

**Statement of Material Contravention of the
Fingal Development Plan 2017-2023 (including Building
Height Guidelines Consistency Statement)**

In respect of

**Santa Sabina SHD- Proposed Alterations
to Reg. Ref.: F17A/0615**

At

**Site that formerly formed part of
Santa Sabina Dominican College and Convent Complex,
Greenfield Road, Sutton, Dublin 13**

Prepared for

Parsis Ltd

March 2020



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1.0 INTRODUCTION

- 1.1 On behalf of the applicant, Parsis Ltd, we hereby submit this Material Contravention Statement to accompany this application to An Bord Pleanála in respect of a proposed Strategic Housing Development at the site that formerly formed part of Santa Sabina Dominican College and Convent Complex, Greenfield Road, Sutton, Dublin 13.
- 1.2 The proposal seeks to alter the permitted development on the subject site, which relates to 96 no. residential units and associated development, under Reg. Ref.: F17A/0615, to provide for 143 no. residential units. The total number of additional / altered residential units subject to this SHD application is 102. Therefore, the proposed alterations of an existing section 34 permission include the provision of more than 100 residential units, thereby satisfying the above criteria.
- 1.3 The proposed alterations to the permitted development are located entirely on lands zoned RS- Residential. No alterations are proposed to Block B2-B3 (24 no. units) and C2 (17 no. units), which contain a total of 41 no. permitted apartments and a creche. The permitted access road to the adjacent school has been implemented and other site development works associated with the permitted residential development, which are not the subject of the proposed alterations, have commenced on the application site as provided for under Reg. Ref.: F17A/0615.
- 1.4 To achieve the proposed increase in unit numbers it is proposed to increase the height of both Block A-B1 and Block C1 by two storeys resulting in two five-storey buildings on the western portion of the application site. In addition, it is proposed to replace the Block D terrace of two and three storey houses on the northern part of the site with three storey apartment buildings (which will retail similar massing and ridge profile as the permitted houses at this location).
- 1.5 The proposed increase in building heights proposed for the permitted development on the subject site seek to respond to recent Government policy on building heights in urban locations well served by public transport and the surrounding context of the site. This includes SPPR3 of the 2018 Urban Development and Building Height Guidelines, which allows for the granting of permission for development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise, when such development complies with site specific criteria associated with SPPR3.
- 1.6 In this regard, we note the following section (section 9(3)) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended in 2018):
- “(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.”*
- 1.7 Having regard to the above, it is considered that even where the height of a proposed development would normally breach the height limits / specific height objectives set out within a Development Plan or LAP, if a justification is provided and accepted under SPPR 3 of the Building Height Guidelines (which were issued under section 28 of the 2000 Act), the development will not materially contravene the local policy (as the conflicting policy provisions will be disapplied).

- 1.8 Notwithstanding the provisions of section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, as amended, as set out above, having regard to the Fingal Development Plan 2017 to 2023 and the specific Local Objective 113 relating to a three storey height limit on the subject lands, the Planning Authority may consider that the proposed heights contravene the Development Plan for the area. However, as set out in this Statement, An Bord Pleanála can grant permission under SPPR3 of the Building Height Guidelines subject to the applicant demonstrating compliance with the Development Management Criteria listed in Section 3 of the Guidelines.
- 1.9 Section 3 of the Building Height Guidelines 2018, 'Building Height and the Development Management Process', outlines that it is Government policy to increase building heights in appropriate urban locations. As elaborated upon in Section 4 of this Statement, and considering the subject site's location within the Dublin Metropolitan Area and within 1km of high quality / high frequency public transport services, it is submitted that the development meets the relevant development management criteria, and therefore the Board can approve the proposed development, notwithstanding Local Objective 113 of the County Development Plan, which was prepared prior to the Building Height Guidelines being published in 2018.
- 1.10 The Statement of Consistency / Planning Report accompanying this application demonstrates compliance with all other relevant policies and objectives of the County Development Plan, and it is considered that the proposed heights are the only potential material contravention associated with the application.
- 1.11 It is respectfully submitted that the proposed development is in accordance with recent National Planning Framework and Government policy, as set out in the Statement of Consistency / Planning Report, which seek to provide for increased residential densities and building heights on appropriately zoned and serviced lands within / adjacent to city centre / town centres and high quality public transport corridors. It is therefore submitted that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development should they consider the proposal a material contravention of Local Objective 113 restricting building height to three storeys on the subject lands.

Legislative Context

- 1.12 The Planning and Development (Housing) and Residential Tenancies Act, 2016, states the way in which An Bord Pleanála may grant permission for a development which materially contravenes policies and objectives of a Development Plan or Local Area Plan, other than in relation to the zoning of land, is as follows:

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

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

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

1.13 Section 37(2)(b) of the Planning and Development Act 2000 states the following:

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

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

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

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

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

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

1.14 A response to the relevant criteria above is provided in Section 4 of this report, should the Board consider the proposal a material contravention of Local Objective 113 restricting building heights to 3 storeys on the subject site.

2.0 FINGAL COUNTY DEVELOPMENT PLAN AND SHD PRE-APPLICATION CONSULTATIONS

2.1 The local planning policy context in respect to building height is summarised below, with an explanation for why this Material Contravention Statement is included with the subject application.

2.2 The Fingal Development Plan 2017-2023 does not include a specific building height strategy for the County. However, as illustrated in the Development Plan zoning map extract below, the site is subject to a specific local objective (number 113). This local objective seeks to *'ensure no development in excess of three storeys'* is delivered on the subject site.

