical mass required to provide public transport and local services and to sustain local businesses. Importantly, they also underpin the NPF’s primary National Strategic Outcome (NSO), ‘Compact Growth’.</p> <p>Further discussion in respect of the proposed development’s alignment with the <i>NPF</i> is included in the <i>Statement of Consistency</i>, also prepared by Thornton O’Connor Town Planning.</p>
<p>Criterion</p>	<p>“Site must be well served by public transport – i.e. within 1000 metre/10 minute walk band of LUAS stop, DART Stations or Core/Quality Bus Corridor, 500 metre/5 minute walk band of Bus Priority Route - with high capacity, frequent service and good links to other modes of public transport.”</p> <p>A note in the <i>Development Plan</i> states that this criterion does not apply to the site and development in question, as they fall under Policy Objective BHS 3 relating to Residual Areas.</p>
<p>Response</p>	<p>Notwithstanding the fact that this criterion does not apply to areas that fall under Policy Objective BHS 3, the subject site is well served by public transport, as well as active transport options.</p> <p>Presently, Sandyford Road to the immediate front of the site, is served by Bus Route Nos. 44B (Dundrum – Glencullen) and 114 (Sandyford/Ballinteer – Blackrock). In Sandyford Village (within short walking distance) Bus Route No. 44 is available (Enniskerry – Dublin city centre). In addition, the Green Luas line Glencairn stop (Bride’s Glen – Broombridge) is approximately a 20–25-minute walk or 7-minute cycle from the site. It is also noted that the subject site falls within the Section 49 LUAS Development Contribution Scheme area and, therefore, is recognised by the Council as benefiting from the Luas.</p> <p>These modes of transport provide direct connections throughout the city region, including the city centre, where residents can easily transfer to other routes and modes for onward connectivity.</p> <p>It is also noted that Sandyford Road is identified in the <i>Development Plan</i> as having a 6-Year Road Objective, which if delivered, will significantly increase the capacity of the road network, which may support additional bus services available to future residents of the proposed development.</p>

	<p>The development itself proposes cycle parking that exceeds the minimum standards, with the site itself well served by northbound and southbound off-road cycle paths at Sandyford Road.</p>
Criterion	<p><i>"Proposal must successfully integrate into/enhance the character and public realm of the area, having regard to topography, cultural context, setting of key landmarks. In relation to character and public realm the proposal may enclose a street or cross roads or public transport interchange to the benefit of the legibility, appearance or character of the area."</i></p>
Response	<p>The proposed development will create a strong and defined frontage along Sandyford Road, albeit with an appropriate setback to protect future residents' amenities and to provide attractive planting and necessary infrastructure. This will also support the activation of the site, which is currently muted due to the long stretch of relatively high boundary wall.</p> <p>The design of the development and its layout is such that the taller elements front Sandyford Road (west), with a transition down in levels to generally 3 No. storeys (in the east). This ensures that the development integrates with the existing 2-storey development to the east in Coolkill and Sandyford Downs, respecting the pattern of development present thereat, but allowing for a gradual uplift in height at select locations, and an increase in density overall.</p>
Criterion	<p><i>"Protected Views and Prospects: Proposals should not adversely affect the skyline, or detract from key elements within the view whether in foreground, middle ground or background. A proposal may frame an important view."</i></p>
Response	<p>It is not evident that the subject site is not proximate to the principal line of sight of any Protected Views or Prospects.</p>
Criterion	<p><i>"Infrastructural carrying capacity of area as set out in Core Strategy of CDP, relevant Urban Framework Plan or Local Area Plan."</i></p>
Response	<p>In terms of the waste water and transport infrastructure projects listed for delivery in Sandyford, none are believed to apply to the subject site, with their focus being the Sandyford Urban Framework Plan area.</p> <p>Generally, with respect to water services, the Confirmation of Feasibility issued by Irish Water confirmed the feasibility of connecting to their potable water and foul water networks. Further details of the proposals are contained in Torque Consulting Engineers' <i>Engineering Services Report</i>.</p> <p>NRB Consulting Engineers' <i>Bus/Luas Capacity Report</i> (included as Appendix I to their <i>Transportation Assessment Report</i>) involved an assessment of expected demand for bus and Luas services and their existing use. It concluded that <i>"the additional demand for Bus/LUAS trips as a result of the proposed development can be accommodated on the existing & improved services without any noticeable effect."</i></p> <p>In relation to social and community infrastructure, the <i>Social Infrastructure Audit</i> and <i>Childcare Demand Assessment</i> prepared by KPMG Future Analytics are of relevance. The Reports indicate the availability of adequate childcare and school places within the environs of the subject site to meet the demand generated by the development and ample provision of a broad range of</p>

	community facilities and services. Both Reports are included as part of the planning application pack.
At District/Neighbourhood/Street Level	
Criterion	<i>"Proposal must respond to its overall natural and built environment and make a positive contribution to the urban neighbourhood and streetscape."</i>
Response	<p>The existing site does not include any notable natural features, with all trees and hedges thereat deemed to be unsustainable (The Tree File) and appropriate for removal. In terms of the built environment, there are no Protected Structures, Recorded Monuments or Places, or Architectural conservation Areas at, or in the immediate environs of, the subject site. Consequently, there are no protected or sensitive natural or built features at risk of negative impacts that may arise as a result of the realisation of up to 6 No. storeys at the subject site.</p> <p>The proposed development strikes a balance between respecting the residential amenity of the existing 2-storey residences to the east, and also using height to increase land-use intensity and residential density in a sustainable and efficient manner in accordance with national, regional and local policy. This has been achieved by providing ample separation distances, obscuring windows at upper levels where necessary, gradually increasing height from lower levels at the east to higher levels at the west of the site and providing ample, carefully considered landscape planting along the length or the eastern boundary (as well as northern and southern boundaries).</p> <p>The development will make a positive contribution to the neighbourhood and streetscape by: delivering a new pedestrian connection to Cul Cuille to the north; bringing the building line forward and creating a newly defined urban edge at Sandyford Road, with activation at street level; enhancing the natural vegetation at the site by introducing a broad planting regimen; augmenting the critical mass required to sustain local service provision and businesses; and broadening the number and type of housing options available in the area.</p>
Criterion	<i>"Proposal should not be monolithic and should avoid long, uninterrupted walls of building in the form of slab blocks. "</i>
Response	<p>Horan Rainsford Architect's (HRA) design of the proposed Blocks has sought to intentionally avoid the inclusion of monolithic elevations and large blank facades, actively articulating and fenestrating them to make them attractive, engaging and rhythmic. For example, alternating brickwork, with some horizontal and some vertical features, and elements of slightly recessed brickwork, activate and diffuse the elevations where no windows are proposed (e.g. west elevation of Block D). Where small portions of blank elevations are present, this is to prevent overlooking and/or where they are amply screened by proposed or existing vegetation; therefore, they will not be directly visible.</p> <p>In terms of the development being perceived as monolithic, this is not the case, with the breakdown of the built massing achieved by the creation of 4 No. Blocks, the transitioning in heights and the active fenestration of elevations.</p> <p>An Bord Pleanála is directed to the following Drawings prepared by HRA, which emphasise these points: <i>Proposed Site Elevations, Proposed Contiguous</i></p>

	<i>Elevations and the Proposed Elevations & Sections Drawings for each of the 4 No. Blocks.</i>
Criterion	<i>"Proposal must show use of high quality, well considered materials. "</i>
Response	Per the <i>Material Treatment</i> Drawing prepare by HRA, a mix of high-quality materials is proposed to deliver an attractive and hard-wearing development that requires lower levels of maintenance. These include light red brick (laid vertically and horizontally), light red render and charcoal metalwork for Blocks A and C and cream brick (laid vertically and horizontally), cream render and charcoal metalwork for Blocks B and D. The colours and tones of the materials are of a respectful palette and will create rhythm and distinction as they alternate between the Blocks.
Criterion	<i>"Proposal where relevant must enhance urban design context for public spaces and key thoroughfares and marine or river/stream frontage. "</i>
Response	In the case of the proposed development, as detailed above, it will create a newly redefined frontage onto Sandyford Road. This will be a new urban edge and interface at this location, due to the current context at the site being that of low-rise, low density dwellings that do not relate to the road frontage. The benefit of this will also be the creation of a new active edge, creating a more vibrant and engaging environment. Importantly, the development will not be gated or setback behind the boundary wall that exists at Sandyford Road, ensuring that it reads as being open and connected with the public realm along the Road.
Criterion	<i>"Proposal must make a positive contribution to the improvement of legibility through the site or wider urban area. Where the building meets the street, public realm should be improved."</i>
Response	The proposed development includes the removal of the existing western boundary wall and the construction of the proposed development facing Sandyford Road, thereby creating a new urban edge and interface with the Road. This is a positive element of the development, enhancing the public realm and removing the perception of this area being private and segregated due to the presence of the relatively high boundary wall and gated entrances serving the existing detached dwellings set quite far back from the Road. Attractive and varied planting will act as a gentle, natural buffer between the Road and the residential buildings. Legibility, navigability and permeability will be enhanced by the creation of the new pedestrian connection to the north at Cul Cuille and the orientation of the residential Blocks generally along an east-west axis, which makes line-of-sight and movement into the development easier, safer and quicker.
Criterion	<i>"Proposal must positively contribute to the mix of uses and /or building/dwelling typologies available in the area. "</i>
Response	The environs of the subject site have generally been comprised of low-rise, low-to-medium-density residential development. The predominance of this pattern of development is evidenced in the established residential areas of Kilcross, Coolkill, Sandyford Downs, Hillcrest Road, Blackglen Road and Sandyford Village. Consequently, the proposed development is a progressive and proactive effort by the Applicant to enhance the housing stock in this part of the County

	<p>by providing an alternative housing type to that which dominates the immediate locality. Pursuing a residential apartment development is also seen as the most appropriate means through which to increase residential densities and to use scarce urban land resources more appropriately.</p>
Criterion	<i>"Proposal should provide an appropriate level of enclosure of streets or spaces. "</i>
Response	<p>Within the development itself, the main entrance and the smaller pedestrian and cycle entrances have been designed with widths that meet their requirements, but also to create a sense of place and benefit from passive surveillance. Given the tallest elements of the development only ever reach 6 No. storeys, these spaces will never feel as though they are affected by overbearance and are very much of 'human scale'.</p> <p>Along the front of the site, the building line of the proposed Blocks will create a new urban edge with Sandyford Road, redefining the sense of place in a positive way. Furthermore, this more assertive interface will enhance the creation of placemaking and perception of this area now being an accessible public environment (that is lacking presently due to the existing extensive boundary wall). Subtle planting to the front of the site will soften the built-form and create a natural buffer between the Blocks and the Road itself.</p> <p>Within the communal amenity space areas (discussed below), the intention has been to create a variety of different spaces to serve different purposes and preferences. The lawned kick-about spaces are intended to be broad and somewhat more expansive, whilst many of the seating and break-away areas are more intimate and enclosed, complemented by the proposed planting regimen.</p>
Criterion	<i>"Proposal should be of an urban grain that allows meaningful human contact between all levels of buildings and the street or spaces"</i>
Response	<p>The Block orientation is principally along an east-west axis. The benefit of this is that it will create a new urban grain and built rhythm along Sandyford Road, rather than a single impenetrable curtain of development running parallel to the Road.</p> <p>This grain and the overall height of the Blocks and their separation distances have been designed to be of a human scale and not overbearing; their height, positioning on the site and materiality mean that residents, visitors and passers-by can engage with them.</p> <p>The landscaped spaces between the Blocks and the communal amenity spaces to the rear have been carefully designed and planted to give them a sense of expanse and freedom in the lawned (kick-about) areas and intimacy and enclosure in the seating and break-away areas.</p> <p>Furthermore, the external communal amenity spaces provide a variety of different features that will promote human interaction, engagement and socialising, including the seating areas, outdoor work-from-home spaces, children's play area, toddler's play area and lawns. This will be bolstered by the internal communal amenity spaces (gym and hot desk), which promote the creation of a community within the development, rather than it being solely a series of dwelling units.</p>

Criterion	<i>"Proposal must make a positive contribution to the character and identity of the neighbourhood."</i>
Response	<p>The proposed development has been designed to make a positive and lasting contributions to the character and identity of the neighbourhood by following means:</p> <ul style="list-style-type: none"> • Redefining the building line and interface along Sandyford Road, by the construction of the Blocks fronting onto the Road, this will create a new physical urban edge at the site which is otherwise missing due to the presence of the relatively tall wall along its entire western boundary; • The above approach to the design will also activate Sandyford Road, in terms of both built-form (i.e. visually/aesthetically) and human presence and vibrancy, something that is lacking at this location; • A significant planting regimen is proposed that includes, amongst other features and plants, approximately 130 No. trees, which will create an attractive, lush and ecologically beneficial environment as they mature; and • The addition of 137 No. apartment units will broaden the total housing stock in the area, but also the housing types and sizes, thereby accommodating a broader range of residents (with different socio-economic backgrounds and incomes, life stages, household sizes, etc.) than would have otherwise lived here, which will support community building and integration.
Criterion	<i>"Proposal must respect the form of buildings and landscape around the site's edges and the amenity enjoyed by neighbouring properties."</i>
Response	<p>The proposed development's height and block massing have been carefully designed to respect the existing residences on neighbouring sites, as well as those that are proposed or awaiting a planning application decision. This has been done by staggering the heights of the proposed Blocks, rising up from the 1 No. and 3 No. storey elements to the east (closest to Coolkill), gradually reaching 6 No. storeys fronting Sandyford Road. In addition, separation distances of at least 22 m have been achieved between the Blocks and the rear elevations of the dwellings at Coolkill. By employing this approach, the design has had regard for the residential amenity, privacy and built-form of neighbouring properties to ensure that overlooking and impacts on daylight and sunlight do not occur.</p> <p>With respect to landscaping, the proposed development will respect the established landscaping outside of the site area to the north, east and south. This will be augmented by a significant landscape plan that proposes substantial boundary treatments and tree planting (in excess of 130 No. trees).</p>
At site/building scale	
Criterion	<i>"Proposed design should maximise access to natural daylight, ventilation and views and minimise overshadowing."</i>
Response	<p>The proposed development has been carefully designed to ensure there is minimal impact on the daylight and sunlight reaching the existing and proposed residences on adjacent sites. This is thoroughly detailed in 3D Design Bureau's <i>Daylight and Sunlight Assessment Report</i> and further discussed in Section 5.4.1 of this Report.</p>

