

**DOWNEY**

29 Merrion Square, D02RW64



# Material Contravention Statement

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**Proposed Strategic Housing Development  
Lands at Auburn House (Protected Structure),  
Little Auburn and Streamstown off the  
R107 Malahide Road/Dublin Road  
and Carey's Lane,  
Malahide, Co. Dublin**

**Applicant: Kinwest Ltd.**

April 2022

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## 1.0 INTRODUCTION

Downey Planning, Chartered Town Planners, 29 Merrion Square, Dublin 2, have prepared this material contravention statement, on behalf of the proposed applicant, Kinwest Ltd. This statement outlines the justification of the proposed development on lands at Lands at Auburn House (Protected Structure), Little Auburn and Streamstown off the R107 Malahide Road/Dublin Road and Carey's Lane, Malahide, Co. Dublin, which materially contravenes the Fingal County Development Plan 2017-2023 in terms of the preparation of a Masterplan for lands known as Streamstown and the specific objectives of such a masterplan regarding building height and density. This statement also provides justification in relation to units per core and the car parking provision, trees and also in relation to the Development Plan's Core Strategy.

This statement is being submitted having regard to section 8(1)(a)(iv) of the Planning and Development (Housing) and Residential Tenancies Act, 2016:

*"8. (1)(a)(iv) Where the proposed development materially contravenes the said plan, other than in relation to the zoning of the land, indicating why permission should nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000."*

and section 37(2)(b) of the Planning and Development Act, 2000 (as amended) which read as follows:

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

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

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

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

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

It is respectfully requested that An Bord Pleanála have regard to the following justification for a material contravention of the Fingal County Development Plan 2017-2023 in terms of the preparation of a masterplan on the basis that the policies and objectives of Development Management Guidelines for Planning Authorities which preclude the refusal of permission on prematurity because of a commitment in a development plan to prepare a strategy, Local Area Plan or framework plan not yet completed should only be used as a reason for refusal if there is a realistic prospect of the strategy or plan being completed within a specific stated timeframe. There are also numerous planning precedents for the permission of development in the absence of a completed and adopted masterplan.

It is also respectfully requested that the Board have regard to the justification for the material contravention of the specific objectives for the masterplan for low density housing and that the height of development be no more than 6m on the basis that there are conflicting objectives within the said Development Plan and that the policies and objectives stated in the Section 28 Government Guidelines, particularly ‘*Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)*’, ‘*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*’ (2020), the ‘*Urban Development and Building Heights, Guidelines for Planning Authorities*’, and the ‘*Project Ireland: National Planning Framework 2040*’ enable increased building height and residential densities on appropriately zoned lands in accessible suburban locations within existing urban areas.

The Board may also be of the opinion that the proposed development, specifically the provision of a new vehicular access from the Malahide Road (R107) may materially contravene Local Objective 57 and Objective Malahide 2 of the Fingal County Development Plan.

An argument may also be made that certain elements of the proposed development may materially contravene Development Management Standards of the Fingal County Development Plan in relation to units per core and car parking standards.

The proposed development is also of strategic and national importance as there is a clear and urgent need for housing at a national level within Ireland and indeed that permission for the proposed development should be granted having regard to the pattern of development in the area and the proposed development’s compliance with any future masterplan.

Therefore, the proposed development should be considered by An Bord Pleanála even if the proposed development may contravene materially the Development Plan relating to the area.

## **2.0 MATERIAL CONTRAVENTION OF OBJECTIVE MALAHIDE 11 AND OBJECTIVE PM14**

The Fingal County Development Plan 2017-2023 sets out objectives for the preparation of a Masterplan for lands at Streamstown, which the subject application site forms part of. In this regard, Objective Malahide 11 of the Development Plan states:

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

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

Furthermore, Objective PM14 of the Fingal County Development Plan 2017 -2023 seeks to:

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

Therefore, the proposed development materially contravenes Objective Malahide 11 of the Development Plan as a Masterplan has not yet been prepared or adopted for the Streamstown lands by Fingal County Council. This material contravention statement provides justification for the granting

of permission for the development of the lands at Auburn House, Little Auburn and Streamstown in the absence of the preparation and adoption of the Streamstown Masterplan. It is important to note that the masterplan area is already largely built out and/or approved at this stage with the exception of Auburn House and a handful of high-end individual houses that are located on big plots. The making of this application effectively constitutes the masterplan lands as the lands comprise the remaining lands available for development under the area designated for the Streamstown Masterplan.