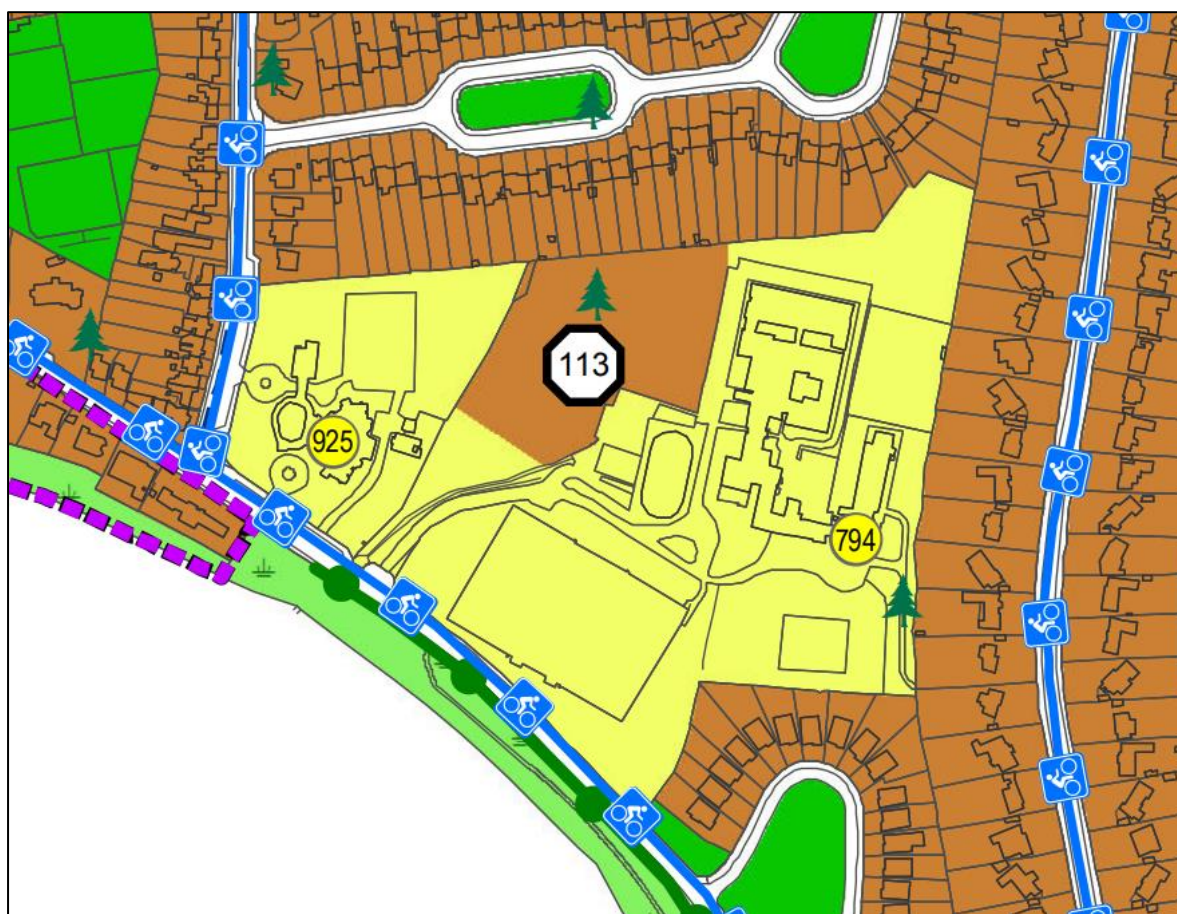


Figure 2.1: Extract from zoning map 10 of the Fingal County Development Plan

- 2.3 Under the SHD application, the increase in the number of units on site from 96 to 143 will be partially achieved by adding two storeys to the permitted apartment blocks A-B1 (42 no. units) and C1 (28 no. units). In addition, it is proposed to replace the ten no. two and three storey houses on the northern part of the site with three storey apartment buildings containing 32 no. units.
- 2.4 This will result in Block A-B1 and C1 each having an overall height of 5 storeys, with the top storey set back. The Block D apartment buildings will have a height of three storeys, which is consistent with the height of the houses previously permitted in this area of the site (see Statement of Consistency for further justification).
- 2.5 The proposed increase in building height of the apartment blocks is considered to be justified in the context of the 2018 Building Height Guidelines, which include policy provisions which overrule height restrictions such as that which is applied to the subject site in the Development Plan.
- 2.6 SPPR 3 of the Building Height Guidelines notes that where the applicant sets out compliance with the criteria for assessing building height at the scale of the relevant town / city, at the scale of district / neighbourhood / street and at the scale of a site / building that the planning authority or An Bord Pleanála may approve such development even where specific objectives of the relevant development plan or local area plan may indicate otherwise.

2.7 SPPR 3 (a) states:

*“1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and
2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;*

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

2.8 In this regard, we note that the Planning and Development Act 2000, as amended, provides that when making a decision in relation to an application, the planning authority or the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000 and that where specific planning policy requirements of guidelines 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.

2.9 Having regard to the above, it is considered that even where the height of a proposed development would normally breach the height limits set out within a Development Plan or LAP, if a justification is provided and accepted under SPPR 3 of the Building Height Guidelines (which were issued under section 28 of the 2000 Act), the development will not materially contravene the local policy (as the conflicting policy provisions will be disapplied).

FCC’s Chief Executive’s Opinion

2.10 The Planning Authority’s Written Opinion on the SHD pre-application consultation request to the Board (ABP Ref.: 304374-19 / FCC Ref.: SHD006/19) included limited commentary on the appropriateness of the proposed building heights, which were more extensive at pre-application stage including two storey additions to both Block B2-B3 and C2 also.