	<p>Within the proposed development itself, the units perform well in terms of Average Daylight Factor (96% of rooms compliant, although 99% compliant if the reduced target value of 1.5% is used for Living/Kitchen/Dining areas). Although the compliance rates for Annual Probable Sunlight Hours and Winder Probable Sunlight Hours for living rooms and Sun on Ground for balconies are lower by comparison, the results are considered reasonable and acceptable as 100% compliance is difficult to achieve in urban and suburban environments and on sites with existing constraints (shape, size, adjacent uses/development, etc.).</p>
Criterion	<p><i>"Proposal should demonstrate how it complies with quantitative performance standards on daylight and sunlight as set out in BRE guidance "Site Layout Planning for Daylight and Sunlight" (2nd Edition). Where a proposal does not meet all the requirements, this must be clearly identified and the rationale for any alternative, compensatory design solutions must be set out. On relatively unconstrained sites requirements should be met."</i></p>
Response	<p>The <i>Daylight and Sunlight Assessment Report</i> prepared by 3D Design Bureau includes a detailed assessment and review of the proposed development and the possible impacts of the proposed development on existing and potential neighbouring developments. The Board is directed to review this Report, included as part of this application pack, and also to Section 5.4.1 of this Report, which assesses impacts on residential amenity and privacy.</p>
Criterion	<p><i>"Proposal should ensure no significant adverse impact on adjoining properties by way of overlooking overbearing and/or overshadowing."</i></p>
Response	<p>As articulated in response to the preceding criteria, the proposed development has been carefully designed to ensure that it is not overbearing in its design. Its stepped heights and distributed massing result in a scheme that respects existing and proposed developments. Furthermore, windows have been orientated and/or obscured to prevent future residents of the development imposing upon the privacy of others.</p> <p>In terms of overshadowing, as noted above, the proposed development has little to no impact on neighbouring or granted/proposed adjacent residences. In some instances, the proposed development will have positive effects.</p>
Criterion	<p><i>"Proposal should not negatively impact on an Architectural Conservation Area (ACA) or the setting of a protected structure."</i></p>
Response	<p>The subject site does not include nor is it within an Architectural Conservation Area. In addition, there are no protected structures on-site. Therefore, there is no risk of negative impacts on any Architectural Conservation Areas or protected structures.</p>
Criterion	<p><i>"Proposals must demonstrate regard to the relative energy cost of and expected embodied and operational carbon emissions over the lifetime of the development. Proposals must demonstrate maximum energy efficiency to align with climate policy. Building height must have regard to the relative energy cost of and expected embodied carbon emissions over the lifetime of the development."</i></p>
Response	<p>Careful regard has been given to the energy costs and efficiency associated with the proposed development, both in terms of its construction and embodied carbon and in terms of its operation and occupation. The longevity of the structures' lives, the energy systems proposed, demolition and construction phases (and the release of stored carbon) have been considered</p>

	as part of the design process. Although the delivery of the development will result in the emission/production of carbon and other greenhouse gases, it is intended that these will be minimised wherever practicable, with the net gain associated with the provision of a high-quality, sustainable development close to public and amenities considered to be significant. Further discussion in relation to these matters features in the <i>Sustainability Statement</i> and <i>Building Lifecycle Report</i> .
County Specific Criteria	
Criterion	<i>"Having regard to the County's outstanding architectural heritage which is located along the coast , where increased height and/or taller buildings are proposed within the Coastal area from Booterstown to Dalkey the proposal should protect the particular character of the coastline. Any such proposals should relate to the existing coastal towns and villages as opposed to the coastal corridor."</i>
Response	This criterion is not deemed applicable to the subject site or proposed development.
Criterion	<i>"Having regard to the high quality mountain foothill landscape that characterises parts of the County any proposals for increased heights and/or taller building in this area should ensure appropriate scale, height and massing so as to avoid being obtrusive."</i>
Response	At a maximum height of just 6 No. storeys, the proposed development will not be obtrusive and of a scale that would negatively impact on the quality and amenity value of the County's <i>"high quality mountain foothill landscape"</i> . Furthermore, it is sufficiently distant and screened by topography, existing and future development and vegetation from the amenity areas at Ticknock, Ballyedmonduff, Three Rock and Fairy Castle to the south and south-west. No concerns in relation to impacts on the mountain foothill landscape were raised in the enclosed <i>Landscape Visual Impact Assessment</i> prepared by Mitchell + Associates. Furthermore, the development is not considered to be of any more significant a scale than many of the existing and proposed developments further to the south in more sensitive locations in Stepside, Aiken's Village and Belarmine, which are markedly closer to the County's mountain foothills.
Criterion	<i>"Additional specific requirements (Applications are advised that requirement for same should be teased out at pre planning's stage)."</i>
Response	This criterion is not deemed applicable.
Criterion	<i>"Specific assessments such as assessment of microclimatic impacts such as down draft."</i>
Response	A <i>Microclimate Assessment</i> was prepared by AWN Consulting and is included as part of this planning application pack. It is recommended that An Bord Pleanála consults this document for the technical assessment, which ultimately concluded that: <i>"The existing environment experiences B3/B4 conditions for much of the time which correspond to a gentle breeze. Based on the analysis conducted it was concluded the proposed development would have no significant effects with regard to microclimate."</i> In addition, a <i>Noise Impact Assessment</i> was prepared by RSK Ireland Ltd. This Report considered the impact of noise during the construction and operation

phases on adjacent residential areas and the impact of traffic at Sandyford Road on the future residents of the proposed development.

The *Noise Impact Assessment* concluded the following:

"Baseline monitoring has found pre-existing noise levels are typical of a suburban location in the vicinity of a busy regional road. Local and distant traffic were the primary contributor to the noise environment on site. Baseline noise measurement data has been corrected to account for the impacts relating to Covid-19 restrictions.

An assessment of the potential construction phase noise impacts has been conducted, following the procedures as outlined in BS 5228-1:2009+A1:2014. At the majority of locations, and for the majority of phases, calculated noise levels are within construction noise significance thresholds. At locations closest to the site boundary, potential significant construction noise effects are predicted, this is primarily due to the short distance between the works area and these neighbouring dwellings. The adoption and implementation of the noise control measures outlined in the relevant sections of this document is expected to reduce impacts to an acceptable level.

In the developments operational phase, criteria have been set for new building services plant items in accordance with the methodologies outlined in BS 4142:2014+A1:2019. It has been concluded that the likely noise impact of the developments in its operational phase is not significant.

This report also considers the potential inward impact of road traffic on the proposed development. Assessment methodologies use guidance from *The Professional Guidance on Planning & Noise* (ProPG), May 2017. The two primary stages of the ProPG assessment are the "Stage 1" initial noise risk assessment of the proposed site and "Stage 2" detailed appraisal of the proposed development and preparation of an Acoustic Design Statement (ADS).

The site noise survey has also been used to assess the sites noise risk categories, as per the ProPG "Stage 1" assessment. The ProPG noise risk categories are as follows:

Daytime: **Medium**

Night-time: **Medium**

Recommendation to mitigate noise emissions, as specified in the "Stage 2" Acoustic Design Statement, include the following:

- *Provision of glazing with minimum sound insulation properties as outlined in this document.*
- *Provision of acoustic attenuation to ventilation systems for dwellings exposed to the highest levels of traffic noise.*

	<i>In summary, it is considered that the site is suitable for residential development subject to the provision of the noise control recommendations as outlined in this report."</i>
Criterion	<i>"Potential interaction of building, materials and lighting on flight lines in locations in proximity to sensitive bird/bat areas."</i>
Response	<p>The development is not of a height that would interfere with flight lines and is not of such significant lengths/widths or design that would be considered likely to 'trap' birds and bats between the Blocks.</p> <p>No specific issue in relation to this criterion was raised in the <i>Ecological Impact Assessment</i> prepared by Enviroguide Consulting.</p>
Criterion	<i>"Assessment that the proposals allow for the retention of telecommunications channels, such as microwave links."</i>
Response	The <i>Telecommunications Report</i> prepared by ISM identified that 2 No. microwave links to the west of the subject site may be impacted by the proposed development. Therefore, to mitigate these impacts, the proposed development also includes the installation of 4 No. 300 mm microwave transmission link dishes mounted on 2 No. steel support poles affixed to the life shaft overrun on Block D. These will be encased in radio friendly GRP shrouds to reduce possible visual impacts.
Criterion	<i>"An assessment that the proposal maintains safe air navigation."</i>
Response	<p>The subject site is not within the 'Inner Approach Area' or 'Critical Safety Zone' of Casement (Baldonnell) Aerodrome or Weston Airport, nor is it within either the 'Inner Public Safety Zone' or the 'Outer Public Safety Zone' of Dublin Airport.</p> <p>Therefore, and based on the proposed development's height of up to just 6 No. storey (up to 138 mAOD), it is not deemed necessary to prepare an Aviation Assessment in relation to the maintenance of safe air navigation. However, should An Bord Pleanála deem it prudent to liaise with the Irish Aviation Authority in advance of commencement of development, this could be instructed by way of condition to a grant of planning permission.</p>
Criterion	<i>"Relevant environmental assessment requirements, including SEA, EIA (schedule 7 information if required), AA and Ecological Impact Assessment, as appropriate."</i>
Response	An Bord Pleanála is directed to the <i>Ecological Impact Assessment Report</i> , <i>Appropriate Assessment Screening Report</i> and <i>Environmental Impact Assessment Screening Report</i> prepared by Enviroguide Consulting in respect of this development. They ultimately conclude that there is no reason for the development not to proceed on key ecological and environmental grounds.
Criterion	<i>"Additional criteria for larger redevelopment sites with taller buildings"</i>
Response	This criterion is not deemed applicable.
Criterion	<i>"Proposal should make a positive contribution to place making, incorporating new streets where appropriate, using massing and height to achieve densities but with variety and scale and form to respond to scale of adjoining development."</i>
Response	<p>These considerations have been core tenets of the design strategy employed by HRA. Several notable elements of the design are worth highlighting:</p> <ul style="list-style-type: none"> • The new building line, brought forward towards Sandyford Road plays a major role in placemaking and the creation of a new urban

	<p>edge and interface in the location, which has otherwise lacked activation and a sense of relationship with the public realm.</p> <ul style="list-style-type: none"> • The height and massing have been considered and distributed from 1 No. up to 3 No., 4 No., 5 No. and 6 No. storeys and varied in block forms to ensure that the development is not perceived as bulky, overbearing, obtrusive or monotonous. • The gradual change in heights is such that the lowest heights of 1 No. and 3 No. storeys are those closest to the 2-storey houses to the east at Coolkill, thereby securing a respectful transition in height and scale.
Criterion	<i>"For larger unconstrained redevelopment sites BRE standard for daylight and sunlight/any forthcoming EU standards on daylight sunlight should be met."</i>
Response	The subject site is not considered to be unconstrained, therefore, this criterion does not apply to the development. However, An Bord Pleanála is redirected to the response in relation to daylight and sunlight above.

Table 3.1: Responses to criteria in Table 5.1 of the *Dún Laoghaire-Rathdown County Development Plan 2022-2028's* Building Height Strategy

Source: Responses by Thornton O'Connor Town Planning, 2022

Informed by the responses provided to the criteria above (which are set out in Table 5.1 of the *Development Plan's* Height Strategy), it is considered that the proposed development complies and is consistent with Policy Objective PHP42 (Building Design & Height) of the *Development Plan*:

"It is a Policy Objective to:

- *Encourage high quality design of all new development.*
- *Ensure new development complies with the Building Height Strategy for the County as set out in Appendix 5 (consistent with NPO 13 of the NPF)."*

Informed by the foregoing, given the proposed development's compliance with Policy Objective BHS 3 which allows an assessment of increased height to be provided, the height of up to just 6 No. storeys is considered to be appropriate and a progressive means through which to secure additional, sustainable housing delivery. It could be argued that the objectives in relation to building height are not clearly stated and thus it is considered that the proposed building height is acceptable in line with Section 37 (2)(b)(ii) of the Act of 2000.

Furthermore, the design has sought to respect existing and proposed residences, preventing overlooking, overbearance and overshadowing. Therefore, permitting the proposed development will be in accordance with proper planning and sustainable development and a strong rationale for increased building height has been provided above in response to Table 5.1 of Appendix of the *Development Plan*. Therefore, we consider that the proposed heights are in accordance with Table 5.1 of the *Development Plan* however this has been included in the Material Contravention Statement on a precautionary basis, if An Bord Pleanála do not agree.

The subject site is located within c. 1.5 kilometres to Beacon Hospital and c. 1.6 – c. 2 kilometres to Sandyford Business Park, a significant employment district area containing over 500 No. companies, and c. 2.5 kilometres to Dundrum Town Centre. The closest LUAS station to the site is the Glencairn Station, which is c. 1.9 kilometres (20-25 minute walk or 7

No. minute cycle), providing access to light rail services to Dublin City and towards Cherrywood. Therefore, it is our opinion that, through a high standard of design, siting and layout the proposed development knits successfully with the surrounding context.

The proposed development can be facilitated through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act of 2000) as the critical need to provide student accommodation and increased building height is acknowledged throughout the following Guidelines:

- *National Planning Framework ("NPF");*
- *Regional Spatial and Economic Strategy for the Eastern and Midland Regional Assembly 2019-2031 ("RSES");*
- *Urban Development and Building Height Guidelines for Planning Authorities, December 2018 ("Building Height Guidelines");* and
- *Sustainable Urban Housing: Design Standards for New Apartments, December 2020 (Apartment Guidelines, 2020).*

Particular focus will be places on the acceptability of the proposed building height with respect to the *NPF* and *Building Height Guidelines*.

The *Urban Development and Building Heights Guidelines for Planning Authorities, 2018 ("Building Height Guidelines")* set out that a key objective of the *NPF* is to ensure that significant increases in building heights and overall density of development in our urban centres is not only facilitated but actively sought out and brought forward by our planning processes [para 1.20]. Detailed compliance with the performance criteria under Section 3.2 of these Guidelines will be considered further below.

The Development Management Principles in the Guidelines, at paragraph 3.1, state that it is Government policy that building heights must generally be increased and that planning authorities must apply certain broad principles when considering development proposals for buildings taller than prevailing building heights in pursuit of the Guidelines.

In particular, where there is a conflict between the provisions of the *Development Plan* which provide for a height generally 3-4 No. storeys [which can be increased subject to compliance with Table 5.1 of Appendix 5 of the *Development Plan*] and SPPR 3A of the *Building Height Guidelines*, which is considered further below, the provisions of the latter must be applied instead.

The *Development Plan* must now be considered in conjunction with the *Building Height Guidelines* and the objectives of the *NPF*. There is significant potential for the subject site to provide increased heights, subject to appropriate safeguards. It is our professional planning opinion that the inclusion of heights ranging in height from part-1 No. storey to part-6 No. storeys with a part-basement/part-undercroft level (at Blocks B, C and D) at the subject site can be readily absorbed without any undue impact on the character of the area or the amenity of neighbouring properties.