Under '**Objective Malahide 11**' which seeks to prepare and/or implement the Streamstown Masterplan, the main elements to be included in the Streamstown Masterplan are:

- **Facilitate low density residential development reflective of the character of the area.**
- *Protect and preserve trees, woodlands and hedgerows within the Masterplan area.*
- *Preserve the tree lined approach to Malahide along the Dublin Road.*
- *Facilitate high quality sustainable development that protects and enhances the sensitive historic and natural setting of Auburn House and integrates new development with the conservation and preservation of the Protected Structure, its curtilage and protected trees.*
- *Retain visual corridors to/from Auburn House through the establishment of a visual buffer to the east of Auburn House.*
- **The area for development north of Auburn House is considered a sensitive development zone, whereby a maximum ridge height of 6m should be applied.**
- *Provide for a pedestrian / cycle route along the Auburn House Avenue to Malahide Road.*
- *Ensure pedestrian connectivity between Auburn House Avenue and Abington/Gaybrook/Castleheath.*
- *The lands will be the subject of a detailed flood risk assessment.*

However, the proposed development does materially contravene specific objectives for the lands with regards to the requirement to provide low density housing and the restriction of the height of the northern field to 6m. The proposed development ranges from two storeys to five storeys in height with a maximum ridge height of 14 metres - 17 metres in the area for development north of Auburn House and will provide a net density of c. 38 units per hectare which means that the proposed height and density is in excess of the height restriction and density requirements as set out as specific objectives of any masterplan and as such the proposed development contravenes materially the Development Plan relating to the area.

The masterplan lands, as set out under the Fingal County Development Plan 2017-2023, comprise Auburn House and grounds, Little Auburn, greenfield lands at Streamstown, recent development at Clairville Lodge on Carey's Lane as well as permitted development along Streamstown Lane with several smaller sites on both Streamstown Lane and Malahide Road. These smaller sites are made up of larger, single family style houses set in private gardens.

The Streamstown Masterplan relates to c. 21 hectares of brownfield and greenfield lands immediately adjoining the Dublin Road/Malahide Road and Careys Lane. This proposed SHD application relates to

c. 13.28 hectares of the Masterplan lands and represents the majority of the greenfield lands that are available for development. These lands include Auburn House and lands, including the two fields, and Little Auburn, house and grounds and lands at the Streamstown area to the south of Auburn House. The c. 13.55 of land are in the ownership of the applicant and therefore provides an opportunity to provide a coherent and planned development of these remaining masterplan lands. It is important to note that since the masterplan was identified in the Fingal Development Plan 20127-2023, many of the sites within the identified masterplan area have already been developed or are subject to live planning applications. Therefore, this application is unique in the sense that the subject lands comprise the majority of the undeveloped lands that would be subject to development under the designated masterplan lands as illustrated in figure 1 below and essentially represents the completion of the masterplan lands, as designated under the County Development Plan and would mean that the need to prepare a masterplan is effectively redundant.

Indeed, there has been numerous infill developments permitted or under consideration on the surrounding lands in the absence of the preparation of the masterplan including 5 no. residential dwellings in addition to the existing dwelling on Streamstown Lane which was granted permission by Fingal County Council under F19A/0541 following submission of additional information, F19A/0277 whereby 8 no. dwellings were permitted in the absence of the Masterplan and indeed 1 no. residential dwelling to the rear of existing dwelling under F20A/0206. These applications represent infill development and indicate that such infill developments on the surrounding lands can be permitted in the absence of a masterplan. As can be seen in figure 1 above, there have been numerous recent permissions granted on the lands to the south of the masterplan lands. Indeed, the lands subject to this application comprise the completion of the masterplan lands and provide for a co-ordinated and planned strategic development of the remaining developable lands.

It is submitted that this proposed Strategic Housing Development Application could be seen as effectively completing the development of the remaining masterplan lands. In this instance, the applicant is the sole owner of a significant portion of the masterplan lands and the proposed development has been carefully considered and designed such that it does not impact or prejudice the development potential of the surrounding lands that may be in different ownership. The proposed development and its architectural design statement clearly identifies links to surrounding lands, the provision of extensive open spaces, provision of walking and cycling routes and addresses the specific objectives for the Streamstown lands that allows and does not prohibit the development of surrounding lands in separate ownership and as can be seen above, there has been numerous developments permitted or under consideration within the Masterplan lands that do not prejudice against the development of the subject lands.



Figure 1 – Subject lands in red - adjoining permitted and existing developments outlined

Of the 9 specific objectives of the Development Plan for the masterplan, the following 2 objectives are subject to this material contravention:

- *Facilitate low density residential development reflective of the character of the area.*
- *The area for development north of Auburn House is considered a sensitive development zone, whereby a maximum ridge height of 6m should be applied.*

The application lands are identified as being subject to the preparation of a Masterplan by Fingal County Council and as such any application for development should not be considered in advance of the preparation of same. Therefore, the justification of the granting of this material contravention is set out below.

### **3.0 JUSTIFICATION FOR MATERIAL CONTRAVENTION OF OBJECTIVE MALAHIDE 11 AND OBJECTIVE PM14**

The subject site is identified as being subject to a Masterplan under Objective Malahide 11 and Objective PM14 of the Fingal County Development Plan with specific objectives to facilitate low density housing and restriction of height to 6m to the north of Auburn House and would not normally be considered for development until the adoption of the Masterplan. However, Downey Planning are of the considered opinion that this application should be granted planning permission, notwithstanding the material contravention, for the following reasons:

#### ***Subject Site Location***

The application site is located adjacent to 'Outer Suburban / Greenfield' in the context of the densities required under the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009). These areas are defined as being located on the periphery of cities or larger towns. The Guidelines also increased residential densities particularly for sites located in 'Outer Suburban / Greenfield' sites, and for such sites on the periphery of cities or larger towns, as it states:

*'The greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally.'*

In this case, the application site is located on appropriately zoned lands in an accessible location within the development boundary of Malahide where its setting along the periphery of the existing development boundary will form a natural extension to the suburbs of the town. The application site is also located within immediate walking distance of a Dublin Bus stop (No. 3579) located along the Dublin Road/Malahide Road (R107) to the southeast of the application site and is located within 2km of Malahide train station.