2.11 However, the following statements are considered to be of relevance to the proposed building heights now put forward in this SHD application:

“The Planning Authority are of the opinion that due to the height of the proposed apartments, the development would be a material contravention of the development plan in respect of Local Objective 113.

The Planning Authority has concerns with the proximity of proposed apartment Block B on site in relation to the existing sports hall adjacent. In the interests of residential amenity of the future residents and the proximity of the side elevation of the apartments to the sports hall, a greater separation distance would be recommended.”

2.12 In the context of the above, this Statement of Material Contravention is included with the subject application. We also note that no alterations to Apartment Block B2-B3 and C2, i.e. the two blocks on the eastern portion of the site closest to the sports hall are now proposed, i.e. the alterations only relate to development on the RS zoned lands, thus the SHD application does not have any additional impacts on the sports hall when compared with the permitted development.

- 2.13 In addition, we note that the Chief Executive's Report noted that the Conservation Officer was satisfied that the proposed development would not have an adverse impact on the setting of the protected structure of St. Dominic's Convent. However, the report acknowledges the concerns expressed by the Conservation Officer in relation to the impact of the proposed height increases on the subject site on the setting / visual impact on St. Fintan's Church. The Conservation Officer suggests a series of photomontages be prepared to properly assess the impact on the belltower.
- 2.14 In response to this item, a series photomontage views have been prepared by BSM with a particular emphasis on the impact of the increase from 3 to 5 storeys on the subject site on the setting of the belltower at St. Fintan's Church. In addition, the application is accompanied by an Architectural Heritage Assessment prepared by Cathal Crimmins Conservation Architects
- 2.15 This SHD application to the Board seeks to demonstrate, through the various documentation submitted, that the proposed alterations to the permitted scheme, including an increase in height of two permitted apartment blocks from 3 to 5 storeys can be accommodated on the subject site without adversely impacting on the residential, heritage or visual amenity of the area.
- 2.16 As outlined further below, the height restriction of three storeys required under Local Objective 113 is now superseded by that provided in Section 3 of the Building Height Guidelines 2018. This section states that it is Government policy that building heights must be generally increased in appropriate urban locations, in order to meet the ongoing housing crisis and residential demand. It is noted that the SPPR's listed under the Building Height Guidelines 2018 supersede Development Plan / Local Area Plans that are considered to be contrary to the Building Height Guidelines. In respect to specific applications, the applicant must demonstrate compliance with specific development management criteria to comply with SPPR 3. Section 3 below demonstrates how the proposed scheme meets these criteria and that the Board should grant permission for the proposed heights, notwithstanding the building height restriction on the site under the current Development Plan.

3.0 JUSTIFICATION FOR MATERIAL CONTRAVENTION IN CONTEXT OF SECTION 37(2)(B) CRITERIA

- 3.1 In the event that the Board considers that the proposed development constitutes a material contravention of Local Objective 113 of the Development Plan by virtue of the proposed alterations which seek to increase the height of both Block A-B1 and Block C2 from three to five storeys, a justification for such a material contravention is set out below, under the relevant criteria set out under Section 37(2)(b) of the 2000 Act.

Part (i) - Proposed Development is of Strategic or National Importance

- 3.2 As set out in further detail in the Statement of Response to the Board's Opinion and the Legal Opinion provided by Eamon Galligan S.C., the proposed development falls within the definition of a Strategic Housing Development in accordance with the definition of same provided under section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended.
- 3.3 The proposal seeks to alter the permitted development on the subject site, which relates to 96 no. residential units and associated development, under Reg. Ref.: F17A/0615, to provide for 143 no. residential units. The total number of additional / altered residential units subject to this SHD application is 102. Therefore, the proposed alterations of an existing section 34 permission include the provision of more than 100

residential units, thereby satisfying the relevant criteria to constitute a Strategic Housing Development.

- 3.4 On this basis it is submitted that the proposed development is, by definition, strategic in nature and of strategic importance.
- 3.5 The long title of the Planning and Development (Housing) and Residential Tenancies Act 2016 is as follows:

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

- 3.6 The Rebuilding Ireland Action Plan, and consequently the 2016 Act, recognise the strategic importance of larger residential developments (including developments of over 100 residential units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply.
- 3.7 In relation to the arrangements to be put in place for Strategic Housing Developments, the Rebuilding Ireland Action Plan states:

“Such arrangements would draw on procedures already in place in respect of strategic infrastructure development projects under the Planning and Development (Strategic Infrastructure) Act 2006 and should speed up the planning decision-making process in respect of such developments, while also providing greater certainty for developers in terms of timeframes within which such developments can be determined in the planning system.”

- 3.8 Due to the strategic importance of larger housing developments designated as SHDs, the Government moved to introduce legislation under the 2016 Act, which would see such developments assessed in a similar manner to Strategic Infrastructure Developments.
- 3.9 Having regard to this legislative and policy context, it is considered that the proposed significant Strategic Housing Development at the subject site, located within the Dublin Metropolitan Area and within 1km of high frequency DART and bus services, is, by definition, of strategic importance for the purposes of section 37(2)(b) of the 2000 Act.