Despite the proposed increase in height, it has been demonstrated in the accompanying documentation, particularly the Landscape Visual Impact Assessment and Daylight and Sunlight Assessment, that the subject scheme will not have a significant material impact on

the residential amenity of existing surrounding dwellings. It is considered that the height proposed can be absorbed into the natural and built environment due to the separation distances and generous setbacks at upper levels provided from sensitive boundaries and the layout of the development has been thoroughly considered and greater heights are provided away from neighbouring dwellings.

In our opinion, the heights provided in the subject development are appropriate having regard to the express requirement in National level policy to achieve compact growth, in addition to the careful modulation of height throughout the site, which responds to the surrounding context of each individual block.

Project Ireland 2040: National Planning Framework

Project Ireland 2040: National Planning Framework ("NPF") is the Government's high-level overarching strategic plan that aims to shape the future growth and development of the country. The NPF is a long-term Framework that sets out how Ireland can move away from the current 'business as usual' pattern of development.

A number of key national policy objectives are identified throughout the NPF such as the following (in summary):

- **National Policy Objective 2a** states that a target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs.
- **National Policy Objective 3a and National Policy Objective 3b** aim to deliver at least 40% of all new homes nationally, within the build-up of existing settlements and to deliver at least 50% of all new homes that are targeted in the five main Cities within their existing built-up footprints.
- **National Policy Objective 4** aims to provide diverse and integrated communities ensuring the creation of attractive, livable, well designed, high quality urban places.
- **National Policy Objective 13** stipulates that '*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*'.
- **National Policy Objective 32** sets a target of 550,000 No. additional homes to 2040.
- **National Policy Objective 33** prioritises the provision of residential development at appropriate scales within sustainable locations.
- **National Policy Objective 35** notes the aim to increase residential density in settlements through a range of measures including (amongst others) in-fill development schemes and increased building heights.

The *NPF* sets out that:

'To effectively address the challenge of meeting the housing needs of a growing population in our key urban areas, it is clear that we need to build inwards and upwards rather than outwards.' [Our Emphasis]

TOC Comment: The proposed scheme involves the redevelopment of an underutilised brownfield site in a prime location, which will contribute towards compact growth in Dublin, in line with the objectives of the *NPF*.

We note that the *NPF* recognises that building inwards and upwards is important to effectively address the housing crisis. There is a significant importance placed in the *NPF* to develop high quality accommodation by increasing building heights in existing urban areas. The proposed development (which proposes heights of part-1 No. storey to part-6 No. storeys with a part-basement/part-undercroft level [at Blocks B, C and D]) is appropriate given the site's sustainable location and close proximity to public transport such as the LUAS Green Line connecting Sandyford to Dublin City Centre.

Urban Development and Building Heights – Guidelines for Planning Authorities (December 2018)

The *Urban Development and Building Heights Guidelines for Planning Authorities* (“*Building Height Guidelines*”) were adopted in December 2018 under Section 28 of the 2000 Act. An Bord Pleanála and Planning Authorities must have regard to these *Building Height Guidelines* and, in particular, compliance with the Specific Planning Policy Requirements (SPPRs) is mandatory (see Section 9(3)(b) of the SHD Act).

The *Building Height Guidelines* set out that a key objective of the *NPF* is to significantly increase the building heights and overall density of developments. The Minister's foreword to the *Building Height Guidelines* acknowledges that Ireland's classic development models for city and town cores has tended to be dominated by employment and retail uses, surrounded by extensive and constantly expanding low-rise suburban residential areas which is an unsustainable model. There is an opportunity for our cities and towns to be developed differently. Urban centres could have much better use of land, facilitating well located and taller buildings, meeting the highest architectural and planning standards. The *Building Height Guidelines* are intended to set a new and more responsive policy and regulatory framework for planning the growth and development of cities and towns upwards rather than outwards.

The *Building Height Guidelines* state that the:

*‘Government considers that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, **by building up and consolidating the development of our existing urban areas.**’* [Our Emphasis]

The *Building Height Guidelines* further note that:

*‘A key objective of the *NPF* is therefore to see that greatly increased levels of residential development in our urban centres and significant increases in the building heights and overall density of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels.’* [Our Emphasis]

The *Building Height Guidelines* also emphasise that increasing prevailing building heights have a critical role to play in addressing the delivery of more compact growth in our urban

areas, particularly our cities and large towns through enhancing both the scale and density of development and it notes that the planning process must actively address how this objective will be secured.

The *Building Height Guidelines* expressly seek increased building heights in urban locations:

*'In relation to the assessment of individual planning applications and appeals, it is Government policy that **building heights must be generally increased in appropriate urban locations**. There is therefore a presumption in favour of buildings of **increased height** in our town/city cores and **in other urban locations with good public transport accessibility**.'* [Our Emphasis].

The *Building Height Guidelines* also advise that taller buildings can assist in contributing to a sense of place:

*'Furthermore, while **taller buildings** will bring much needed additional housing and economic development to well-located urban areas, they **can also assist in reinforcing and contributing to a sense of place** within a city or town centre, such as indicating the main centres of activity, important street junctions, public spaces and transport interchanges. In this manner, **increased building height is a key factor in assisting modern placemaking** and improving the overall quality of our urban environments'.* [Our Emphasis]

TOC Comment: The layout of the proposed development has comprehensively considered the position of the 4 No. blocks which allows high-quality open spaces to be provided for all 137 No. units with the scheme providing an active frontage onto Sandyford Road. Therefore, it is considered that the scheme as proposed is the optimal solution for the lands.

The development will range in height from part 1 No. to 6 No. storeys (over a part-basement/part-undercroft level) with setbacks provided in each block at the upper levels. It is considered that the scheme design strikes a balance between respecting the surrounding environment of the scheme and ensuring the development potential of a strategically positioned and underutilised plot is maximised, in close proximity to Sandyford Business District and Dundrum Town Centre, which allows additional height to be absorbed into the area.

A Landscape and Visual Impact Assessment and Daylight and Sunlight Assessment have been carried out in conjunction with the design of the subject development. These assessments demonstrate that the proposed layout and design will not have an undue negative impact on its receiving environment and thus can be assimilated into the surrounding environment.

It is our professional planning opinion that the site has the capacity and capability to accommodate increased height that is actively sought in National policy guidance, particularly given the strategic location of the subject site in proximity to public transport, employment locations and services and facilities. It is considered that the scheme design strikes a balance between respecting the surrounding environment of the scheme and ensures that the development potential of a strategically positioned and underutilised plot is maximised.

Chapter 3 of the *Building Height Guidelines* expressly seeks increased building heights in urban locations:

*'In relation to the assessment of individual planning applications and appeals, it is Government policy that **building heights must be generally increased in appropriate urban locations**. There is therefore a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility.'* [Our Emphasis]

Under the heading, Development Management Principles, the *Building Height Guidelines* state (at paragraph 3.1) that it is Government policy that building heights must generally be increased, and that Planning Authorities must apply certain broad principles when considering development proposals for buildings taller than prevailing building heights in pursuit of the *Building Height Guidelines*. In addition, the Specific Planning Policy Requirements in the *Building Height Guidelines* are relevant to the assessment of this proposed development.

Section 3.1 of the *Building Height Guidelines* states that '*Planning Authorities must apply the following broad principles in considering development proposals for buildings taller than prevailing building heights in urban areas in pursuit of these guidelines*':

Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?

TOC Response: The proposed scheme involves the redevelopment of an existing underutilised, brownfield, infill site in a sustainable location. The subject development will contribute towards delivering compact growth in our urban areas. The scheme is therefore fully in accordance with the preferred approach of the *NPF*.

Is the proposal in line with the requirements of the development plan in force and which plan has taken clear account of the requirements set out in Chapter 2 of these Guidelines?

TOC Response: Other than as set out in this Material Contravention Statement, the proposal is in line with the *Development Plan*. The *Development Plan* allows an assessment of development proposals with increased height and sets out principles that will be considered when assessing capacity for height.

It is our professional planning opinion that the heights proposed principally ranging from part 1 No. storeys to part 6 No. storeys with a part-basement/part-undercroft level (at Blocks B, C and D) are appropriate at the subject lands especially having regard to the site's frontage onto Sandyford Road, in order to accord with Government policy to increase building heights in sustainable locations.

The subject scheme has been broken down into 4 No. (with set backs at the upper levels) to have minimal impact on the residential amenity of surrounding existing dwellings, which will assist in assimilating the development into the area. The Daylight and Sunlight Assessment and Landscape and Visual Impact Assessment demonstrate that these design measures have been successful in reducing any potential adverse impact on the surrounding area.

Where the relevant development plan or local area plan pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework?

TOC Response: The *Development Plan*, which was recently adopted on 21st April 2022, allows an assessment of increased height to be carried out (Table 5.1 of Appendix 5). We have provided a detailed response to Table 5.1 and in our opinion, the proposed development ranging in height from part 1 No. storeys to part 6 No. storeys with a part-basement/part-undercroft level (at Blocks B, C and D) is appropriate for the subject site. However, we have included building height in this Material Contravention Statement in the event that An Bord Pleanála consider the increase in building height to represent a material contravention of the *Development Plan*.

If a scheme of lower heights was provided, it is our opinion that this would not represent sustainable development of underutilised lands and thus it could be considered that the *Development Plan* policy seeking 3 to 4 No. storeys (with an opportunity for an assessment of further increased height allowed with respect to Table 5.1) does not align with the objectives and policies of the *National Planning Framework* ("NPF"). As detailed herein, this is delivered in a careful manner by way of stepped and staggered block massing. Based on the west elevation, Block B reads as the tallest parapet at 18.975 metres. Blocks C and D are up to 18.525 metres at parapet level, although Block D increases to 20.25 metres at the top of the proposed microwave link dishes at the highest point.

We note, in particular, National Policy Objective 35 of the *National Planning Framework*, which seeks an increase in residential density in settlements, through a range of measures including infill development schemes, area or site-based regeneration and increased building heights.

It is our opinion that the subject site has the potential for increased heights to sustainably densify this strategic site having regard to the high quality architectural composition of the scheme, the open spaces provided and the site's location at a prominent frontage onto Sandyford Road, which will all contribute towards absorbing the proposed building heights.

A Landscape and Visual Impact Assessment and Daylight and Sunlight Assessment have been carried out in conjunction with the design of the subject development which highlight that the subject site has the potential to absorb the proposed greater heights. These technical assessments demonstrate that the proposed development will not have an undue negative impact on its receiving environment.

Specific Planning Policy Requirement 3

SPPR₃ of the *Building Height Guidelines* sets out that:

'It is a specific planning policy requirement that where;

- (A) *1. an applicant for planning permission sets out how a development proposal complies with the criteria [below]; and*

2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;

then the planning authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise.'

Section 9(3) of the SHD Act provides as follows:

'(3) (a) When making its decision in relation to an application under this section, the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000.

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

We now wish to consider how the proposed development complies with the specified criteria under Section 3.2 of the *Building Height Guidelines*, which are referred to in SPPR₃ as follows²:

Development Management Criteria	
At the Scale of the Relevant City/ Town	
Assessment Criteria	Comment
<ul style="list-style-type: none"> <i>The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.</i> 	<ul style="list-style-type: none"> Presently, Sandyford Road to the immediate front of the site, is served by Bus Route Nos. 44B (Dundrum – Glencullen) and 114 (Sandyford/Ballinteer – Blackrock). In Sandyford Village (within short walking distance) Bus Route No. 44 is available (Enniskerry – Dublin city centre). In addition, the Green Luas line Glencairn stop (Bride’s Glen – Broombridge) is approximately a 20–25-minute walk or 7-minute cycle from the site. It is also noted that the subject site falls within the Section 49 LUAS Development Contribution Scheme area and, therefore, is recognised by the Council as benefiting from the Luas. These modes of transport provide direct connections throughout the city region, including the city centre, where residents

² Table 5.1 in the *Development Plan’s Height Strategy* (responded to earlier in this section) is similar to SPPR₃ of the *Building Height Guidelines*, so some repetition between responses is required.

	<p>can easily transfer to other routes and modes for onward connectivity.</p> <ul style="list-style-type: none"> • It is also noted that Sandyford Road is identified in the Development Plan as having a 6-Year Road Objective, which if delivered, will significantly increase the capacity of the road network, which may support additional bus services available to future residents of the proposed development. • The development itself proposes cycle parking that exceeds the minimum standards, with the site itself well served by northbound and southbound off-road cycle paths at Sandyford Road. • A Preliminary Planning Stage Mobility Management Plan/Travel Plan' prepared by NRB Consulting Engineers and enclosed within the Transportation Assessment provides further detail in relation to the existing and proposed public transport facilities serving the subject site. • A <i>Bus/LUAS Capacity Assessment Report</i> prepared by NRB Consulting Engineers has also been submitted as part of this application which contains details of current and future bus services and bus capacity serving the site and local area, noting that the small additional demand for Luas and bus services as a result of the proposed development '<i>can easily be accommodated within the existing services</i>'. Visual surveys were carried out on a weekday in April 2022 during normal school term to review existing demand and these surveys at AM and PM peak show bus services had in excess of 50% spare capacity (with many closer to 80% or more spare capacity). The predicted demand for Luas services will equate to 0.4% of the current carrying capacity which is considered negligible. The report concludes '<i>that the additional demand for bus/Luas trips as a result of the proposed development can be accommodated on the</i>
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	<p><i>existing and improved services without any noticeable effect’.</i></p>
<ul style="list-style-type: none"> • <i>Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/ enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake landscape and visual assessment (LVIA), by a suitably qualified practitioner such as a chartered landscape architect.</i> 	<ul style="list-style-type: none"> • It is our professional opinion that the proposed scheme will successfully assimilate into the surrounding context, regenerating the subject site through the replacement of 2 No. existing low-density houses with much needed higher density residential units, which will contribute positively towards addressing the national housing crisis. The topography of the site has also been considered in the layout i.e. there is a c. 1.5 metre – 1 metre difference between the level along Sandyford Road boundary and the eastern boundary of the site (see Section 5.3 of the Architectural Design Statement). • The proposed development will create a strong and defined frontage along Sandyford Road, albeit with an appropriate setback to protect future residents’ amenities and to provide attractive planting and necessary infrastructure. This will also support the activation of the site, which is currently muted due to the long stretch of relatively high boundary wall. • The design of the development and its layout is such that the taller elements front Sandyford Road (west), with a transition down in levels to generally 3 No. storeys (in the east). This ensures that the development integrates with the existing 2-storey development to the east in Coolkill and Sandyford Downs, respecting the pattern of development present thereat, but allowing for a gradual uplift in height in select locations, and an increase in density overall. Therefore, the subject scheme will result in the appropriate densification of a key infill site, providing much needed residential units which will contribute towards addressing the national housing crisis.