Restricting the height and density of the development at such a well-served location under the Fingal Development Plan 2017-2023 and proposed Streamstown Masterplan would go against the spirit and thrust of National Policy which promotes increased densities at well served urban sites and discourages general blanket height standards in certain urban areas, such as the subject site.

**Section 37(2)(b) Criteria**

Section 37(2)(b) of the Act sets out 4 distinct criteria and which at least 1 of which needs to apply for the Board to materially contravene a development plan. It is the opinion of Downey Planning that this current proposal satisfies all 4 of these criteria as follows:

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

There is a clear and urgent need for housing at a national level within Ireland, which is particularly prevalent within the larger cities and towns, including Malahide which is within the Dublin Metropolitan area. This is acknowledged by the Government as well as planning authorities and other such bodies. The result of this crisis has been a significant change in planning policy and guidance, which seeks to increase the output of housing with a focus being on increased densities within appropriate urban locations and zoned and serviceable sites. Key policy changes include:

- Housing for All: A Plan for Ireland (2021);
- Rebuilding Ireland, an Action Plan for Housing and Homelessness (2016);
- Project Ireland 2040 – National Planning Framework;
- *Sustainable Urban Housing: Design Standards for New Apartments* (2020); and
- Urban Development and Building Heights Guidelines for Planning Authorities (December 2018).

All of these documents acknowledge the current need and demand for additional housing and seek to bring forward the delivery of housing units. Locally, the lands are zoned for residential development and Malahide is listed as a self-sustaining growth town. The key tenet of the overall Settlement Strategy is the continued promotion of sustainable development through positively encouraging consolidation and densification of the existing urban built form – and thereby maximising efficiencies from already established physical and social infrastructure. It is submitted that the proposed development of 368 units as well as the protection and preservation of the existing Auburn House as one dwelling, complies with the objectives of the proposed variation to promote sustainable development through densification of the existing urban form and the provision of residential dwellings where there is a great demand for housing. This current proposal offers the opportunity to bring forward 368 housing units for Malahide and the Metropolitan Dublin Area.

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

It is evident that there are conflicting objectives within the Development Plan which seeks to accord with national planning policy in terms of the delivery of housing, the density of development and indeed the permitted height of development.

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

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

Page 364 of the Development Plan notes that subsequent applications will be required to adhere to the approved masterplans.

*“Subsequent planning applications will be required to adhere to the approved Masterplans”.*

However, the Planning Authority have already granted planning permission on lands that are within the designated masterplan area prior to such masterplan being prepared (Reg. Refs. F17A/0208, F18A/0151, F17A/0177 and F19A/0541 refers).

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

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

The Core Strategy of the Development Plan (including Objective SS02) clearly seeks to have residential development take place during the lifetime of this Plan on appropriately zoned lands in the County. The subject lands in this instance are zoned and serviced and are located within Malahide, which is identified as a Moderate Sustainable Growth Town within the Metropolitan Area of the County.

Objective Malahide 11 and PM14, seeking to have the Planning Authority first prepare a masterplan for these lands could be seen to conflict with Objective SS02 of the Development Plan as Objective PM14, as it relates to this site, could prevent the full implementation of SS02 should the non-preparation of masterplans have the effect of preventing residential development on otherwise zoned lands from being brought forward. Therefore, it is submitted that there is a lack of clarity regarding the true intention of the Plan as well as conflicting objectives within it.

In relation to density, Objective Malahide 11 of the Development requires the preparation of a Streamstown Masterplan and the first item for the Masterplan is to *“facilitate low density residential development reflective of the character of the area”*. However, this materially conflicts with Objective PM41 of the Development Plan, which seeks to: *“Encourage increased densities at appropriate locations whilst ensuring that the quality of place, residential accommodation and amenities for either existing or future residents are not compromised.”*

Furthermore, the Development Plan notes with regards to residential density that in general the number of dwellings to be provided on a site should be determined with reference to the Departmental Guidelines document Sustainable Residential Development in Urban Areas –

Guidelines for Planning Authorities (2009). As a general principle and to promote sustainable forms of development, higher residential densities will be promoted within walking distance of town and district centres and high-capacity public transport facilities. However, the Development Plan has a specific objective to provide for low density housing on the subject lands and as such there are conflicting objectives in the Development Plan with regards to appropriate densities for outer suburban sites such as the subject lands whereby national policy requires net densities of 35-50 units per hectare. Not strictly speaking an Objective, but Objective Malahide 11 is not consistent with the Guidelines (in my opinion).

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

***(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***

The proposed development is in accordance with the following national and regional planning policies, including guidelines issued under Section 28 of the Planning & Development Act, 2000 (as amended), which shall be discussed now.