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

- 3.10 The following section shall demonstrate how the proposed height is justified in the context of recent National Planning Policy and Section 28 Government Guidelines, which seek to increase residential densities on zoned serviced lands adjacent to public transport corridors, and which have been published since the adoption of the Fingal Development Plan 2017-2023. These include:
- Project Ireland: National Planning Framework 2040 (NPF)

- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guidelines 2018)
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018)

Project Ireland: National Planning Framework 2040

- 3.11 The NPF seeks to increase densities and building heights in appropriate urban locations to consolidate urban sprawl, increase the sustainability of public transport networks and meet the housing needs of our growing population.
- 3.12 In relation to residential development the plan states:
- 'A major new **policy emphasis on renewing and developing existing settlements will be required**, rather than continual expansion and sprawl of cities and towns out into the countryside, at the expense of town centres and smaller villages. **The target is for at least 40% of all new housing to be delivered within the existing built up areas of cities, towns and villages on infill and/or brownfield sites**'.* (Emphasis added)
- 3.13 National Policy Objective 3a formalises the above as it seeks to *'Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements'*.
- 3.14 National Policy Objective 3c seeks to *'Deliver at least 30% of all new homes that are targeted in settlements other than the **five Cities and their suburbs, within their existing built-up footprints**'.* (Emphasis added)
- 3.15 National Policy Objective 6 seeks to *'regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area'*.
- 3.16 National Policy Objective 11 states that *'in meeting urban development requirements, there will be a **presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages**, subject to development meeting appropriate planning standards and achieving targeted growth'* (emphasis added).
- 3.17 National Policy Objective 33 seeks to *'Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location'*.
- 3.18 National Policy Objective 35 seeks to *'Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights'*.
- 3.19 It is clear from the NPF that there is a strong emphasis towards increased building heights in appropriate locations within existing urban centres and along public transport corridors in order to provide for the critical mass needed to make the public transport services viable. As such, it is respectfully submitted the proposed alterations to the permitted development, to provide an increase in height of two apartment buildings from three to five storeys, is consistent with Government guidance / policy and emerging trends for sustainable residential developments.

- 3.20 The proposed density and height of the development is considered appropriate given the location of the site within the Dublin Metropolitan Area and within 1km of Sutton District Centre and DART / public transport services. The proposed alterations to the permitted development are therefore considered to be in accordance with the objectives of the NPF in this regard.
- 3.21 Restricting the height of residential development to three storeys on the subject site, which is well served by public transport and a range of local commercial, social and community facilities, as specified by Local Objective 113 is considered to be contrary to current Government policy which promotes increased densities and building heights at well served urban sites, and discourages universal height standards in certain urban areas, such as the subject site.

Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guideline 2018)

- 3.22 The Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guideline 2018) build upon the provisions of the NPF.
- 3.23 The Apartment Guidelines provide clear guidance with regard to the types of location which are considered suitable for higher density residential development such as 'Central and/or Accessible Urban Locations and 'Intermediate Urban Locations'.
- 3.24 The Apartment Guidelines state that Central and/or Accessible Urban Locations are generally suitable for small- to large-scale (will vary subject to location) and higher density development (will also vary), that may wholly comprise apartments, and are classified as follows:
- *'Sites within walking distance (i.e. up to 15 minutes or 1,000- 1,500m), of principal city centres, or significant employment locations, that may include hospitals and third-level institutions;*
 - **Sites within reasonable walking distance (i.e. up to 10 minutes or 800-1,000m) to/from high capacity urban public transport stops (such as DART or Luas); and**
 - *Sites within easy walking distance (i.e. up to 5 minutes or 400-500m) to/from high frequency (i.e. min 10 minute peak hour frequency) urban bus services'.*
- 3.25 The application site is located within c. 1km of Sutton Dart Station, is adjacent to a bus stop and is within c.550 m from further bus services at Sutton Cross. The accessibility of the site is illustrated in Figure 3.1 below. The subject site therefore constitutes a 'central and / or accessible urban location' as defined within the 2018 Apartments Guidelines.



Figure 3.1: Public Transport Accessibility

- 3.26 As the site can be classified as a 'Central and/or Accessible Urban Locations', it is suitable in principle for higher residential densities and building heights.

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

- 3.27 The Urban Development and Building Height Guidelines 2018 are intended to set out national planning policy guidelines on building heights in urban areas in response to specific policy objectives set out in the National Planning Framework and Project Ireland 2040. Under section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended), Planning Authorities and An Bord Pleanála will be required to have regard to the guidelines and apply any specific planning policy requirements (SPPR's) of the guidelines in carrying out their function.
- 3.28 The Guidelines state that *'the preparation of development plans, local area plans and Strategic Development Zone (SDZ) Planning Schemes and their implementation in city, metropolitan and wider urban areas **must therefore become more proactive and more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights**, while also being mindful of the quality of development and balancing amenity and environmental considerations'* (emphasis added).
- 3.29 The guidelines state that *'implementation of the National Planning Framework requires **increased density, scale and height of development in our town and city cores**, including an appropriate mix of both the living, working, social and recreational space we need in our urban areas'*,

and;

*'to meet the needs of a growing population without growing out urban areas outwards requires more focus in planning policy and implementation term on **reusing previously developed "brownfield" land, building up urban infill sites** (which may not have been built on before) and either reusing or redeveloping existing sites and*

buildings that may not be in the optimal usage or format taking into account contemporary and future requirements’.

3.30 Having regard to the above, SPPR 1 states the following:

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

3.31 Under Section 3 of the Guidelines, which relates to Building Height and the Development Management process, it is acknowledged that in advance of Development Plans / LAPs being updated to reflect the Guidelines that planning authorities / the Board can permit development which would be considered to contravene their current plans subject to assessment against a series of development management criteria.

3.32 Section 3 of the Guidelines states that in assessing individual planning applications that it is Government policy that building heights must be generally increased in appropriate urban locations. There is a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility in order to meet the ongoing housing crisis and residential demand.

3.33 SPPR 3 of the Building Height Guidelines notes that where the applicant sets out compliance with the criteria for assessing building height at the scale of the relevant town / city, at the scale of district / neighbourhood / street and at the scale of a site / building that the planning authority or An Bord Pleanála may approve such development even where specific objectives of the relevant development plan or local area plan may indicate otherwise.