	<ul style="list-style-type: none"> • The subject scheme includes the provision of 1,299 sq m of communal open space which has been subject to detailed design by Murphy and Sheanon Horticulture and Landscape Architecture. • A Daylight and Sunlight Analysis has been carried out by 3D Design Bureau, which demonstrates that no significant material impacts will occur to the surrounding properties. • A Landscape Visual Impact Assessment has been carried out by Mitchell and Associates Landscape Architecture. The Assessment clearly demonstrates that there will be no adverse visual impact as a result of the proposed development.
<ul style="list-style-type: none"> • <i>On larger urban redevelopment sites, proposed developments should make a positive contribution to place-making, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.</i> 	<ul style="list-style-type: none"> • The subject scheme seeks to limit urban sprawl by making best use of an existing brownfield site. The proposed scheme will make a positive contribution to the surrounding area by densifying a key underutilised site and providing a high-quality residential development which will contribute positively towards addressing the national housing crisis. • The proposed development seeks to appropriately densify the subject site through increased height, providing a defined urban edge along the Sandyford Road. • The subject scheme includes the provision of 1,299 sq m of communal open space for future residents which has been subject to detailed design by Murphy + Sheanon Horticulture and Landscape Architecture. The open spaces will enhance the quality of living of future occupants and thus will positively contribute to place-making. The development will animate Sandyford Road and will provide a pedestrian connection to Cul Cuille to the north. This will be facilitated by the demolition of a short section of existing wall and the removal of some existing low-grade vegetation, with its delivery seen as being

	<p>of notable benefit to the community in terms of permeability and accessibility. This will positively contribute to place-making and create visual interest in the streetscape.</p> <ul style="list-style-type: none"> • There will be limited vehicular activity within the subject scheme which provides a public realm that prioritises ease of movement for pedestrians and bikes, by diverting vehicles to the basement shortly after entering the development site. • The scheme will result in a high-quality architectural design, which has been informed by the surrounding existing context, appropriately densifying an underutilised brownfield site, creating a clear definition to the urban edge along the Sandyford Road and providing a varied and visually interesting façade for the surrounding streetscape.
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Development Management Criteria	
At the scale of District/ Neighbourhood / Street	
Assessment Criteria	Comment
<ul style="list-style-type: none"> • <i>The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.</i> 	<ul style="list-style-type: none"> • The existing site does not include any notable natural features, with all trees and hedges thereat deemed to be unsustainable (The Tree File) and appropriate for removal. In terms of the built environment, there are no Protected Structures, Recorded Monuments or Places, or Architectural conservation Areas at, or in the immediate environs of, the subject site. Consequently, there are no protected or sensitive natural or built features at risk of negative impacts that may arise as a result of the realisation of up to 6 No. storeys at the subject site. • The high-quality design of the proposed development will allow the development to be integrated into the surrounding area and as noted above, will positively enhance the legibility and streetscape of the surrounding area.

	<ul style="list-style-type: none"> • The proposed development strikes a balance between respecting the residential amenity of the existing 2-storey residences to the east, and also using height to increase land-use intensity and residential density in a sustainable and efficient manner in accordance with national, regional and local policy. This has been achieved by providing ample separation distances, obscuring windows at upper levels where necessary, gradually increasing height from lower levels at the east to higher levels at the west of the site and providing ample, carefully considered landscape planting along the length of the eastern boundary (as well as northern and southern boundaries). • The development will make a positive contribution to the neighbourhood and streetscape by: delivering a new pedestrian connection to Cul Cuille to the north; bringing the building line forward and creating a newly defined urban edge at Sandyford Road, with activation at street level; enhancing the natural vegetation at the site by introducing a broad planting regimen; augmenting the critical mass required to sustain local service provision and businesses; and broadening the number and type of housing options available in the area. • In designing the subject scheme, the Applicant has ensured that sufficient land is reserved along the western boundary of the subject site to allow for the future upgrade works to take place. • The design of the 1,299 sq m of communal open space includes toddler's play area, children's play area, seating, lawns, planting and pedestrian paths, which will positively contribute to the natural environment. • Given the context and size of the subject site, the site is suitable to accommodate building heights of part 1 to part 6 No.
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	<p>storeys, whilst remaining respectful of the surrounding context through the adoption of separation distances to sensitive boundaries and the set back of the uppermost levels of the proposed blocks. Therefore, it is our opinion that, through a high standard of design, siting and layout the proposed development knits successfully with the surrounding context.</p>
<ul style="list-style-type: none"> • <i>The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.</i> 	<ul style="list-style-type: none"> • The Architectural Design Statement prepared by HRA enclosed with application, details the use of materials, the elevational treatment and modulated height arrangement which break up the massing of the proposed development. • The design of the proposed blocks has sought to intentionally avoid the inclusion of monolithic elevations and large blank facades, actively articulating and fenestrating them to make them attractive, engaging and rhythmic. For example, alternating brickwork, with some horizontal and some vertical features, and elements of slightly recessed brickwork, activate and diffuse the elevations where no windows are proposed (e.g. west elevation of Block D). Where small portions of blank elevations are present, this is to prevent overlooking and/or where they are amply screened by proposed or existing vegetation; therefore, they will not be directly visible. • In terms of the development being perceived as monolithic, this is not the case, with the breakdown of the built massing achieved by the creation of 4 No. Blocks, the transitioning in heights and the active fenestration of elevations. • An Bord Pleanála is directed to the following Drawings prepared by HRA, which emphasise these points: Proposed Site Elevations, Proposed Contiguous Elevations and the Proposed Elevations & Sections Drawings for each of the 4 No. blocks.

	<ul style="list-style-type: none"> • Per the Material Treatment Drawing prepare by HRA, a mix of high-quality materials is proposed to deliver an attractive and hard-wearing development that requires lower levels of maintenance, which demonstrates that the materials and building fabric are well considered. These include light red brick (laid vertically and horizontally), light red render and charcoal metalwork for Blocks A and C and cream brick (laid vertically and horizontally), cream render and charcoal metalwork for Blocks B and D. The colours and tones of the materials are of a respectful palette and will create rhythm and distinction as they alternate between the Blocks.
<ul style="list-style-type: none"> • <i>The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/ marine frontage, thereby enabling additional height in development form to be favourably considered in terms of enhancing a sense of scale and enclosure while being in line with the requirements of "The Planning System and Flood Risk Management – Guidelines for Planning Authorities (2009)".</i> 	<ul style="list-style-type: none"> • In the case of the proposed development, as detailed above, it will create a newly redefined frontage onto Sandyford Road. This will be a new urban edge and interface at this location, due to the current context at the site being that of low-rise, low density dwellings that do not relate to the road frontage. The benefit of this will also be the creation of a new active edge, creating a more vibrant and engaging environment. • Importantly, the development will not be gated or setback behind the boundary wall that exists at Sandyford Road, ensuring that it reads as being open and connected with the public realm along the Road. • The scheme includes 15.6% of the developable site area designated as high-quality communal open space. • The Flood Risk Assessment prepared by Torque Consulting Engineers has been prepared in accordance with the The Planning System and Flood Risk Management – Guidelines for Planning Authorities and concludes that: <i>'A review of the OPW's Historical Flood Maps does not indicate any previous</i>

	<p><i>instances of flooding on the subject lands.</i></p> <ul style="list-style-type: none"> <i>• The subject lands are located outside of the 0.1% predicted fluvial flood zone and in a low-risk area for pluvial flooding.</i> <i>• The subject lands are located outside the 0.1% predicted tidal flood zone, and are designated as being in Flood Zone C.</i> <i>• Assessment of the OPW's Historical Flood Maps reports show no instances of Pluvial flooding in the vicinity of the development site.</i> <i>• The site is not required to be reviewed under Dun Laoghaire Rathdown County Councils requirement for a justification test and is deemed to be in compliance with their County Development Plan 2022-2028 flood risk strategy requirements.</i> <i>• There is no geological evidence of karst formations beneath the subject site and as such the likelihood and on-site flooding due to groundwater is deemed to be remote and within acceptable levels.</i> <i>• The implications of pipe blockages and exceedance rainfall events have been identified and models as part of the surface water design process, see ESR which is also part of this submission.'</i>
<ul style="list-style-type: none"> <i>• The proposal makes a positive contribution to the improvements of legibility through the site or wider urban area within which the development is situated and integrates in a cohesive manner.</i> 	<ul style="list-style-type: none"> The proposed development includes the removal of the existing western boundary wall and the construction of the proposed development facing Sandyford Road, thereby creating a new urban edge and interface with Sandyford Road. This is a positive element of the development, enhancing the public realm and removing the perception of this area being private and segregated due to the presence of

	<p>the relatively high boundary wall and gated entrances serving the existing detached dwellings set quite far back from the Road. Attractive and varied planting will act as a gentle, natural buffer between the Road and the residential buildings.</p> <ul style="list-style-type: none"> • Legibility, navigability and permeability will be enhanced by the creation of the new pedestrian connection to the north at Cul Cuille and the orientation of the residential blocks generally along an east-west axis, which makes line-of-sight and movement into the development easier, safer and quicker. • The high-quality design of the scheme will ensure the development will be a legible and attractive addition to the area.
<ul style="list-style-type: none"> • <i>The proposal positively contributes to the mix of uses and/ or building / dwelling typologies available in the neighbourhood.</i> 	<ul style="list-style-type: none"> • The environs of the subject site have generally been comprised of low-rise, low-to-medium-density residential development. The predominance of this pattern of development is evidenced in the established residential areas of Kilcross, Coolkill, Sandyford Downs, Hillcrest Road, Blackglen Road and Sandyford Village. • Consequently, the proposed development is a progressive and proactive effort by the Applicant to enhance the housing stock in this part of the County by providing an alternative housing type to that which dominates the immediate locality. Pursuing a residential apartment development is also seen as the most appropriate means through which to increase residential densities and to use scarce urban land resources more appropriately. • The proposed scheme seeks to contribute towards reducing the deficit in Dublin’s housing supply and will positively contribute to the mix of unit typologies available in the area. The subject site is a key underutilised infill site

	and provides a prime opportunity to provide a residential development of suitable height, scale and mass that will result in the appropriate densification of the site.
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Development Management Criteria	
At the Scale of the Site/ Building	
Assessment Criteria	Comment
<ul style="list-style-type: none"> <i>The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.</i> 	<ul style="list-style-type: none"> The proposed development has been carefully designed and modulated to ensure there is minimal impact on the daylight and sunlight reaching the existing and proposed residences on adjacent sites. This is thoroughly detailed in 3D Design Bureau's Daylight and Sunlight Assessment Report. The design of the subject scheme has evolved through a creative process, in conjunction with the results of the Daylight, Sunlight and Shadow Analysis to ensure an attractive living environment for future residents which has a limited impact on the amenity of surrounding properties. Within the proposed development itself, the units perform well in terms of Average Daylight Factor (97% of rooms compliant). Although the compliance rates for Annual Probable Sunlight Hours and Winter Probable Sunlight Hours for living rooms and Sun on Ground for balconies are lower by comparison, the results are considered reasonable and acceptable as 100% compliance is difficult to achieve in urban and suburban environments and on sites with existing constraints (shape, size, adjacent uses/development, etc.).
<ul style="list-style-type: none"> <i>Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guidelines. Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any</i> 	<ul style="list-style-type: none"> As noted above, the Daylight/Sunlight Assessment and the Landscape Visual Impact Assessment ultimately demonstrates that no material impacts will occur on neighbouring properties. The <i>Daylight and Sunlight Assessment Report</i> prepared by 3D Design Bureau

<p><i>alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and an effective urban design and streetscape solution.</i></p>	<p>includes a detailed assessment and review of the proposed development and the possible impacts of the proposed development on existing and potential neighbouring developments. The Board is directed to review this Report, included as part of this application pack, and also to Section 5.4.1 of the Planning Report, which assesses impacts on residential amenity and privacy.</p> <ul style="list-style-type: none"> • As part of a compensatory design solution for the rooms that do not meet the recommended minimum average daylight factor, the proposed development has incorporated a number of compensatory design measures including larger rooms sizes and rooms facing communal open spaces. We have included a list of the rooms that fall short of the daylight provisions and demonstrated the compensatory design measures provided in Section 3.5 of this Material Contravention Statement. • The scheme will also contribute towards achieving wider planning objectives such as increased building heights and density and the development of sustainable urban lands in proximity to public transport and services and will represent high-quality urban redevelopment for the area especially due to the new pedestrian link provided to Cul Cuille to the north and the activation of the streetscape along Sandyford Road.
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Development Management Criteria	
Site Specific Assessments	
Assessment Criteria	Comment
<ul style="list-style-type: none"> • <i>Specific impact assessment of the micro-climatic effects such as down-draft. Such assessments shall include measurements to avoid/mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the</i> 	<ul style="list-style-type: none"> • A Microclimate Assessment was prepared by AWN Consulting and is included as part of this planning application pack. It is recommended that An Bord Pleanála consults this document for the technical assessment, which ultimately concluded that:

<p><i>cumulative micro-climatic effects where taller buildings are clustered.</i></p>	<p><i>"The existing environment experiences B3/B4 conditions for much of the time which correspond to a gentle breeze. Based on the analysis conducted it was concluded the proposed development would have no significant effects with regard to microclimate."</i></p> <ul style="list-style-type: none"> • In addition, a Noise Impact Assessment was prepared by RSK Ireland Ltd. This Report considered the impact of noise during the construction and operation phases on adjacent residential areas and the impact of traffic at Sandyford Road on the future residents of the proposed development. • The Noise Impact Assessment concluded the following: <ul style="list-style-type: none"> <i>"Baseline monitoring has found pre-existing noise levels are typical of a suburban location in the vicinity of a busy regional road. Local and distant traffic were the primary contributor to the noise environment on site. Baseline noise measurement data has been corrected to account for the impacts relating to Covid-19 restrictions."</i> <i>An assessment of the potential construction phase noise impacts has been conducted, following the procedures as outlined in BS 5228-1:2009+A1:2014. At the majority of locations, and for the majority of phases, calculated noise levels are within construction noise significance thresholds. At locations closest to the site boundary, potential significant construction noise effects are predicted, this is primarily due to the short distance between the works area and these neighbouring dwellings. The adoption and implementation of the noise control measures outlined in the relevant sections of this document is expected to reduce impacts to an acceptable level.</i> <i>In the developments operational phase, criteria have been set for new building</i>
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	<p>services plant items in accordance with the methodologies outlined in BS 4142:2014+A1:2019. It has been concluded that the likely noise impact of the developments in its operational phase is not significant.</p> <ul style="list-style-type: none"> This report also considers the potential inward impact of road traffic on the proposed development. Assessment methodologies use guidance from The Professional Guidance on Planning & Noise (ProPG), May 2017. The two primary stages of the ProPG assessment are the "Stage 1" initial noise risk assessment of the proposed site and "Stage 2" detailed appraisal of the proposed development and preparation of an Acoustic Design Statement (ADS). The site noise survey has also been used to assess the sites noise risk categories, as per the ProPG "Stage 1" assessment. The ProPG noise risk categories are as follows: Daytime: Medium Night-time: Medium Recommendation to mitigate noise emissions, as specified in the "Stage 2" Acoustic Design Statement, include the following: <ul style="list-style-type: none"> Provision of glazing with minimum sound insulation properties as outlined in this document. Provision of acoustic attenuation to ventilation systems for dwellings exposed to the highest levels of traffic noise. <p>In summary, it is considered that the site is suitable for residential development subject to the provision of the noise control recommendations as outlined in this report."</p>
<ul style="list-style-type: none"> In development locations in proximity to sensitive bird and/ or 	<ul style="list-style-type: none"> The development is not of a height that would interfere with flight lines and is not