#### ***Development Management Guidelines for Planning Authorities (2007)***

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

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

#### ***Project Ireland 2040 – National Planning Framework***

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

*“At a metropolitan scale, this will require focus on a number of large regeneration and redevelopment projects, particularly with regard to underutilised land within the canals*

*and the M50 ring and a more compact urban form, facilitated through well designed higher density development.”*

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

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

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

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

*“**National Policy Objective 11:** In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.”*

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

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

*“**National Policy Objective 35:** Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”.*

Downey Planning are of the considered opinion that the proposed residential development is consistent with the Objectives of the NPF, which will help the Dublin Metropolitan area reach its targeted growth as outlined in the NPF. The proposed development will take place in a sustainable manner, on lands that are within the established urban settlement of Malahide and can be considered contiguous to existing residential developments. This will take place through appropriate design standards and achieving the correct density for the subject site. The development will not give rise to

any negative effects on the environment and will support the economic growth and development of Malahide.

It is evident that there is a strong emphasis placed on increased building heights and densities in appropriate zoned lands and locations within existing urban settlements. As such it is respectfully submitted that the proposed building height ranging from two storeys to five storeys is consistent with Government guidance and evolving trends for sustainable residential developments in urban areas.

### ***Sustainable Residential Development in Urban Areas & Urban Design Manual (2009)***

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

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

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

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

The sequential approach to land development is also recognised by the Guidelines within Section 2. which notes that *"the Department's Development Plan Guidelines (DoEHLG, 2007) specifies that zoning shall extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, encouraging infill opportunities and that areas to be zoned shall be contiguous to existing zoned development lands."*

In this case, the subject site is zoned "RA – Residential Area" within the Fingal County Development Plan 2017-2023. The site is located on appropriately zoned lands to the southwest of Malahide and will be contiguous to existing residential developments at Abington and Auburn Grove to the north, and Clairville Lodge to the south, while there is a residential scheme currently under construction at

Streamstown Wood located to the south of the site. Limiting height and density will prevent sustainable, compact development in within appropriately zoned lands located within an existing settlement boundary and will lead to 'leapfrogging' of developments and urban/suburban sprawl, particularly into greenfield and high amenity lands. Thus, the Development Plan's objectives restricting height at the application site conflict with National Planning Policy issued under Section 28 Guidelines.

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

In terms of density, Section 5.11 of the Guidelines support increased residential densities particularly for sites located in 'Outer Suburban / Greenfield' sites, particularly for such sites on the periphery of cities or larger towns, as it states:

*'The greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally.'*

In addition to the above, the guidelines go on to further state the following in terms of residential development in 'Outer Suburban/Greenfield' sites:

*'Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares.'*

The application site will achieve an overall net density of c.38 dwellings per hectare (Net developable area is 9.879 hectares when the areas of Auburn House, woodland and existing entrance avenue have been omitted). It is considered that the site is classified as an outer suburban / greenfield site noting its location on appropriately zoned lands in a highly accessible location within the development boundary of Malahide. Therefore, it is submitted that the proposed development provides for an appropriate density of development given the nature of lands and protection of the existing Protected Structure, Avenue and woodland areas. **Downey Planning would also bring to the attention of the Board a recent decision by the Board under ABP Ref. 307020-20 (Fingal Reg. Ref. F19A/0452) for a development of 52 no. dwellings at Streamstown Wood, which is to the south of the lands at Auburn. The Board overturned the decision of the Planning Authority and refused permission on the basis that the net density of 24.9 units/hectare would constitute an unacceptable residential development in this outer suburban/greenfield location and not in accordance with Section 5.11 of the Guidelines. The Board have clearly set a precedent that low density development is not acceptable in this area.**

***Sustainable Urban Housing: Design Standards for New Apartments (2020)***

The ‘Sustainable Urban Housing: Design Standards for New Apartments’ build on the content of the 2015 apartment guidance. The Guidelines state that *“in the longer term to 2040, the Housing Agency has identified a need for at least 45,000 new homes in Ireland’s five cities (Dublin, Cork, Limerick, Galway and Waterford), more than 30,000 of which are required in Dublin City and suburbs, which does not include additional pent-up demand arising from under-supply of new housing in recent years.”*

The Guidelines also state that *“apartments are most appropriately located within urban areas. As with housing generally, the scale and extent of apartment development should increase in relation to proximity to core urban centres and other relevant factors. Existing public transport nodes or locations where high frequency public transport can be provided, that are close to locations of employment and a range of urban amenities including parks/waterfronts, shopping and other services, are also particularly suited to apartments.”*

In light of this, the Guidelines note that *“City and County Development Plans must appropriately reflect this, in the context of the need to both sustainably increase housing supply and to ensure that a greater proportion of housing development takes place within the existing built-up areas of Ireland’s cities and towns. This means making provision for more residential development to take place on infill and brownfield sites and as refurbishment of existing buildings, to increase urban residential densities.”*

Section 2.23 of the Guidelines also recognises that the National Planning Framework *“signals a move away from rigidly applied, blanket planning standards in relation to building design, in favour of performance-based standards to ensure well-designed high-quality outcomes. 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.”*

The objectives within the Fingal County Development Plan 2017-2023 materially conflict with this National Policy.