3.34 SPPR 3 (a) states the following:

“It is specific planning policy requirement that where:

- 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and*
- 2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;*

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

3.35 Compliance with the relevant criteria set out in the Building Height Guidelines is demonstrated below.

Consistency with Development Management Criteria

3.36 The guidelines set out the criteria for developments at the scale of the relevant city / town as follows:

Scale of the City / Town

- *The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.*

Response

3.37 As noted above, the application site is located within 1km of Sutton Dart Station, is adjacent to a bus stop and is within c.550 m from further bus services at Sutton Cross. The frequency of the DART and bus services serving the area, including the subject site, is addressed in greater detail in the Traffic and Transport Assessment prepared by AECOM which accompanies the application. The TTA also notes that further improvements to public transport serving this area of the City are planned under the Bus Connects project.

3.38 Thus, it is respectfully submitted that the site is well served by existing and proposed high capacity public transport services which are located within easy walking and cycling distance of the application site. Thus, it is a suitable location for increased heights and densities as proposed in this application.

- *Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.*

Response

3.39 In addressing the above criteria, the Board should also refer to the following documentation which accompanies the application:

- OMP's Design Statement
- BSM's Visual Impact Assessment and Photomontages
- Cathal Crimmins Architects Architectural Heritage Assessment

3.40 With reference to the above documents, we seek to summarise herein the justification for increasing the height of two no. apartment blocks on the subject site from three to five storeys.

3.41 Firstly, we note that the site is not located within an architecturally sensitive area, being a low rise suburban area.

3.42 We note that the proposed alterations to the permitted development relate to a site which is located in an open area where the two closest buildings are St. Fintan's Church and the Santa Sabina school complex, both containing protected structures, and accordingly an Architectural Heritage Assessment accompanies this application.

3.43 The church is designed as a 'one-off' building designed to stand alone and be seen in the round. It has a strong visual presence and would be minimally impacted by development in proximity. The school complex is some distance away and although it contains a protected structure, it does not in itself set a particular context or have architectural merit. The proposed amendments will have no impact on the protected structure or its established curtilage.

- 3.44 Other existing developments nearby include the Glencarraig housing to the north which is located a substantial distance from the proposed development, with the three storey Block D buildings on the north part of the application site providing a suitable transition from the five storey apartment blocks on the front portion of the RS zoned land.
- 3.45 Please refer to the Visual Impact Assessment and Photomontages for a more detailed assessment.
- 3) *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.*
- 3.46 The subject site would not be considered as a large urban redevelopment site. In addition, this SHD application relates to proposed alterations to a permitted Section 34 permission, which established the layout and massing of development on site. The proposed alterations do not seek to significantly alter the layout and massing of the development, other than in relation to an increase in height for Blocks A-B1 and C2.
- 3.47 The increase in height proposed on the subject site could be considered to be a positive addition to the built form of the Greenfield Road area. The development provides for a good sense of enclosure in an urban design sense and screens views of rear gardens. The structures are set back from the road so that the visual impact from the taller buildings is scaled appropriately. The design quality of the architecture in itself is high and represents a step change in improving the streetscape.

Scale of District / Neighbourhood / Street

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

Response

- 3.48 As set out above, this SHD application relates to proposed alterations to a permitted Section 34 permission, which established the layout and massing of development on site. The proposed alterations do not seek to significantly alter the layout and massing of the development, other than in relation to an increase in height for Blocks A-B1 and C2.
- 3.49 The increase in height proposed on the subject site could be considered to be a positive addition to the built form of the Greenfield Road area. The structures are set back from the road so that the visual impact from the taller buildings is scaled appropriately. The design quality of the architecture in itself is high and represents a step change in improving the streetscape.
- 3.50 Thus, it is submitted that the proposal will make a positive contribution to the area, as it will provide for a high quality architectural development that responds to and respects existing development in the area.
- 2) *The proposal avoids long, uninterrupted walls of building in the form of perimeter blocks or slab blocks with materials / building fabric well considered;*

Response

- 3.51 The architectural design and treatment of buildings is not proposed to be altered as part of this SHD application, other than changes associated with the increase in heights of Block A-B1 and C2 and the change of the houses on the northern boundary to 3 storey apartment buildings.
- 3.52 In addition, we note that points relating to the architectural design and materials have already been addressed as part of the Planning Authority's assessment of the previous applications. In particular, we refer the Board to Further Information Item 3.d) of F17A/0615 which shows that where concerns were had, in that regard, these were successfully addressed. In relation to the materials, these have also been addressed as part of the Further Information Item 13 of F17A/0615 and Condition no. 3 of that permission. A similar condition can be appended to any grant of permission.
- 3) *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 "the Planning System and Flood Risk Management Guidelines for Planning Authorities 2009;*

Response

- 3.53 The subject site is located to the north of a substantial area of open space fronting Greenfield Road associated with the adjacent school. The open space for the permitted / proposed residential development provides for continuity with this expanse of open space providing a suitable buffer to the five storey buildings now proposed within the site. The proposed building heights of 3 to 5 storeys to the north of the open space areas will provide an appropriate sense of scale and enclosure to both the open space and Greenfield Road further to the south.
- 3.54 A flood risk assessment has been carried out by DBFL and accompanies this SHD application. The SSFRA has been undertaken in consultation with the Planning Authority and having regard to the Opinion issued by An Bord Pleanála. The proposed increase in building height does not have a material impact on the flood risk assessment.
- 4) *The proposal makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is situated and integrated in a cohesive manner.*