<p><i>bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight lines and/or collision.</i></p>	<p>of such significant lengths/widths or design that would be considered likely to 'trap' birds and bats between the Blocks.</p> <ul style="list-style-type: none"> No specific issue in relation to this criterion was raised in the Ecological Impact Assessment prepared by Enviroguide Consulting.
<ul style="list-style-type: none"> <i>An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.</i> 	<ul style="list-style-type: none"> The Telecommunications Report prepared by ISM identified that 2 No. microwave links to the west of the subject site may be impacted by the proposed development. Therefore, to mitigate these impacts, the proposed development also includes the installation of 4 No. 300 mm microwave transmission link dishes mounted on 2 No. steel support poles affixed to the life shaft overrun on Block D. These will be encased in radio friendly GRP shrouds to reduce possible visual impacts.
<ul style="list-style-type: none"> <i>An assessment that the proposal maintains safe air navigation.</i> 	<ul style="list-style-type: none"> The subject site is not within the 'Inner Approach Area' or 'Critical Safety Zone' of Casement (Baldonnel) Aerodrome or Weston Airport, nor is it within either the 'Inner Public Safety Zone' or the 'Outer Public Safety Zone' of Dublin Airport. Therefore, and based on the proposed development's height of up to just 6 No. storey (up to 138 mAOD), it is not deemed necessary to prepare an Aviation Assessment in relation to the maintenance of safe air navigation. However, should An Bord Pleanála deem it prudent to liaise with the Irish Aviation Authority in advance of commencement of development, this could be instructed by way of condition to a grant of planning permission.
<ul style="list-style-type: none"> <i>An urban design statement including, as appropriate, impact on the historic built environment.</i> 	<ul style="list-style-type: none"> An Architectural Design Statement prepared by Horan Rainsford Architects has been submitted with this planning application. There are no areas or buildings of historic interest in the vicinity of the site. A Landscape and Visual Impact Assessment prepared by Mitchell +

	<p>Associates Landscape Architects and Verified Views prepared by 3D Design Bureau have also been included with this planning application in order to provide a complete overview of the subject design.</p>
<ul style="list-style-type: none"> • <i>Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.</i> 	<ul style="list-style-type: none"> • An <i>Appropriate Assessment Screening Report, Environmental Impact Assessment Screening Report, Ecological Impact Assessment Report and Article 299B Statement</i> have been submitted with this planning application.

Conclusion on compliance with criteria under Section 3.2 of the *Building Height Guidelines*

Having regard to the response to each element of the Development Management Criteria outlined above, it is our considered opinion that the proposed development meets the criteria under Section 3.2 of the *Building Height Guidelines*. The application proposes a development ranging in height from part 1 No. storeys to part 6 No. storeys with a part-basement/part-undercroft level (at Blocks B, C and D), which is considered to be appropriate having regard to the location of the subject site, well served by public transport and in proximity to employment locations, services and facilities. In addition, the subject site has the ability to absorb increased height having regard to its frontage onto Sandyford Road, which has also provided the opportunity to open up the site and provide enhanced permeability to Cul Cuille to the north and an activate streetscape. It is considered that the proposed height is in accordance with Table 5.1 of Appendix 5 of the *Development Plan* which allows an assessment of increased building height, however we have included this in the Material Contravention Statement in the event that An Bord Pleanála consider the height as a material contravention of the *Development Plan*.

It is our professional planning opinion that the subject site is capable of achieving additional height and density having regard to the introduction of the *NPF* and the *Building Height Guidelines*, which encourages increased height and density on appropriate sites, particularly as this site is severely underutilised in this sustainable location. It is considered that the design response ensures that the development potential of a strategically positioned underutilised plot is maximised without impacting adversely on the amenity of adjacent properties and the surrounding area having regard to the position of the highest forms at the least sensitive locations at the subject site (fronting Sandyford Road and at a distance from the neighbouring residential units).

Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, 2020

The *Department of Housing, Planning and Local Government* published the updated *Sustainable Urban Housing: Design Standards for New Apartments* in December 2020 (“*Apartment Guidelines, 2020*”).

These Guidelines update previous guidance in the context of greater evidence and knowledge of current and likely future housing demand in Ireland taking account of the Housing Agency National Statement on Housing Demand and Supply and projected need

for additional housing supply out to 2020, the Government's *Rebuilding Ireland – Action Plan for Homelessness, 2016, Housing for All – a New Housing Plan for Ireland, September 2021* and the *National Planning Framework – Ireland 2040*, published since the 2015 Guidelines.

The Specific Planning Policy Requirements of the *Apartment Guidelines, 2020* take precedence over any conflicting policies and objectives of development plans, local area plans and strategic development zone planning schemes.

The subject site is considered to be located in an Intermediate Urban Location as set out in the *Apartment Guidelines, 2020* which states the following:

'Such locations are generally suitable for smaller-scale (will vary subject to location), higher density development that may wholly comprise apartments, or alternatively, medium-high density residential development of any scale that includes apartments to some extent (will also vary, but broadly >45 dwellings per hectare net) including:

- *Sites within or close to i.e. within reasonable walking distance (i.e. up to 10 minutes or 800-1,000m), of principal town or suburban centres or employment locations, that may include hospitals and third level institutions;*
- *Sites within walking distance (i.e. between 10-15 minutes or 1,000-1,500m) of high capacity urban public transport stops (such as DART, commuter rail or Luas) or within reasonable walking distance (i.e. between 5-10 minutes or up to 1,000m) of high frequency (i.e. min 10 minute peak hour frequency) urban bus services or where such services can be provided;*
- *Sites within easy walking distance (i.e. up to 5 minutes or 400-500m) of reasonably frequent (min 15 minute peak hour frequency) urban bus services.*

The range of locations is not exhaustive and will require local assessment that further considers these and other relevant planning factors.'

TOC Comment:

As noted in the *Apartment Guidelines, 2020*, *'the range of locations is not exhaustive and will require local assessment that further considers these and other relevant planning factors'*. In this regard, we note that the subject site is within the administrative area of the Section 49 LUAS Development Contribution Scheme and is thus reasonably considered to be within the catchment area of the LUAS Green Line. The site is in proximity to the Glencairn Luas Stop which is c. 1.9 kilometres (c. 20 -25 minute walk or c. 7 minute cycle from the site), which connects the area to the city centre.

The subject site is also located c. 1.5 kilometres to Beacon Hospital and c. 1.6- c. 2 kilometres to Sandyford Business Park, a significant employment district area containing over 500 No. companies. In addition, the closest Dublin Bus stop offers routes No. 44 and 44B from the Sandyford Road towards the City Centre and south towards Enniskerry. GoAhead Ireland Bus route No. 114 towards Rockview and Blackrock DART Station leaves every 20 minutes from Sandyford Road which is accessible at Bus Stop. 6006 (a c. 2 -minute walk, c. 150 - 200 metres away from the subject site).

Having regard to the site's location within the catchment area of the Section 49 LUAS Development Contribution Scheme, the proximate Glencairn and Luas stop, and existing bus stops, the subject site can be considered an Intermediate Urban Location, and thus can absorb increased height and density.

Regional Spatial and Economic Strategy for the Eastern and Midlands Region 2019 – 2031

The Regional Spatial and Economic Strategy for the East and Midlands Regional Assembly 2019 – 2031 (“RSES”) comprises a number of core Regional Policy Objectives which coincide with the *National Planning Framework* (“NPF”). The purpose of the guidelines are to guide all Local Authority future plans, projects and activities requiring consent of the Regional Assembly.

Under **RPO 4.3** ‘*Consolidation and Re-intensification*’ the following objective is stated:

‘Support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin city and suburbs and ensure that the development of future development areas is coordinated with the delivery of key water infrastructure and public transport projects.’ [Our Emphasis]

TOC Comment: The subject project will consist of comprising 137 No. units (32 No. one beds, 78 No. two beds and 27 No. three beds) in 4 No. blocks ranging in height from part-1 No. storey to part-6 No. storeys with a part-basement/part-undercroft level (at Blocks B, C and D) on a developable site of 0.829 Ha., with a resultant density of 165 No. units per hectare. It is our opinion that the development will result in the appropriate intensification of an infill site within close proximity to Sandyford Business District, Dundrum Town Centre and with accessible links to Dublin City Centre, in accordance with RPO 4.3 of the RSES.

The *Metropolitan Area Spatial Plan (MASP) for Dublin* contained within the RSES notes that following relevant objective **RPO 5.5**:

‘Future residential development in the Dublin Metropolitan Area shall follow a clear sequential approach, with a primary focus on the consolidation of Dublin and suburbs supported by the development of key metropolitan towns in a sequential manner as set out in the Metropolitan Area Strategic Plan (MASP) and in line with overall Settlement Strategy for the RSES. Identification of suitable residential development sites shall be supported by a quality site selection process that addresses environmental concerns.’

TOC Comment: The subject development is contained within an a built up area which is currently in transition from lower density housing to higher density apartments, a short distance from high-quality public transport, employment locations, services and facilities. Therefore, the proposed development represents consolidated growth on a brownfield site in Dublin. The Environmental Reports prepared by Enviroguide Consulting addresses all environmental items that are relevant to the site. It is our professional opinion that the proposed scheme provides an appropriate design response that will contribute towards consolidating Dublin in accordance with RPO 5.5.

Therefore, as clearly demonstrated above, the proposed development is consistent with the *NPF*, the *Building Height Guidelines*, the *Apartment Guidelines, 2020* and the *RSES* and is therefore acceptable in line with Section 37 (2)(b)(iii) of the Act.

Furthermore, it is our opinion that the proposed heights can be absorbed at the subject site having regard to the pattern of development/permissions granted in the area in recent years. Section 37 (2)(b)(iv) of the Act states the following:

"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."

We acknowledge that the current *Development Plan* was formally adopted on 21st April 2022 and that the recent grants of permission in the area were ultimately made prior to the adoption of this *Development Plan* (given that the *Development Plan* was adopted c. 1 week prior to lodging this planning application). However we still consider it prudent to outline the surrounding permitted developments/pattern of development as the area is in transition from lower density housing to higher density apartments.

The examples below relate to recent grants of permission for schemes with increased building height in proximity to the subject site:

1. Ironborn SHD – 445 No. apartment units granted on 15th July 2021 (ABP Reg Ref. ABP-309828-21) – Heights of up to 8 No. storeys granted³.
2. The Pastures – DLRCC Reg. Ref. D21A/0595 – 33 No. apartment units granted by Dún Laoghaire – Rathdown County Council on 18th August 2021 and is currently on Appeal (First and Third Party) to An Bord Pleanála (ABP Reg. Ref. ABP-312990-22) – Proposes heights of up to 5 No. storeys.
3. Mount Eagle, Kilgobbin Road – DLRCC. Reg. Ref. D18A/0609 (ABP Reg. Ref. 303196-18) – 32 No. Unit Residential Development granted on 25th April 2019 – Heights of 3 No. storeys granted.
4. Whinsfield – DLRCC Reg. Ref. D17A/1003 (ABP Reg. Ref. 302954-18) – 67 No. Unit Residential Development granted on 27th March 2019 – Heights of 4 No. storeys granted.

³ Currently subject to Judicial Review Proceedings

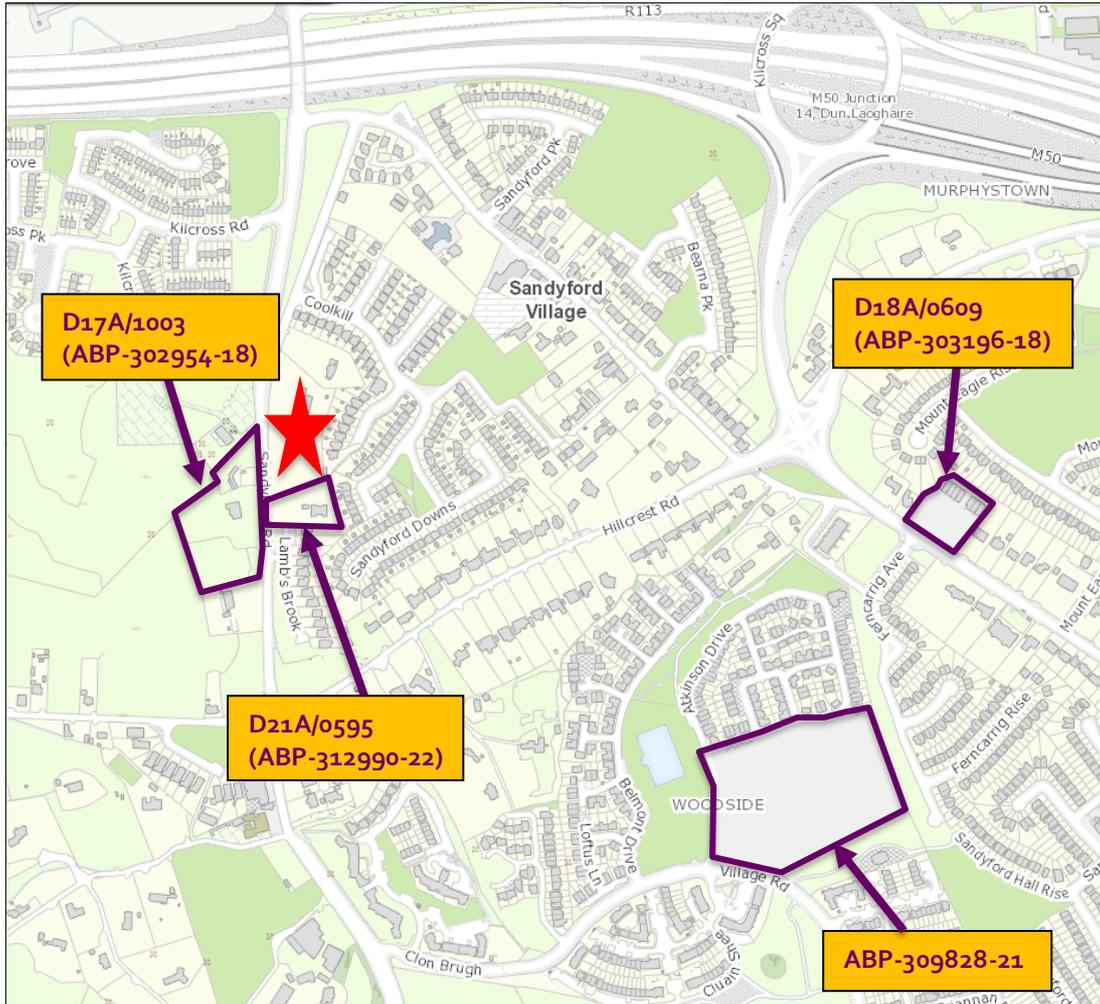


Figure 3.1: Map Showing a Relevant Recent Planning Applications in the Vicinity of the Subject Site (Subject Site Indicatively Denoted by the Red Star)

(Source: Myplan.ie, annotated by Thornton O'Connor Town Planning, 2022)

Therefore, it is our opinion that the proposed development can be absorbed into the area having regard to the pattern of development in the area and the development is thus in accordance with Section 37 (2)(b)(iv) of the Act (while caveating that the *Development Plan* was only recently adopted).