Section 2.4 of the Guidelines also promotes higher density development in accessible, suburban locations within easy walking distance to/from high frequency urban bus services. The subject site meets this criterion as it is within 100 metres of a bus stop located on the Dublin Road/Malahide Road which provides a bus connection to Malahide and Dublin City Centre, i.e., Bus Stop No. 3579 on R107.

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

The ‘Urban Development and Building Heights, Guidelines for Planning Authorities’ are intended to set out national planning policy guidelines on building heights in relation to urban areas, building from the strategic policy framework set out in the National Planning Framework 2040 (NPF). These Guidelines recognise that in recent years local authorities, through the statutory plan process, have started to set generic maximum height limits. However, such limits if inflexibility and unreasonably applied, can undermine national policy objectives to provide more compact urban forms as outlined in the National Planning Framework and instead can continue unsustainable patterns of development.

These Guidelines reinforce 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.”*

The document states that it is critically important that development plans identify and provide policy support for specific geographic locations or precincts where increased building height is not only desirable but a fundamental policy requirement. The Guidelines go on to state that, *“the scope to consider general building heights of at least three to four storeys, coupled with appropriate density, in locations outside what would be defined as city and town centre areas, and which would include suburban areas, must be supported in principle at development plan and development management levels.”*

*“Newer housing developments outside city and town centres and inner suburbs, i.e. the suburban edges of towns and cities, typically now include town-houses (2-3 storeys), duplexes (3-4 storeys) and apartments (4 storeys upwards). Such developments deliver medium densities, in the range of 35-50 dwellings per hectare net. Such developments also address the need for more 1 and 2 bedroom units in line with wider demographic and household formation trends, while at the same time providing for the larger 3, 4 or more bedroom homes across a variety of building typology and tenure options, enabling households to meet changing accommodation requirements over longer periods of time without necessitating relocation. These forms of developments set out above also benefit from using traditional construction methods, which can enhance viability as compared to larger apartment-only type projects.”*

The Guidelines go on to state that, *“the suburban edges of towns and cities, for both infill and greenfield development and should not be subject to specific height restrictions.*

Alternatively, as set out below, the Board could grant permission on the basis that Section 9(3)(b) of the Planning and Development (Housing) and Residential Tenancies Act 2016 provides that 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. Where specific planning policy requirements in such Ministerial 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.

It is respectfully submitted that even if the Board does not expressly grant permission on the basis of material contravention, the Board is required to dis-apply any provisions of the Fingal County Development Plan to the extent that they differ from any specific planning policy requirements set out in Ministerial Guidelines.

In that regard, it is respectfully submitted that the requirements in SPPR2 and SPPR3 of the 2018 Building Height Guidelines are met.

The following Special Planning Policy Requirements are contained within the Guidelines and are relevant to the proposed development:

**Specific Planning Policy Requirement 2** – *“In driving general increases in building heights, planning authorities shall also ensure appropriate mixtures of uses, such as housing and commercial or employment development, are provided for in statutory plan policy. Mechanisms such as block delivery sequencing in statutory plans could be*

*utilised to link the provision of new office, commercial, appropriate retail provision and residential accommodation, thereby enabling urban redevelopment to proceed in a way that comprehensively meets contemporary economic and social needs, such as for housing, offices, social and community infrastructure, including leisure facilities”.*

The proposed development seeks to provide for a mix of housing typologies, including houses, duplex apartments and apartments. Furthermore, there will be a mix of uses within the development itself comprising childcare facilities as well as residential amenity facilities. This will all add to the variety and mix of the development as well as creating active frontage and animation to the development.

In addition, the application relies on **SPPR 3** of the Building Height Guidelines which provides 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 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.”*

Section 3 of the Guidelines sets out development management principles and criteria that proposals for higher buildings are to be assessed against. The application complies with the criteria in Section 3.2 of the Building Height Guidelines and meets the standard set by the High Court in *Rita O’Neill v An Bord Pleanála* [2020] IEHC 356 where McDonald J. highlighted (at para.157) the requirement contained within Section 3.2 of the criteria referable to SPPR3(A) that an application is required to demonstrate to the satisfaction of the planning authority (in this case the Board) that the proposed development satisfies the criteria which are set out over the next three pages of the guidelines and which are broken down into four distinct categories. The judgment identified that, among the criteria that a proposed development must satisfy are the following:

(a) It is a requirement that the development site should be well served by public transport with high capacity, frequent service and good links to other modes of public transport;

(b) In the case of development proposals incorporating increased building height, there is a requirement that these should successfully integrate into/enhance the character and public realm of the area;

(c) There is also a requirement that the form, massing and height of a proposed development should be carefully modulated so as to maximise access to natural daylight and views and minimise overshadowing and loss of light;

(d) The guidelines also state that specific assessments may be required including an assessment that the proposed development allows for the retention of important telecommunication channels.

In *Spencer Place Development Co. Ltd. v Dublin City Council* [2020] IECA 268 the Court of Appeal stated that *“In contrast with Ministerial guidelines generally - to which planning bodies must ‘have regard’ but which do not impose binding obligations as such - planning authorities, regional assemblies and An Bord Pleanála (‘ABP’) are statutorily required to ‘comply’ with SPPRs in the performance of their functions.”*

It is clear from the decision of the Court of Appeal that, in cases where SPPR3(A) applies, this requires a planning authority to undertake the assessment of a development proposal against the development management criteria contained in Chapter 3 of the Guidelines – namely the criteria specified in detail in para. 3.2 of the Building Height Guidelines.