Response

- 3.55 The proposed development would improve the legibility of the area by providing a taller element of development along Greenfield Road, which is predominantly low rise at present and therefore somewhat lacking an urban structure at present. The proposed heights of 3 to 5 storeys across the site are appropriately located and designed to provide a positive response to the site and surrounding context in respect of the proposed building heights. The five storey elements are well set back from Greenfield Road and neighbouring properties to ensure they can be absorbed into the environment without having an adverse impact on the surrounding area.
- 5) *The proposal positively contributes to the mix of uses and / or building / dwelling typologies available in the area.*

- 3.59 The development would increase the share of apartment dwellings in an area where such type of units represents a small share of the housing stock. Data from the 2016 Census shows that the housing stock in the Electoral Division (ED) of Howth (where the site is located) is 86% houses and 12.5% apartments; the share in the adjoining Sutton ED is 93% houses and 7% apartments. Thus, the proposed alterations to the permitted development would increase the variety of dwelling types and apartment sizes to meet a variety of housing needs in this area of the City.

Scale of the Site / Building

- 3.56 The guidelines lastly set out the following criteria for developments at the scale of the site / building;
- 1) *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.*

Response

- 3.57 The application is accompanied by a Daylight and Sunlight Assessment prepared by Digital Dimensions which demonstrates that the proposed alterations to the permitted residential development on the subject lands, including the open spaces serving the residential units, meet with the relevant requirements of the BRE Guidelines and do not adversely impact the amenity of adjacent residential properties.
- 3.58 Key quotes from the daylight and sunlight assessment are as follows:

Daylight within the Proposed Development

“All habitable rooms in the units assessed exceed the minimum levels set out and therefore meet the recommendations of the BRE Guidelines and BS8208 Part 2:2008 Lighting for Buildings, Code of Practice for Daylighting.”

Impact on neighbouring properties and of permitted open space:

“The preliminary assessment indicates there will be no impact to daylight for the surrounding buildings and the proposed development meets the recommendations of the BRE Guidelines and BS8208 Part 2:2008 Lighting for Buildings, Code of Practice for Daylighting.”

and

“There will be no reduction in the available sunlight on the ground to any adjacent residences. The amenity space to the proposed development meets the recommendations of the BRE guidelines and will receive in excess of 2 hours sunlight over 50% of the open space.”

- 3.59 Thus, it is respectfully submitted that the proposed increase in building height to five storeys on part of the site can be accommodated without adversely impacting on daylight and sunlight within the development or on surrounding properties.
- 3.60 As such it is respectfully submitted that the proposed development has been carefully designed as to maximise access to natural daylight, ventilation and views and to minimise overshadowing and loss of light.

- 2) *Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlines in guides like the Building Research Establishment's "Site Layout Planning for Daylight and Sunlight" (2nd edition) or BS 8206-2:2008 – "lighting for Buildings – Part 2; Code of Practice for Daylighting".*

Response

- 3.61 As mentioned above, a daylight / sunlight analysis has been prepared and is submitted with this application. The design, form and layout of the proposed alterations to the permitted development have been informed by achieving the best possible results for daylight/ sunlight within the development and the surrounding properties.

Specific Assessments

- 3.63 The Guidelines note that to support proposals at some or all of these scales, specific assessments may be required and these may include:

- 1) *Specific Impact assessment of the micro-climatic effects such as down-draft. Such assessments shall include measures to avoid/mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.*

Response

- 3.64 This SHD application is accompanied by a Wind Study that demonstrates the proposed increase in height does not have the potential to give rise to adverse microclimate impacts.

- 2) *In development locations in proximity to sensitive bird and/or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight lines and/or collision.*

Response

- 3.65 This SHD application is accompanied by an Ecological Impact Assessment, a Bat Assessment and a Natura Impact Statement which demonstrates that the proposed increased in building heights does not have the potential to adversely impact on the biodiversity of the area, primarily as there are no sensitive bird or bat areas impacted by the proposed apartment blocks.

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

Response

- 3.66 The development is modest in height and is located at a low datum level. There are no communications masts in the vicinity and no identified channels.

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

Response

- 3.67 The development is modest in height and is located at a low datum level. There is no potential for any impact on air navigation as a result of the height increase proposed on site.

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

Response

- 3.68 As set out above, the application is accompanied by the following documentation of relevance to this requirement:

- 3) OMP's Design Statement
- 4) BSM's Visual Impact Assessment and Photomontages
- 5) Cathal Crimmins Architects Architectural Heritage Assessment

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

Response

- 3.69 As noted above, this SHD application is accompanied by an Ecology Report and an AA Screening Report and Natura Impact Statement, which demonstrates that the proposed increase in building heights does not have the potential to adversely impact on the biodiversity of the area.
- 3.70 In addition, an EIA Screening Report accompanies the application which demonstrates that the proposed alterations to the permitted development do not have the potential to adversely impact on the environment.

Specific Planning Policy Requirement 3

- 3.71 Under SPPR 3 of the Building Height Guidelines, it states that where the applicant sets out compliance with the criteria for assessing building height at the scale of the relevant town / city, at the scale of district / neighbourhood / street and at the scale of a site / building that the planning authority or An Bord Pleanála may approve such development even where specific objectives of the relevant development plan or local area plan may indicate otherwise.
- 3.72 As demonstrated above, this application has demonstrated that the proposed building heights are appropriate within the context of the above development management criteria.
- 3.73 Having regard to the above and provisions of SPPR3, it is respectfully submitted that the Board can approve the proposed development under section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended) as compliance has been demonstrated with the relevant development management criteria under Section 3 of the Building Height Guidelines 2018.