It is considered that the design response provided strikes a balance between respecting the surrounding environment of the scheme and ensuring the development potential of a strategically positioned and underutilised plot is maximised, with frontage onto Sandford Road, which allows additional height to be absorbed into the area. The scheme includes setbacks at the upper levels close to more sensitive boundaries and a landscaped buffer zone is also provided along the boundaries where required. Therefore, the proposed height and massing has been duly considered as part of the subject development.

3.3 Subject No. 2 – Car Parking Provision

Potential Material Contravention in Relation to Car Parking - The Proposed Development Can be Facilitated Due to Conflicting Policies in the Development or the Objectives are not Clearly Stated (Section 37 (2)(b)(ii) of the Act), the Proposed Development can be Facilitated Through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act) and Can be Facilitated Having Regard to the Pattern of Development, and Permissions Granted, in the Area since the making of the Development Plan (Section 37 (2)(b)(iv) of the Act)

The car parking provision has been guided by the contents of the *Development Plan* and the *Apartment Guidelines, 2020*.

As the subject site is located in Parking Zone 3 ('Remainder of County (non-rural)', based on the *Development Plan's Parking Zones Map*), the standards shown in Table 3.2 below apply to the proposed residential apartment development. It is noted that these are stated as 'absolute' standards and not maxima or minima. As also shown in the Table (based on the proposed number and mix of units) is the calculated requirement to provide 178 No. car parking spaces (equivalent to a car parking ratio of 1.3).

Unit Type	Car Parking Standard in Zone 3	Units Proposed	No. of Spaces Required
1-bed apartment	1 per unit	32	32
2-bed apartment	1 per unit	78	78
3-bed apartment	2 per unit	27	54
Visitors	1 per 10 No. units	-	14
Total		137	178

Table 3.2: Car parking standards and requirements for the proposed development

Source: *Dún Laoghaire-Rathdown County Development Plan 2022–2022* and Thornton O'Connor Town Planning, 2022

However, the *Development Plan* does allow for a deviation from the standards which it sets for car parking. Specifically, Section 12.4.5.2 of the *Development Plan* states:

"In all instances, where a deviation from the maximum or standard specified in Table 12.5 is being proposed, the level of parking permitted and the acceptability of proposals, will be decided at the discretion of the Planning Authority, having regard to criteria as set out below:

(i) Assessment Criteria for deviation from Car Parking Standards (set out in Table 12.5)

- *Proximity to public transport services and level of service and interchange available.*
- *Walking and cycling accessibility/permeability and any improvement to same.*
- *The need to safeguard investment in sustainable transport and encourage a modal shift.*
- *Availability of car sharing and bike / e-bike sharing facilities.*
- *Existing availability of parking and its potential for dual use.*
- *Particular nature, scale and characteristics of the proposed development (as noted above deviations may be more appropriate for smaller infill proposals).*
- *The range of services available within the area.*

- *Impact on traffic safety and the amenities of the area.*
- *Capacity of the surrounding road network.*
- *Urban design, regeneration and civic benefits including street vibrancy.*
- *Robustness of Mobility Management Plan to support the development.*
- *The availability of on street parking controls in the immediate vicinity.*
- *Any specific sustainability measures being implemented including but not limited to:*
 - *The provision of bespoke public transport services.*
 - *The provision of bespoke mobility interventions.*

Where a development site is located on the boundary of two or more parking zones, the level of parking provision will be decided at the discretion of the Planning Authority having regard to the criteria set out above. In Zones 1 and 2, where a deviation from the parking standards set out in Table 12.5 is being proposed, the applicant should engage with the Council at pre-planning stage regarding the acceptability of the proposal.

In support of a deviation from the *Development Plan's* standards, paragraph 4.21 of *Apartment Guidelines, 2020* states that:

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

As the *Development Plan* sets a 'fixed' standard for car parking in Parking Zone 3, it does not "*apply an appropriate maximum car parking standard*", contrary to the guidance in *Apartment Guidelines, 2020* and thus it is considered that the proposed car parking is acceptable in line with Section 37 (2)(b)(ii) of the Act of 2000 as the maximum car parking standard is not clearly stated in the *Development Plan*. National planning policy in the Guidelines clearly supports a reduction in car parking requirements and delivery as a means to encourage modal shift, which the planning authority "*must consider*". Therefore, the proposed development is consistent with National Policy and is therefore acceptable in line with Section 37 (2)(b)(iii) of the Act.

Reference should also be made to the fact that the Green Luas line is within a reasonable c. 20–25-minute walk or c. 7-minute cycle of the site, which falls within the area defined by the Section 49 Luas Development Contribution Scheme. Therefore, the Council clearly sees that development at the subject site benefits from its proximity to the Luas and this benefit should be reflected by way of an accepted reduction in the expected car parking provision.

The development proposed in this planning application includes a total of 137 No. car parking spaces at surface and semi-basement/semi-undercroft level (Lower Ground Floor). This equates to a parking ratio of 1.0 (i.e. 1 No. space per unit). Whilst this is lower than the requirements calculated in Table 3.2, it is deemed appropriate for the location of the development, the proposed mix of units, the availability of ample cycle parking and the presence of local cycling infrastructure and frequent public transport running along Sandyford Road.

Beneficially, the car parking provision includes 6 No. GoCar (car share) spaces, which NRB Consulting Engineers' *Transportation Assessment* cites are equivalent to 15 No. resident car parking spaces. Therefore, there is an "*effective car parking station [sic] ratio of ~1.6 at this*

site”, which would convert to approximately 220 No. car parking spaces; thereby exceeding the requirement for the development set by the Development Plan.

Notably, the 1.0 car parking ratio exceeds the ratio of 0.9 in the recently granted Ironborn SHD in Aiken’s Village (ABP Reg. Ref. ABP-309828-21), which is slightly further south along Sandyford Road. Therefore, it is our opinion that the proposed development can be absorbed into the area having regard to the pattern of development in the area and the development is thus in accordance with Section 37 (2)(b)(iv) of the Act (while caveating that the *Development Plan* was only recently adopted).

In assessing the proposed car parking provision of the subject scheme, NRB Consulting Engineers’ commentary in the enclosed *Transportation Assessment* remarks:

“A Travel Plan is enclosed with this application as Appendix F to demonstrate the applicant’s commitment to encourage modal shift and the use of public transport, cycling and walking.

Given the restricted number of car parking spaces provided, the scheme will also be actively marketed and promoted as a “Reduced-Car-Dependency” scheme and this will be communicated from the outset as part of sales and marketing. The development will also be managed on an on-going basis to ensure that the reduced dependency nature of the development is continually promoted and enhanced. The development will be managed and operated by a Management Company. Car parking will not be an automatic entitlement with the apartments, but spaces will be available to rent and purchase. Renting/sales of parking will be allocated to residents mainly on a first come first served basis by the Management Company and will be continually managed by the Management.

Some parking spaces will be reserved for visitors with other car parking spaces allocated for rent/sale to larger units. The allocation of car parking spaces will be reviewed/renewed on an annual/ongoing basis to suit demand.

Dedicated Clauses can and will be contained within Letting / Sales Agreements for all Residential Apartments, which specifically address Car Parking. In the event where a parking space is an entitlement as part of a Letting / Sales Agreement, this will be clearly enunciated by way of a dedicated clause, with the specific space or spaces referenced in Agreements, with mapping provided & referenced therein to identify the relevant space.”

Informed by the foregoing, the following points summarise the justifiable reduction in the provided car parking provision:

1. Flexibility to deviate from the car parking standards set by the *Development Plan* is provided by the *Development Plan* itself;
2. The *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities* state Councils must consider a reduction in the car parking standards;
3. The subject site is served at Sandyford Road and in Sandyford Village by multiple bus routes (Nos. 44, 44B, 114) providing connections throughout the city;

4. The subject site is within a 20–25-minute walk or 7-minute cycle of the Green Luas line stop at Glencairn, which provides southbound connectivity to Bride’s Glen and northbound connectivity via the city centre to Broombridge;
5. The site falls within the area defined by the Section 49 Luas Development Contribution Scheme, therefore, the Council recognises that development at the subject site benefits from its proximity to the Luas and this benefit should be reflected by way of an accepted reduction in the expected car parking provision;
6. The above-mentioned public transport options connect with other modes of public transport at key hubs, such as Dundrum (Green Luas and bus), Blackrock (DART, bus and rail), Abbey Street (Red Luas and bus);
7. The subject site is well served locally by a range of services and amenities, which can be accessed by active and public modes transport (please refer to KPMG Future Analytics’ *Social Infrastructure Audit* and *Childcare Demand Assessment*;
8. The inclusion of 6 No. GoCar spaces will meet the additional mobility needs of residents, with each such space considered to be the equivalent of 15 No. normal resident car spaces, meaning there is an effective car parking ratio of approximately 1.6;
9. All car parking spaces will be actively managed, monitored and maintained by the Management Company;
10. The prepared *Travel Plan* will be updated and provided to all future residents as a means to promote alternatives to private car ownership and use;
11. Ample cycle parking has been provided as part of the development, thereby making this a more attractive alternative as residents can store their bikes quickly, easily and safely;
12. Providing additional car parking would have resulted in a loss and reduction in the quality of open space or else a significantly larger and unviable basement level;
13. A lower level of car provision is a direct means through which to promote, encourage and leverage reduced levels of car ownership and use; and
14. The creation of additional critical mass as a result of the proposed development will assist in sustaining and promoting existing and new local services and businesses, thereby making journeys shorter, quicker and less dependent on car use.

In terms of the detail of the proposed car parking, 133 No. spaces are proposed in the semi-basement/semi-undercroft (beneath Blocks B, C and D) and 4 No. are proposed externally in 2 No. locations at street level close to the main entrance and beside Blocks A and B. The 4 No. latter spaces are dedicated set down spaces (serving a short-stay purpose).

The 133 No. spaces in the semi-basement/semi-undercroft include 7 No. mobility impaired spaces (5% of the total, which exceeds the Development Plan standard of 4%) and 31 No. electric vehicles charging spaces (23% of the total, which exceeds the *Development Plan* standard of 20%). 2 No. of the mobility impaired spaces will benefit from electric vehicle

charging points. The 106 No. spaces that will not have electric vehicle charging points at first have been designed with ducting in place so that they can be easily retrofitted in the future.

Parking will be secure, with the set down spaces benefitting from passive surveillance and their proximity to the concierge, and the spaces at semi-basement/semi-undercroft benefitting from regular movements by residents, CCTV (if required) and the entrance being opposite the concierge.

The proposed development is comprised entirely of apartments and is located c. 1.5 kilometres to Beacon Hospital, c. 1.6 – c. 2 kilometres to Sandyford Business Park, a significant employment district area containing over 500 No. companies, and c. 2.5 kilometres to Dundrum Town Centre. The closest LUAS station to the site is the Glencairn Station, which is c. 1.9 kilometres (c. 20-25 minute walk or c. 7 minute cycle), providing access to light rail services to Dublin City and towards Cherrywood. The subject site is within the catchment of the Section 49 LUAS Development Contribution Scheme and thus we consider that higher densities are required in the context of National and Local policy and the principles of proper planning and sustainable development.

The subject site is a c. 2-5 No. minute walk to bus stops on Sandyford Road, where services connect the site to Dundrum Town Centre and Dublin City Centre. The existing bus services will be enhanced as part of Bus Connects, the future bus network proposals providing frequent public transport. Having regard to the context of the subject site, in our professional planning opinion it is incumbent that a reduced car parking provision is accepted in line with Paragraph 4.21 of the *Apartment Guidelines, 2020*, and thus as noted above, the development can be facilitated through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act of 2000.

3.4 Subject No. 3 – Public Open Space

Potential Material Contravention in Relation to Car Parking - The Proposed Development Can be Facilitated Due to Conflicting Policies in the Development or the Objectives are not Clearly Stated (Section 37 (2)(b)(ii) of the Act) and the Proposed Development can be Facilitated Through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act)

The *Dún Laoghaire-Rathdown County Development Plan 2022–2028* states in Table 12.8 that a public open space standard equivalent to 15% of the site area applies to "residential development in the existing built up area." Based on the main developable site area of 0.829 Ha, this would equate to approximately 1,244 sq m. Ultimately, the *Development Plan* states in Section 12.8.3.1 that Table 12.8 (which set out the public open space requirement of 15% for the subject site) has had regard to the content of the *Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities*.

Notwithstanding the above, these Guidelines state that "for other cases [i.e. excluding greenfield, LAP and institutional lands], such as large infill sites or brown field sites public open space should generally be provided at a minimum rate of 10% of the total site area". A standard of 10% of site area as public open space would equate to 829 sq m. Therefore it could be considered that Table 12.8 and Section 12.8.3.1 of the *Development Plan* are not in alignment in relation to public open space (Section 37 (2)(b)(ii) of the Act).

However, public open space has not been included as part of the proposed development. In lieu of its provision, a financial contribution to the Council will be paid. This option is facilitated by the *Development Plan* in Section 12.8.3.1, which states:

"It is acknowledged that in certain instances it may not be possible to provide the above standards of public open space. High density urban schemes and/or smaller urban infill schemes for example may provide adequate communal open space but no actual public open space. In these instances where the required percentage of public open space is not provided the Council will seek a development contribution under Section 48 of the Planning and Development Act 2000, as amended. The contribution in lieu to be paid for any shortfall in the quantum of public open space to be provided will be used for the provision of improved community and civic infrastructure and/or parks and open spaces, in the vicinity of the proposed development for use of the intended occupiers of same."

Prior to lodging this planning application, Thornton O'Connor Town Planning received confirmation (7th March 2022, via e-mail) from Michelle Breslin (Senior Executive Planner) and Ruari O'Dulaing (Head of Parks Department) of Dún Laoghaire-Rathdown County Council that the payment of a financial contribution in lieu of providing public open space was acceptable in principle. Please see below for this correspondence. Note: text redacted is to provide privacy.