As set out below, it is respectfully submitted that the application meets that threshold.

The Development Management Principles are in accordance with and consistent with securing the objectives of the NPF and the Fingal County Development Plan. The Development Management Criteria are as follows:

**1. At the scale of the relevant city/town:**

- Malahide is located within the Metropolitan Area of Dublin and Malahide has been identified as a Moderate Sustainable Growth Town in the Fingal County Development Plan 2017-2023. The County Plan notes that Malahide has experienced population growth in recent years and is served by high-capacity public transport links to Dublin City.
- The Development Plan states *“the emphasis of this Plan is to continue to consolidate the existing zoned lands and to maximise the efficient use of existing and proposed infrastructure. In this way the Council can ensure an integrated land use and transport strategy in line with national and regional policy.*
- The subject site is well served by public transport, particularly Dublin Bus with bus stops just outside the site on the Dublin Road/Malahide Road (R107). The site is also within approximately 2km walking distance of the Malahide Train Station offering further transportation connections to and from the city centre and beyond.
- The existing area is generally characterised by low density housing and the subject site is screened from the Dublin Road/Malahide Road (R107) by the tree lined approach on the Dublin Road/Malahide Road and the site itself is characterised by mature trees, woodland and primarily the large 11-bedroom Auburn House (Protected Structure). The retention of the existing tree lined boulevard and woodland, including through the Woodland Management Plan, will ensure that the proposed development will not give rise to any significant negative visual impact as confirmed in the Visual Impact Assessment prepared by TBS Landscape Architects.

**2. At the scale of the district/neighbourhood/street:**

- The proposal for increasing the height of parts of the development, above the 6-metre threshold set out in the Development Plan, will help to create added visual interest at the subject site, which will be supported by the provision of open space and variety of housing types. It is noted that the heights of Blocks 1-3 have been reduced from a previously

proposed 6 storeys, down to 5 storeys, which further improve the integration of these blocks into the site.

- It is respectfully considered that the proposal introduces a high-quality development at an underutilised site of site within an urban setting. The proposed development responds appropriately to the massing and scale of the surrounding urban pattern and scale, with higher built elements away from more sensitive parts of the site, such as the Protected Structure.
- It is noted that there is a pattern of larger, suburban style dwellings in the area on large plots. The proposed development positively adds to the variety and mix of housing typologies that would otherwise be available in the area and thus helping to achieve a more sustainable pattern of development for existing and future generations.
- The proposed design includes an appropriate palette of materials that are sensitive to the overall development and avoids the creation of monolithic blocks.

### **3. At the scale of the site/building:**

- The design of the scheme has taken cognisance of any constraints within the site, such as Protected Structures and the taller buildings have been located removed from such constraints and more sensitive areas. The existing woodlands and tree lined boundaries will also help to screen the development.
- The taller buildings within the scheme do not impinge upon any sensitive or protected views in the vicinity of the site.

### **4. Specific Assessment:**

- The principle of a residential development on the site has been established through the zoning of the lands for residential use and previous permissions granted in the surrounding area.
- Waterman Moylan Consulting Engineers also carried out a quantitative assessment into daylight and sunlight across the scheme. The assessment, which was carried out in accordance with the BRE document 'Site Layout Planning for Daylight and Sunlight: a Guide to Good Practice' Second Edition 2011, confirms that the proposed development has been designed in accordance with the advice and recommendation set out in those Guidelines.
- Waterman-Moylan Consulting Engineers, in conjunction with JBA have carried out a site-specific Flood Risk Assessment, which confirms that the proposed development will not give rise to any flood risk on the site or on adjoining properties.
- The proposed height of the development will not affect air navigation or result in any undue glare and will not have any other micro-climatic effects.
- The proposed development will not result in impact on telecommunication channels.
- The proposed development will not impact on any safe air navigation as it outside the flight safety zones of Dublin Airport.
- Openfield Ecological Services have also prepared a Natura Impact Statement that confirms that the proposed development will not adversely affect the integrity of any designated Natura 2000 sites.

- An Environmental Impact Assessment Report has also been prepared as part of the application and shall confirm that the proposed development is acceptable from an environmental perspective.
- The proposed development has also been informed by ongoing specialist advice from Sheehan & Barry Conservation Architects to ensure that the development will not give rise to any adverse impacts on the Protected Structure of Auburn House and its attendant grounds.
- The Architect's Report prepared by CCK Architects & Urban Designers has also been included with the application. The Report outlines how the proposed development has been sensitively designed to respond to the existing context of the site.

It is evident from the foregoing that the proposal to provide for buildings in excess of 6 metres at the subject site is in accordance with these Guidelines.

This Strategic Housing Development is in accordance with SPPR1, SPPR2 and SPPR3 of these Guidelines on building heights in urban areas.