4.0 RELEVANT PRECEDENTS

- 4.1 In addition to the preceding section which addresses the specific development management criteria for increased building heights under the Building Height Guidelines, it is also considered relevant to draw the Board's attention to recent relevant precedent decisions from the Board / planning authorities, where permission was granted for building heights that would have (prior to the publication of the Guidelines) been considered to be material contravention of the local planning policy framework.

SHD PERMISSIONS***ABP Ref.: 304823-19 – Churchview Road and Church Road, Killiney, Co. Dublin***

- 4.2 The Board granted permission for a SHD development of 210 no. units on a site at Churchview Road and Church Road, Killiney, Co. Dublin. The permitted heights range from part 3, part 4 to part 7 no. storeys.
- 4.3 This precedent is considered to be relevant to the subject application, given its suburban location within the Dublin Metropolitan area, as the Board considered the site on Churchview Road, Killiney, Co. Dublin, to be an accessible urban location having regard to the terms of the Apartment Guidelines 2018 and proximity to bus routes, where the peak frequency is 10 minutes or less
- 4.4 We note the Inspector's Report states that *"it is considered that the height of the proposed buildings of 3 and 4 storeys on the edges of the site with a 7 storey element on its western boundary would be in keeping with the height strategy set out in appendix 9 of the development plan, although the implementation of this strategy is affected by the subsequent adoption of the national building height guidelines."*
- 4.5 The Inspector further states that *"the greater height of the proposed buildings compared to those around them would accord with the statement at SPPR1 of the guidelines to support increased building height and density in locations with good public transport accessibility."*

Figure 4.1: CGI of Permitted SHD at Churchview Road and Church Road, Killiney***ABP Ref.: 305176-19 - Stillorgan Leisureplex, Old Dublin Road, Stillorgan, Co. Dublin***

- 4.6 We note that the Board recently granted permission for a scheme of 232 no. build to rent residential units, under ABP Ref.: 305176-19 at Stillorgan Leisureplex, Old Dublin Road, Stillorgan, Co. Dublin.
- 4.7 The heights of the permitted scheme ranged from 4 no. to 8 no. storeys in an area subject to the objectives and policies of the Stillorgan Local Area Plan 2018-2024 which limit building heights to 5 storeys across the site and a reduction to 3 storeys at the rear, adjoining 2 storey dwellings.

- 4.8 It is noted that the Board's Order and Direction do not refer to the development being a material contravention of the Development Plan and Local Area Plan. In assessing the development, the Inspector's Report states that *'since the adoption of this LAP, the national guidance for increased building heights in urban areas has been published. An advisory note attached to the DLRCC development plan states that all housing standards in the development plan are superseded by the most up to date standards and specifications in the "Specific Planning Policy Requirements" (SPPR) therefore I have assessed the proposal in line with relevant SPPR's and the overall design and layout further below.'*
- 4.9 The Inspector further states that *"the terms of the 2018 guidelines on building height and the recent permitted development on the adjoining development (ABP 300520-17) would justify a grant of permission for the proposed development despite its height exceeding the benchmark height of 5 storeys, with reduction along the north, as detailed in Site Development Framework in the LAP, in accordance with section 37(2) (b)(iii) of the planning act. In addition, as stated above, an advisory note attached to the CDP refers to the implementation of the national guidance aside from any development management standards in the CDP."*

ABP Ref.: 304346-19 - Former Chivers site on Malahide Road

- 4.10 The Board granted permission for a SHD development at the Former Chivers site on Malahide Road, under ABP Ref.: 304346-19, with permitted heights ranging from 4 to 9 storeys. We note the following extracts from the Board's Direction granting permission for that particular development:

"The height of the proposed building exceeds the limit of 16m for this area set down by section 16.7.2 of the Dublin City Development Plan and that the proposed development would materially contravene this provision of the plan. Nevertheless the Board considered that a grant of permission is warranted in accordance with section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, having regard to the provisions in favour of higher buildings set out in the Guidelines for Planning Authorities on Urban Development and Building Heights issued by the Minister under section 28 of the Act in December 2018 and the compliance of the proposed development with SPPR 3 of those guidelines.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered that the proposed development was located within sufficient distance of several major employment centres including Beaumont Hospital and the City centre and also within 1km of a high capacity integrated public transport system and was satisfied that the development at the scale and density proposed would be fully in accordance with the provisions of the Urban Development and Building Heights Guidelines for Planning Authorities, 2018. It further considered that the proposed development would not set an undesirable precedent for similar developments and had regard to recent decisions in the area. The Board was also satisfied that the proposed design strategy as it relates to scale, mass and height of the proposed structures, represents an appropriate design response to the site's locational context and to the established character and pattern of development of the area and was satisfied that the large open space/parkland to the northern reach of the site provided an appropriate setting for increased height at this location."

ABP Ref.: 304196-19 - Clarehall, Malahide Road, Dublin 17

- 4.11 The Board granted permission for a SHD development of 132 no. build to Rent development on a site at Clarehall, Malahide Road, Dublin 17 under ABP Ref.: 304196-

19. The permitted heights raised from 6 to 9 no. storeys in a location with a general limit of 16 metres under the City Development Plan and a guideline of 4-6 storeys under the North Fringe – Belmayne LAP.
- 4.12 The Board's Direction which accompanies the Order granting permission for the development states that *"the height the proposed building exceeds the limit of 16m for this area set down by section 16.7.2 of the city development plan and that the proposed development would materially contravene this provision of the plan. Nevertheless the Board considered that a grant of permission is warranted in accordance with section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, having regard to the provisions in favour of higher buildings set out in the Guidelines for Planning Authorities on Urban Development and Building Heights issued by the minister under section 28 of the act in December 2018 and the compliance of the proposed development with SPPR 3 of those guidelines."*
- 4.13 In assessing the development, the Inspector states that *"the terms of the 2018 guidelines on building height and the recent permitted development on the adjoining development (ABP 300520-17) would justify a grant of permission for the proposed development despite its height exceeding the benchmark height of 5 storeys, with reduction along the north, as detailed in Site Development Framework in the LAP, in accordance with section 37(2) (b)(iii) of the planning act. In addition, as stated above, an advisory note attached to the CDP refers to the implementation of the national guidance aside from any development management standards in the CDP."*
- 4.14 As set out in this statement, it is submitted that a similar justification in terms of national planning policy and Government guidelines applies to the subject site and provides a justification for the heights proposed under this SHD application to the Board.