From: Breslin Michelle <[redacted]>
Sent: Monday 7 March 2022 12:51
To: Sadhbh O'Connor <[redacted]>
Subject: Re: Sandyford SHD (PAC/SHD/105/21) - Public Open Space Contribution

Hi Sadhbh,

Further to your earlier correspondence regarding the SHD proposal at Sandyford Road, I have discussed same with Ruairi O'Dulaing, Head of Parks Dept, and can confirm that in principle the Planning Authority would accept a financial contribution in lieu of public open space at this site at Sandford Road.

A condition regarding same shall be included in any recommendation to ABP to address the shortfall in open space provision on site.

Kind regards,

Michelle Breslin | Senior Executive Planner

Development Management | Planning Department
 Dún Laoghaire-Rathdown County Council | County Hall | Marine Road | Dún Laoghaire | Co. Dublin

Tel: +353 1 205 4700 Ext: [redacted]
 Email: [redacted]

Please note that e-mails to, from and within Dún Laoghaire-Rathdown County Council are subject to the Freedom of Information Acts 1997 and 2003 and may be liable to disclosure.

The basis for pursuing the development without public open space is set out as the following:

- The development has been the focus of a thorough landscape design process that has resulted in a high-quality landscape proposal comprised of hard and soft features, significant tree planting, toddler's and children's play areas.
- As part of the above landscape proposition, a total 1,299 sq m of communal amenity space included, exceeding the minimum requirement of 939 sq m by 360 sq m or 38%. The details of this communal amenity space are expounded below; but will provide a high-quality external environment with ecological, environmental, SUDS, aesthetic and social/community benefits.
- A series of other public open space areas are all within short walking distances of the subject site, including those as Kilcross, Bearna, Ticknock Park and Aiken's Village, which can be used for walking, exercise, picnics, relaxing and socialising.
- The notable amenity spaces of Fitzsimon's Wood and Fernhill Park and Gardens are within 6-minute and 12-minute walks respectively. The former is a mature, historic woodland area accessed via Kilcross with rustic trails and a naturally evolving environment. The latter is one of the Council's newest parks with planting, walkways and lawned areas.
- The siting of the Blocks away from the east boundary to ensure that negative impacts on residents at Coolkill do not occur meant that public open space could only have been placed to the rear of the development site. This would have been inappropriate on the basis that the public would not have been likely to know that it existed or actively sought to use the space. In addition, the movement of non-residents through the development may have undermined the safety and residential amenity of the residents living in the development.
- The need to secure a sustainable and viable density meant that the Block and semi-basement/semi-undercroft footprints needed to be extended, thereby reducing the site area available or appropriate for use a public open space.
- The requirement to meet a whole series of other development management standards (car parking, cycle parking, vehicular and pedestrian entrances, separation distance, 'Root Protection Area' (trees on adjacent sites)) acts to reduce the site area available or appropriate for use public open space.

It is clear that the *Development Plan* allows flexibility and allows a financial contribution to be paid in some instances, which can be used to enhance the existing parks in the area. However we have included the shortfall in public open space in this Material Contravention Statement on a precautionary basis.

Furthermore, we note that a significant quantum of communal open space has been provided (some 1,299 sq m of communal space has been provided, which significantly exceeds the required 939 sq m). In addition, *the Apartment Guidelines, 2020* only require the provision of communal open space with no requirement to provide public open space specified in these Guidelines, Therefore, the development can be facilitated through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act of 2000.

3.5 Subject No. 4 – Daylight and Sunlight

Potential Material Contravention in Relation to Daylight/Sunlight Facilitated Through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act)

Section 12.3.4.2 of the *Development Plan* sets out the following:

"Development shall be guided by the principles of Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011) and/or any updated, or subsequent guidance, in this regard. A daylight analysis will be required for all proposed developments of 50+ units, or as otherwise required by the Planning Authority. The impact of any development on existing habitable rooms should also be considered."

The *Apartment Guidelines, 2020* state:

"Planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' when undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision."

The *Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011)* ("BRE Guide") notes the following:

"The advice given here is not mandatory and the guide should not be seen as an instrument of planning policy; its aim is to help rather than constrain the designer. Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design."

The *Apartment Guidelines, 2020* further state:

"Where an applicant cannot fully meet all of the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting taking account of its assessment of specific. This may arise due to a design constraints associated with the site or location and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution."

Therefore, the *Apartment Guidelines, 2020* notes that any shortfalls in daylight provisions set out in the BRE Guide must be identified. The daylight/sunlight report demonstrates a very small number of units that do not fully meet the daylight requirements which have been discussed in this section of the Material Contravention Statement in the event that this is considered to be a material contravention of Section 12.3.4.2 of the *Development Plan*.

As part of a compensatory design solution for the rooms that do not meet the recommended minimum average daylight factor (2% for living/kitchen/dining rooms and 1% for bedrooms), the proposed development has incorporated a number of compensatory design measures.

The majority of the rooms that do not meet the ADF target have been provided with the following compensatory measures (LKD = living/kitchen/dining room, APSH = Annual Probable Sunlight Hours, WPSH = Winter Probable Sunlight Hours):

Block B, Apartment B1-08, LKD (ADF=1.98%):

South facing room which overlooks a communal amenity space and is capable of receiving sufficient levels of sunlight as indicated in the APSH/WPSH study.

Block B, Apartment B2-10, LKD (ADF=1.86%):

South facing room which overlooks a communal amenity space and is capable of receiving sufficient levels of sunlight as indicated in the APSH/WPSH study.

Block C, Apartment Co-01, LKD (ADF=1.81%):

This is a dual aspect unit that addresses a communal amenity space and is part of a unit that is at least 10% larger than the minimum area required.

Block C, Apartment Co-03, LKD (ADF=1.72%):

This room is part of an oversized dual aspect unit. The LKD is c. 20% larger than the minimum area required (36.2 sq m vs 30 sq m).

Block C, Apartment Co-04, LKD (ADF=1.44%):

This room overlooks a communal amenity space and is part of an oversized dual aspect unit. The LKD is c. 7% larger than the minimum area required (24.7 sq m vs 23 sq m).

Block C, Apartment Co-05, LKD (ADF=1.76%):

This room addresses a communal amenity space and is part of a dual aspect unit.

Block C, Apartment Co-06, LKD (ADF=1.39%):

South facing room which overlooks a communal amenity space and is part of an oversized dual aspect unit. The LKD is c. 6% larger than the minimum area required (31.9 sq m vs 30 sq m).

Block C, Apartment Co-06, Bedroom 2 (ADF=0.95%):

South facing room as part of an oversized dual aspect unit that addresses a communal amenity space. The bedroom is c. 15% larger than the minimum area required (13.1 sq m vs 11.4 sq m).

Block D, Apartment Do-03, LKD (ADF=1.52%):

This room is c. 20% larger than the minimum area required (36.1 sq m vs 30 sq m).

Block D, Apartment Do-04, LKD (ADF=1.53%):

This room is part of an oversized dual aspect unit. The LKD is c. 20% larger than the minimum area required (36.1 sq m vs 30 sq m).

Block D, Apartment Do-05, LKD (ADF=1.79%):

This room is c. 8% larger than minimum area required (24.8 sq m vs 23 sq m).

Block D, Apartment Do-07, LKD (ADF=1.86%):

This south facing room which overlooks a communal amenity space is capable of receiving sufficient levels of sunlight as indicated in the APSH/WPSH study. The unit

is dual aspect and the LKD is c. 18% larger than the minimum area required (35.1 sq m vs 30 sq m).

In conclusion, the *Apartment Guidelines, 2020* allow alternative, compensatory design solutions to be provided where some units do not fully meet the ADF requirements, and thus the proposed development can be facilitated through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act of 2000. In this instance the scheme will achieve wider planning objectives such as sustainably densifying lands in an intermediate urban location and the development will secure comprehensive urban regeneration and will provide an effective urban design and streetscape solution at the site, which will benefit both the future residents and the community.

3.6 Subject No. 5 – Separation Distances

Potential Material Contravention in Relation to Separation Distances - The Proposed Development Can be Facilitated Due to Conflicting Policies in the Development or the Objectives are not Clearly Stated (Section 37 (2)(b)(ii) of the Act) and the Proposed Development can be Facilitated Through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act)

In the first instance, the proposed development can be permitted on the basis of Section 37 (2)(b)(ii) of the Act of 2000, on the grounds that there are conflicting policies in the *Development Plan* with respect to separation distances.

In relation to separation distances relating to opposing rear first floor windows, the *Development Plan* states that:

*"A minimum standard of 22 metres separation between directly opposing rear first floor windows should **usually** be observed, for new developments. This normally results in a minimum rear garden depth of 11 metres...*

*In all instances, **private open space should not be unduly overshadowed** and where there is the potential for the proposed development to overshadow or overlook existing/future development adjoining the site, minimum separation distances to boundaries should be increased.*

*In an exceptionally well-designed scheme providing an otherwise very high-quality living environment and that is in close proximity to existing public open spaces, **the above standards may be relaxed.***

*Any **relaxing of standards** will be assessed on a case by-case basis and should not be seen as setting a precedent for future development."*

In relation to separation distances between proposed Blocks, the *Development Plan* states that *"a minimum clearance distance of circa 22 metres, in general, is required, between opposing windows in the case of apartments up to three storeys in height. In taller blocks, a greater separation distance may be prescribed having regard to the layout, size, and design."*

This reads as requiring a need to ensure that separation distances of 22 metres are secured between blocks. However, specific reference should be made to the words *"in general"*, which indicates that there may be instances wherein the 22 metre separation distances is not required. On this point, the *Development Plan* states that:

"All proposals for residential development, particularly apartment developments and those over three storeys high, shall provide for acceptable separation distances between blocks to avoid negative effects such as excessive overlooking, overbearing and overshadowing effects and provide sustainable residential amenity conditions and open spaces." [Our Emphasis]

In addition, the *Development Plan* also stipulates:

"In certain instances, depending on orientation and location in built-up areas, reduced separation distances may be acceptable. In all instances where the minimum separation distances are not met, the applicant shall submit a daylight availability analysis for the proposed development." [Our Emphasis]

Therefore, it is clear that the *Development Plan* places significantly greater weight on the qualitative impacts associated with separation distances than on the potentially arbitrary application of a 22 metres quantitative separation distance. Simply enforcing a 22 metre separation distance fails to appreciate and understand the detail of a development, impacts (or lack thereof) on residential amenity and privacy and the overall benefits that can be achieved by more pragmatically assessing a proposal.

It is also asserted that the proposed development can be facilitated by way of Section 37 (2)(b)(iii) of the Act of 2000 on the grounds that Section 28 Guidelines promote and encourage a more 'rounded' and considered assessment of developments, including in relation to the very matter of separation distances. For example, the *Apartment Guidelines, 2020* state:

"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."

While it would not be appropriate for these Guidelines to indicate performance criteria for building height or building separation distance relative to location, it is recognised that there is a need for greater flexibility in order to achieve significantly increased apartment development in Ireland's cities." [Our Emphasis]

In addition, *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009* states:

*"While a 22 metre separation distance between opposing above ground floor windows is normally recommended for privacy reasons, **this may be impractical and incompatible with infill development.** In these cases, **innovation and flexibility will [be] essential in the interpretation of standards so that they do not become inflexible obstacles to the achievement of an attractive village and small town character in new development...***

*Similarly at the rear of dwellings, there should be adequate separation (traditionally about 22 m between 2-storey dwellings) between opposing first floor windows. However, **such rules should be applied flexibly: the careful positioning and detailed design of opposing windows can prevent overlooking even with shorter back-to-back distances.** Windows serving halls and landings do not require the same degree of privacy as, say, balconies and living rooms...*

*Planning authorities should ensure that the **cumulative effect of setting specific minimum quantitative standards** for parking, private and communal open space, and **separation distances between dwellings does not militate against the achievement of the minimum residential densities** recommended in Chapters 5 and 6. **Qualitative standards should be the real test, and innovative design solutions which achieve good performance standards should be considered on their merits.**" [emphasis added]*

Therefore, these Section 28 Guidelines support a practical and pragmatic approach to the application of separation distances in proposed developments. The safeguarding and delivery of high-quality residential amenity and privacy – for existing and proposed residents – is vital to the creation of sustainable urban developments.

In support of these potential contraventions, the following observations are noteworthy in relation to separation distances between the proposed Blocks and Coolkill, Cul Cuille and The Pastures.

As shown on Horan Rainsford Architects' Architecture Drawings and demonstrated in their *Architectural Design Statement*, separation distances generally ranging from 21.9 metres to 40.7 metres feature between the rear building lines of the proposed development's Blocks (at their easternmost extents – i.e. 1st to 3rd storeys) and the existing residences at Coolkill to the east. However, given the diverging rear buildings lines, there are no directly opposing windows, with some windows in the Blocks proposed to be obscured as a prudent measure.

Notwithstanding the diverging building lines, these distances are considered to comply with the *Development Plan's* standard which is that a 22 metre "separation between directly opposing rear first floor windows **should usually be observed**" [emphasis added]. The 1 No. separation distance of 21.9 metre is deemed to be *de minimis*.

Of particular note, is that the design of the development sets back the building lines and elevations at upper levels from the shared boundaries, acting to negate the concern that additional height increases the risk of overlooking. As Table 3.3 indicates, the higher the development rises, the farther from the eastern boundary the elevation is positioned.

Block	Distance at 4th Storey to Opposing Elevation to the East	Distance at 5th Storey to Opposing Elevation to the East	Distance at 6th Storey to Opposing Elevation to the East
Block B	47.4 m	50.4 m	N/A
Block C	28.1 m	37.1 m	47.2 m
Block D	21.9 m	30.9 m	42.0 m

Table 3.3: Approximate distances from the eastern elevations from Block B, C and D facing east towards opposite elevations at Coolkill at 4th, 5th and 5th storeys

Source: Horan Rainsford Architects' Architectural Drawings, as analysed by Thornton O'Connor Town Planning, 2022

To the south, there are no windows in the southern elevation of the proposed Block D directly opposite windows in the north elevation of the development currently on appeal at The Pastures (DLR Reg. Ref. D21A/0595 (ABP Reg. Ref. ABP-312990-22) as there are no windows proposed in the latter. Directly opposing windows in the east elevations of Block D are at least 25.3 metres from the west elevations of Block B in The Pastures.

To the north, there are no opposing windows between the proposed Block A and the development at Cul Cuille. The separation distances between Block A and the houses thereat are no less than 21.3 metres (which would be considered *de minimis* and a reasonable deviation from the 22 metres standard), whilst the separation distances between Block A and the apartments thereat are between 3.2 metres and 14.1 metres, although there are no windows in either development at these narrower points.