### ***National Policy***

Overall, it is clear that it is National Policy to promote and encourage increased densities in the range of 35-50 dwellings per hectare on zoned lands in accessible suburban locations within existing settlement development boundaries. In order to achieve this density in a sustainable manner, the requirement for increased building heights must be explored in appropriate locations to prevent urban sprawl and thus promote a compact urban form. In this case, the proposed overall net density of c.38 dwellings per hectare (Net developable area is 9.879 hectares when the areas of Auburn House, woodland and existing entrance avenue have been omitted), can only be achieved through the provision of increased building heights, with the proposal ranging from two storeys to six storeys in height. It is argued that for the proposed development to comply with sustainable densities in accessible suburban locations, an increased building height must also be applied. As such, it is considered that the proposed maximum building heights of 17 m for the proposed apartment block 2, ranging from three storeys to six storeys in height and a proposed density of c.38 units per hectare is appropriate for the subject site and in compliance with National Policy. Furthermore, there is clear guidance at national level that where there is no clear timeline for the preparation of a plan (such as a masterplan), a proposed development should not be considered premature pending the preparation of the masterplan. In this instance, the subject application is unique in the sense that the lands comprise the last remaining lands available for development and are within the ownership of the applicant. The granting of the proposed development would not prejudice the development of the surrounding lands.

In light of the above, it is considered that restricting the height of development through specific local objectives at such a well-served location under the Fingal County Council Development Plan 2017-2023 is a direct contravention of National Policy which promotes increased densities at well served sites and discourages general blanket height standards in certain suburban areas, such as the subject site.

***(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.***

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

Such developments include Clairville to the south with Reg. Refs. F17A/0208, F18A/0151, F17A/0177 which sought revisions to permitted developments granted in the absence of a masterplan. Under F17A/0548, planning permission was granted for 8 no. residential dwellings in the absence of the preparation of the Streamstown Masterplan. Under F19A/0541, planning permission was granted for 5 no. detached dwellings to the south of the subject lands. It is evident that planning permission could be granted in the absence of the preparation of the Streamstown Masterplan by the Planning Authority and indeed under F20A/0206, planning permission was granted for a dwelling in the absence of the preparation of the Streamstown masterplan. There are also numerous precedents across Fingal where planning permission has been granted in the absence of the preparation of Masterplans by Fingal County Council.

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

It is respectfully submitted that the justification set out within the Material Contravention Statement clearly demonstrates that there is definitive local and national Policy guidance that outlines the appropriateness to develop the Auburn House lands without the requirement for a masterplan to be prepared and adopted by Fingal County Council. Downey Planning have also clearly demonstrated that the proposed development at Auburn House should be considered for increased density and height due to the application site's location within appropriately zoned lands, in a highly accessible location within the development boundary of Malahide and the policies and objectives set out within the Section 28 Guidelines.

The proposed development is consistent with local and national policy guidance where it clearly defines the parameters for the appropriate development with Auburn House and the Streamstown Masterplan lands. The Streamstown Masterplan lands are located in an accessible suburban location within an existing settlement development boundary on future residential zoned lands.

The majority of the masterplan lands are in the ownership of the applicant. The proposed strategic housing application together with the completed residential development at Clairville Lodge and the recent infill development decisions will result in the completion of the majority of the Streamstown Masterplan lands in accordance with local and national policy guidance. Furthermore, the proposed development will not impede the development potential of adjoining lands and the scheme will assimilate into the local area where it is predominately characterised by residential development.

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

#### 4.0 MATERIAL CONTRAVENTION OF LOCAL OBJECTIVE 57, OBJECTIVE MALAHIDE 2, OBJECTIVE PM64, OBJECTIVE DMS77, OBJECTIVE CH20 AND OBJECTIVE CH21

An argument may be made that the provision of a new access to the site on the Malahide Road/Dublin Road (R107) just south of the existing access to Auburn House may materially contravene Local Objective 57 of the Fingal County Development Plan, which states:

*“New or widened entrances onto the Dublin Road between Streamstown Lane and the Swords Junction will be restricted, to ensure the protection of the mature tree-lined approach along the Dublin Road to Malahide”.*

In this instance, the proposed development will provide a new vehicular access, which will be located just south of the existing access to Auburn House. This new junction will form part of a new junction with Back Road. The provision of the new access will require the removal of 16 no. trees (2 no. Category B trees and 14 no. Category C trees).

Furthermore, an argument may also be made that the development may materially contravene Objective Malahide 2, Objective PM64, Objective DMS77, Objective CH20 and Objective CH21 of the Fingal County Development Plan 2017-2023, which state:

Objective Malahide 2:

*“Retain the impressive tree-lined approach along the Dublin Road as an important visual element to the town and, specifically, ensure the protection of the mature trees along the Malahide Road at the Limestone Field and property boundary walls which create a special character to the immediate approach to Malahide”.*

It is noted that wording of both Objective PM64 (placemaking chapter of the Development Plan) and Objective DMS77 (Development Management Chapter of the Development Plan) are identical, and both relate to tree policies. Objective PM64 and DMS77 seeks to:

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

Objective CH20:

*“Ensure that any development, modification, alteration, or extension affecting a Protected Structure and/or its setting is sensitively sited and designed, is compatible with the special character, and is appropriate in terms of the proposed scale, mass, height, density, layout, materials, impact on architectural or historic features, and junction with the existing Protected Structure”.*