Section 34 Permissions

- 4.15 As the Fingal Development Plan 2017-2023 does not include a specific building height strategy section which sets out height restrictions for particular areas in the County, we are not aware of any recent examples of SPPR3 of the Building Height Guidelines having to be imposed by the Planning Authority for particular applications.
- 4.16 However, we are aware of situations where Dublin City Council and / or An Bord Pleanála have granted permission under SPPR3 for Section 34 planning applications where the development proposed included building heights which exceeded the relevant 16m / 24m / 28m height limits in the City Development Plan. In such cases, the applicant had demonstrated that the proposal complied with the relevant SPPR3 criteria and therefore it was appropriate to grant permission notwithstanding the relevant local height restrictions.
- 4.17 For ease of reference we note the following relevant precedents:
- **Eglinton Road, Donnybrook- DCC Reg. Ref.: 3047/18 and ABP Reg. Ref.: ABP-303708-19.** Permission granted by DCC and ABP for a 7 storey development on a site where maximum heights of 16 metres are specified in the City Development Plan.

The Board's Order in approving the development noted the Urban Development and Building Heights - Guidelines for Planning Authorities (December, 2018) and stated that *'the proposed development would be in accordance with current development plan policy, would not detract from the visual amenities of the area, would not adversely affect the architectural heritage of the area, would be*

acceptable in the context of the amenities of adjoining properties and would be acceptable in the terms of pedestrian and traffic safety and convenience.'

- **3 Poplar Row and Annesley Place, Ballybough, Dublin 3- DCC Reg. Ref.: 3900/18.** Planning permission granted on the 22nd March 2019 by Dublin City Council for development comprising the demolition of an existing commercial building and the development of a 'Build to Rent' residential apartment development of seven storeys in height containing 46 no. apartments. A third party appeal was lodged and subsequently withdrawn.

The Planning Report, dated 27th March 2019, in recommending planning permission to be granted included the following commentary regarding the proposed heights:

"In relation to the concerns regarding the height of the proposed development, the covering submission notes the adoption of the new height guidelines and the specific planning policy requirements. An urban design statement has been submitted in which the issue of the height of the proposed development is addressed. This concludes that the proposed build-to-rent development is a build is a new building typology, which will make a positive contribution to the area, that the site at Poplar Row constitutes a suitable location for an increased scale of development and that the amended proposal, together with recessed sixth floor, satisfies the criteria set out in the guidelines, at the scale of the city, the district/neighbourhood/street and the site/building; having regard to this, it is contended that the proposed seven-storey height is acceptable and that permission should therefore be granted.

It is submitted that the 16m maximum height which would apply under the development plan is not consistent with the provisions of the departmental guidelines. The site is adjacent to North Strand Road which is a bus corridor, with 16 Dublin Bus routes within a five-minute walk, while Connolly and Clontarf Road stations are both 1km away. The proposed Bus Connects service would also serve North Strand Road. The proposed development is therefore considered to be in a central and accessible location which should be developed to a sustainable density."

- **Former Cumberland House, Fenian Street- DCC Reg. Ref.: 3336 / 19 –** Permission was granted for an additional storey of development, i.e. a seven storey development with an overall height of 31.9 metres, in a location where the maximum height of 28 metres applies under the City Development Plan.

The Planning Officer's assessment stated the following:

"It is considered in principle the proposed development has made sufficient justification for the height proposed and therefore complies with the Urban Development and Building Heights Guidelines."

- 4.18 Having regard to the foregoing, it is respectfully submitted that it is appropriate for the Board to grant permission for the proposed alterations to the permitted development, notwithstanding that it exceeds the heights for the subject site as specified under Local Objective 113 of the Development Plan, having regard to SPPR 3 of the Urban Development and Building Heights Guidelines 2019.

5.0 CONCLUSION

- 5.1 The proposed alterations to the permitted development seek an increase in height of two no. apartment blocks from 3 to 5 storeys. It is acknowledged that the Planning Authority are likely to consider that the proposed heights contravene the Local Objective 113 relating to the site. It is respectfully submitted that should An Bord Pleanála consider the proposed development a material contravention of the Fingal Development Plan 2017-2023, and specifically Local Objective 113 restricting heights to three storeys on the site, this statement demonstrates that the building heights proposed in this SHD application are appropriate for the subject site and comply with the relevant development management criteria under the Building Height Guidelines 2018.
- 5.2 It is respectfully submitted that the current limitations of building height on the subject site set out under Local Objective 113 is inconsistent with the Building Height Guidelines, which acknowledges that to achieve higher density, development of taller buildings are required at appropriate locations.
- 5.3 This statement has outlined how the proposal meets all criteria outlined in national planning policy and S.28 Guidelines, particularly the Building Height Guidelines 2018, in terms of suitability for high density development incorporating taller buildings. Thus, there is ample justification for An Bord Pleanála to permit a material contravention of the Development Plan, should they consider the proposal a contravention of Local Objective 113, having regard to Section 37(2)(b)(i), (iii) and (iv) of the Planning and Development Act, 2000 (as amended).