Specifically with respect to the matter of daylight and sunlight, the detailed *Daylight and Sunlight Assessment* prepared by 3D Design Bureau assessed existing neighbouring properties and granted neighbouring properties in terms of a series of possible impacts, relating to Effect to Vertical Sky Component, Effect to Annual Probable Sunlight Hours, Effect to Winter Probable Sunlight Hours and Effect to Sun On Ground. The Board is respectfully directed to this Report for the full assessment, the results of which are summarised below.

Cumulative Effect on Existing Neighbouring Properties
<p>Effect to Vertical Sky Component (VSC) :</p> <ul style="list-style-type: none"> • Windows Assessed: 111 • Positive Effect: 16 • Imperceptible: 95
<p>Effect to Annual Probable Sunlight Hours (APSH):</p> <ul style="list-style-type: none"> • Windows Assessed: 58 • Positive Effect: 21 • Imperceptible: 37
<p>Effect to Winter Probable Sunlight Hours (WPSH):</p> <ul style="list-style-type: none"> • Windows Assessed: 58 • Positive Effect: 26 • Imperceptible: 31

- Not applicable: 1

Effect to Sun On Ground (SOG) in existing neighbouring gardens / amenity areas:

- Areas Assessed: 16
- Positive Effect: 5
- Imperceptible: 11

Effect on Granted Neighbouring Properties

Effect to Vertical Sky Component (VSC) :

- Windows Assessed: 58
- Positive Effect: 16
- Imperceptible: 34
- Not significant: 3
- Slight: 3
- Moderate: 2

Effect to Annual Probable Sunlight Hours (APSH):

- Windows Assessed: 18
- Positive Effect: 6
- Imperceptible: 12

Effect to Winter Probable Sunlight Hours (WPSH):

- Windows Assessed: 18
- Imperceptible: 13
- Not applicable: 5

The results of the *Daylight and Sunlight Assessment* indicate that the proposed development will have negligible impacts on the existing and granted residences adjacent to the subject site. In many instances, the Assessment showed "*positive effects*" in terms of Effect to Vertical Sky Component, Effect to Annual Probable Sunlight Hours, Effect to Winter Probable Sunlight Hours and Effect to Sun on Ground, although this is noted as partly being as a result of the removal of existing trees at the subject site.

However, the key observation is that the vast majority of the assessments indicated "*imperceptible*" results. And even when the "*slight*" and "*moderate*" effects are considered, they are rationalised when balanced against the "*positive effects*" and the fact that this is a necessary development to achieve sustainable residential delivery in accordance with national, regional and local policy driving densification and compact growth.

Therefore, it is asserted that the proposed development will not degrade the daylight and sunlight amenity enjoyed by the existing and potential future neighbouring residents.

The separation distances between the proposed Blocks within the development are generally 21.2–21.6 metres, with windows principally facing onto the landscaped areas between Blocks B and C and Blocks C and D and not facing each other. Such reductions are considered to be *de minimus*. However, the general approach has been to stagger and offset windows so that they do not directly oppose each other and result in a diminution of residential amenity and privacy. There are 2 No. instances where separation distances between opposing windows reduce to approximately 16.5 metres; however, these windows

are 'secondary' in their design, with an alternative 'primary' window serving the relevant room. Separation distances of 9 metres and 7.7 metres are noted in 2 No. locations; however, both are 'secondary' windows also and have been obscured.

Although there are the instances of the minimum recommended standards not being met, the design solutions to mitigate residential amenity and privacy impacts are considered to be acceptable, especially given the benefit that the inclusion of the windows has in terms of light and ventilation within the apartment units

The proposed apartment units perform well in terms of Average Daylight Factor; 97% of rooms are compliant, although this increases to 99% compliance if the reduced target value of 1.5% is used for Living/Kitchen/Dining areas). Where rooms in units have not meet the target value for Living/Kitchen/Dining, a series of compensatory measures have been detailed. These are summarised in 3D Design Bureau's *Daylight and Sunlight Assessment* and Section 3.5 of this Material Contravention Statement, and include: south-facing units, units facing into open space areas, sufficient levels of light as indicated by Annual Probable Sunlight Hours (APSH) and Winter Probable Sunlight Hours (WPSH) values, larger unit sizes and dual aspect orientations.

Although the compliance rates for APSH and WPSH for living rooms and Sun on Ground for balconies are lower by comparison, the results are considered reasonable and acceptable as 100% compliance is difficult to achieve in urban and suburban environments and on sites with existing constraints (shape, size, adjacent uses/development, etc.).

Importantly for the quality of the communal amenity spaces, all area assessed significantly exceeded the recommended guideline of 50% Sun on Ground for 2 hours on March 21st.

Overall, it is considered that the proposed development will result in a series of high-quality and attractive living spaces for future residents. Summary results of 3D Design Bureau's analyses are included below.

Daylight and Sunlight Scheme Performance

Sun On Ground (SOG) in Proposed Amenity Areas:

- Areas Assessed: 6
- Meeting the guidelines: 6
- Compliance rate: 100%

Sun On Ground (SOG) in Proposed Balconies:

- Balconies Assessed: 137
- Meeting the guidelines: 87
- Not meeting the guidelines: 50
- Compliance rate: ~64%

Proposed Living Room Windows (APSH):

- Rooms Assessed: 137
- Above recommended minimum: 75
- Below recommended minimum: 62
- Compliance rate: ~55%

Proposed Living Room Windows (WPSH):

- Rooms Assessed: 137
- Above recommended minimum: 81
- Below recommended minimum: 56
- Compliance rate: ~59%

Average Daylight Factor (ADF) of internal proposed development:

- Rooms assessed: 406

ADF circa compliance rate for the proposed scheme:

- Rooms meeting the guidelines: 394
- Rooms not meeting the guidelines: 12
- Compliance rate: ~97%

ADF circa compliance rate for the proposed scheme with a reduced target value of 1.5% considered for LKDs:

- Rooms meeting the guidelines: 403
- Rooms not meeting the guidelines: 3
- Compliance rate: ~99%

Informed by the foregoing observations, it is considered that adequate separation distances are proposed as part of the proposed development such that there will not be detrimental impacts on the residential amenity and privacy of the existing residents at Coolkill or the future residents and Cul Cuille or The Pastures.

Furthermore, the design of the development has been carefully considered to ensure that the residential amenity and privacy of future occupants of the proposal will be of a high-standard and is not negatively prejudiced as a result of inadequate separation distances.

In considering the above, the qualitative aspect associated with securing adequate separation distances have been to the fore, as required by Section 28 Guidelines and the *Development Plan* itself.

3.7 Subject No. 6 – External Storage

Potential Material Contravention in Relation to Separation Distances - The Proposed Development Can be Facilitated Due to Conflicting Policies in the Development or the Objectives are not Clearly Stated (Section 37 (2)(b)(ii) of the Act)

Section 12.3.5.3 of the *Development Plan* notes the following in relation to storage provision:

"Internal storage standards for apartments shall accord with, or exceed the levels outlined in Table 12.3 below:

Unit Type	Minimum Storage Space Requirement
One Bedroom	3 sq m
Two Bedrooms (3 persons)	5 sq m
Two Bedrooms (4 persons)	6 sq m

Three bedrooms	9 sq m
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- *Storage should be additional to kitchen presses and bedroom furniture.*
- *Hot press/boiler space will not count as general storage.*
- *No individual storage room should exceed 3.5sq.m. and shall be provided within the apartment unit.*

Apartment schemes should provide external storage for bulky items outside individual units (i.e. at ground or basement level), in addition to the minimum apartment storage requirements. These storage units should be secure, at ground floor level, in close proximity to the entrance to the apartment block and allocated to each individual apartment unit."

All units will meet, and exceed in many cases, the internal storage standards and requirements set out in Table 12.3 of the *Development Plan*. Please refer to the Housing Quality Assessment Tables prepared by Horan Rainsford Architects. Space for Heat Pumps has been shown and has been excluded from all storage calculations. If bedroom furniture has been included, its associated area has been excluded from the bedroom area. No storage room exceeds 3.5 sq m.

There is no external storage provided outside of the individual units. No quantitative standard is prescribed by the *Development Plan* and thus it could be considered that the objective in relation to external storage provision is not clearly stated and the development can therefore be facilitated in accordance with Section 37 (2)(b)(ii) of the Act. External storage has not been included as part of the development, as the level of residential amenity, storage space and unit sizes were considered to be sufficient to cater for the needs of residents.

Furthermore, we note that Appendix 1 of the *Apartment Guidelines, 2020* does not set out minimum storage areas for external storage. The internal storage provided complies with the minimum standards set out in Appendix 1 (and exceeds the minimum storage standards in some cases). In summary, it is considered that the storage provision internal to the apartments is sufficient and copious and exceeds the minimum standards in many cases. This item is included in this Material Contravention Statement also should An Bord Pleanála consider this to material contravene the *Development Plan*.

3.8 Subject No. 7 – 5% Variation to Apartment Room Sizes / Widths

Potential Material Contravention in Relation to 5% Variation - The Proposed Development can be Facilitated Through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act)

Section 12.3.4.2 of the *Development Plan* notes:

"The minimum size of habitable rooms for houses/apartments/and flats shall conform with appropriate National guidelines/ standards in operation at the date of application for planning permission, including the minimum dimensions as set out in 'Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities' (2018), and 'Quality Housing for Sustainable Communities: Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007)"

In relation to minimum areas for rooms and minimum widths, the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities' (2018) [now 2020]*, (*Apartment Guidelines, 2020*) allows a variation of 5% to be applied subject to overall compliance with required minimum overall apartment floor areas. The *Apartment Guidelines, 2020* are the most recently updated and current National Guidance, and the development has been fully assessed against those standards.

This 5% variation is applied to the following units as extracted from the Architectural Design Statement:

Apt. B1-04, B2-05, B3-05, B4-05, B5-05:

12.7 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. B1-06, B2-07, B3-07:

12.5 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. B1-08, B2-09, B3-09:

12.9 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. B1-08, B2-09, B3-09:

29.5 sq m Living Room Area Provided (30 sq m min., 1.5 sq m variance allowed)

Apt. B1-07, B2-08, B3-08:

33.6 sq m Living Room Area Provided (34 sq m min., 1.7 sq m variance allowed)

Apt. B5-07:

33.4 sq m Living Room Area Provided (34 sq m min., 1.7 sq m variance allowed)

Apt. B2-10, B3-10, B4-09:

12.4 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. C0-05, C1-06, C2-06, C3-06:

29.8 sq m Living Room Area Provided (30 sq m min., 1.5 sq m variance allowed)

Apt. C1-08, C2-08, C3-08:

12.9 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. C4-05:

12.4m² Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. C4-06:

3.7 metre Living Room Width Provided (3.8 metre min., .19 metre variance allowed)

Apt. C5-01:

11.3 sq m Bedroom Area Provided (11.4 sq m min., .57 sq m variance allowed)

Apt. D0-01, D2-01, D3-01, D4-01:

12.8 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. D0-02, D1-02, D2-02, D3-02

12.9 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. Do-06, D1-07, D2-07:

33.3 sq m Living Room Area Provided (34 sq m min., 1.7 sq m variance allowed)

Apt. Do-06, D1-07, D2-07:

12.4 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. Do-07, D1-08, D2-08:

12.4 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. D3-07:

11.3 sq m Bedroom Area Provided (11.4 sq m min., .57 sq m variance allowed)

Apt. D5-02:

11.3 sq m Bedroom Area Provided (11.4 sq m min., .57 sq m variance allowed)

Apt. D1-09, D2-09, D3-09:

12.5 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. D4-02:

11.2 sq m Bedroom Area Provided (11.4 sq m min., .57 sq m variance allowed)

Apt. D4-05:

12.4 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. D5-01:

12.4 sq m Bedroom Area Provided (13 sq m min., .65 sq m variance allowed)

Apt. Do-06, D1-07, D2-07:

11.3 sq m Bedroom Area Provided (11.4 sq m min., .57 sq m variance allowed)

As a result, these units within the scheme will not meet the minimum standards in relation to aggregate room areas and/or widths in some cases, however this 5% flexibility is allowed under the *Apartment Guidelines, 2020*. It is considered that the proposed aggregate areas and room widths are in accordance with the *Apartment Guidelines, 2020* and is therefore acceptable in line with Section 37 (2)(b)(iii) of the Act of 2000⁴.

⁴ Although it appears that the *Development Plan* does not provide specific standards for habitable rooms (and simply refers to other National Guidance), we have included this item on a precautionary basis should An Bord Pleanála consider this a material contravention of the *Development Plan*.

4.0 CONCLUSION

According to Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016*, An Bord Pleanála may grant permission for a development, which materially contravenes the policies and objectives of a *Development Plan*, having regard to the adoption of Section 28 Guidelines or where the pattern of development or permissions granted in the area since the making of the development plan are considered, as prescribed in Section 37 (2)(b) of the *Planning and Development Act (as amended)*.

As noted throughout this Material Contravention Statement, the Statement relates to:

- Building Height with reference to Appendix 5 of the *Development Plan*;
- Car Parking with reference to Table 12.5 of the *Development Plan*;
- Public Open Space with reference to Table 12.5 of the *Development Plan*;
- Separation Distances with reference to Section 12.3.5.2 of the *Development Plan*;
- Daylight and Sunlight with reference to Section 12.3.4.2 of the *Development Plan*;
- External Storage with reference to Section 12.3.5.3 of the *Development Plan*; and
- 5% Variation to Dimensions / Room Sizes with reference to Section 12.3.4.2 of the *Development Plan*.

As set out in Section 37(2)(b) and Section 28(1)(C) of the *Planning and Development Act 2018* (as amended), An Bord Pleanála may materially contravene a development plan where national planning policy objectives take precedence. In particular, Section 9(3)(b) of the 2016 Act, as amended, provides that to the extent that they differ from the provisions of the *Development Plan*, the provisions of SPPRs must be applied instead.

Taking into account all of the foregoing set out in this report, it is therefore considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the *Dun Laoghaire – Rathdown County Development Plan 2022-2028*, by reference to sub-paragraphs (i), (ii), (iii) and (iv) of Section 37(2)(b) of the 2000 Act, as amended, for the reasons set out above.

In the event that the Board decides to grant permission, the Board is obliged in its "*Reasons and Considerations*" for the decision to reference the matters under Section 37(2)(b) of the 2000 Act upon which it relies to justify the granting of permission in material contravention of the *Development Plan*. It is apparent from Section 10(3)(b) of the 2016 Act that such reasons and considerations must appear in the Board decision itself. Section 10(3) provides as follows:

'(3) A decision of the Board to grant a permission under section 9(4) shall state-

....

(b) where the Board grants a permission in accordance with section 9(6)(a), the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be.'



Having regard to the justification set out within this statement, it is respectfully submitted that this is an appropriate case for the Board to grant permission for the proposed development in accordance with national planning policy and statutory guidelines.