Objective CH21:

*“Seek that the form and structural integrity of the Protected Structure is retained in any redevelopment and that the relationship between the Protected Structure and any*

*complex of adjoining buildings, designed landscape features, or designed views or vistas from or to the structure is conserved”.*

## **5.0 JUSTIFICATION FOR MATERIAL CONTRAVENTION OF LOCAL OBJECTIVE 57, OBJECTIVE MALAHIDE 2, OBJECTIVE PM64, OBJECTIVE DMS77, OBJECTIVE CH20 AND OBJECTIVE CH21**

It is respectfully submitted that, in relation to Objective Malahide 2, the existing tree-lined approach along the Dublin Road is being retained in so much as possible while still facilitating the development. The most notable element of the property boundary walls at the subject site are in fact the historic entrance into Auburn and this is to be retained as part of the development. The option of using this as the main entrance, or even as part of an ‘in-out’ access arrangement, would have required significant widening of the entrance and removal of part of the pier walls and gate. Therefore, it is contended that the route option chosen for the access to the proposed development is most consistent with Objective Malahide 2 of the County Development Plan 2017-2023.

In relation to Local Objective 57, the design team have looked at alternative access options from the Malahide Road. However, in the first instance, it must be acknowledged that any for the development of the lands would require either the widening of an existing access and/or the provision of new entrances onto the Malahide Road. The subject lands simply cannot be developed without alterations to the existing accesses onto the Malahide Road as there would not be sufficient capacity on Carey’s Lane/Streamstown as the single means of access and egress to serve the proposed development of these lands. Furthermore, access is not available from the Abington estate to the north as that is in private ownership and the owners had objected to the development of the previous application and it is understood that access would not be made available. In light of this, the Malahide Road (R107) is the only means of providing access/egress to any form of development at this site.

In light of this, it must be acknowledged that all options for the development of the lands would require either the widening of an existing access and/or the provision of new entrances on the Dublin Road. The lands simply cannot be developed without alterations to the existing accesses onto the Dublin Road. Having regard to the opinion of the Planning Inspector on the previous application and the decision of the Board, the design team have prepared a detailed assessment of all of the options available for accessibility onto the main Dublin Road and this is prepared in a stand-alone Development Access Report, which was prepared by Downey Planning and is submitted under separate cover. This report considers the impacts from the view of conservation and heritage, arboricultural, landscape and visual impact and also traffic safety and management. The proposed option, which is in fact a similar approach as previously submitted to the Board, to be the most suitable design for Auburn as the other options would result in even greater tree loss, long-term significant adverse impact on the historic gates and entrance to Auburn or give rise to serious traffic safety issues. It is submitted that the Local Objective 57 needs to be balanced against the need to provide safe means of vehicular access onto the lands in order to facilitate the development of these residentially zoned lands. In this regard, we would draw the Board’s attention to section 11.4.36 of the Inspector’s Report on ABP Ref. 310413-21 (Deer Park Howth), which states:

*“While new openings in this historically significant feature should be avoided, the only option to create an access to this residentially zoned site, is to create a new opening in the wall. There are no existing openings onto Howth Road that can be utilised and therefore the removal of part of the wall to facilitate access is an unavoidable consequence of developing the site. This will be inevitable no matter what type, or scale of development, is proposed on the site”.*

As part of this application, the applicant and design team have looked at alternative access options, including from the Malahide Road (R107) to serve the proposed development and have set this out in a stand-alone ‘Development Access Report’, which is submitted under separate cover. That report assesses 4 access options from the adjoining R107 Malahide Road/Dublin Road and was informed through a collaborative process involving the various design team members, including CCK Architects, Waterman-Moylan Consulting Engineers, The Tree File arborists, Sheehan & Barry Conservation Architects, The Big Space Landscape Architects, 3D Design Bureau (visualisers) and Downey Planning. The Development Access Report considered the impacts from the view of conservation and heritage, arboricultural, landscape and visual impact and traffic safety and management. The proposed option (Option 1), which is in fact the same approach as previously submitted to be the most suitable design for Auburn as the other options would result in a greater tree loss, long-term significant adverse impact on the historic gates and entrance to Auburn or give rise to serious traffic safety issues. The Development Access Report seeks to then provide justification to An Bord Pleanála as to why the current proposed access has been chosen and represents the most suitable location for the site.

It is submitted that the Local Objective 57 needs to be balanced against the need to provide safe means of vehicular access onto the lands to facilitate the development of these residentially zoned lands. In this regard, we would draw the Board’s attention to section 11.4.36 of the Inspector’s Report on ABP Ref. 310413-21 (Deer Park Howth), which states:

*“While new openings in this historically significant feature should be avoided, the only option to create an access to this residentially zoned site, is to create a new opening in the wall. There are no existing openings onto Howth Road that can be utilised and therefore the removal of part of the wall to facilitate access is an unavoidable consequence of developing the site. This will be inevitable no matter what type, or scale of development, is proposed on the site”.*

There are benefits and constraints associated with all four of the options assessed and all options will result in a change to the character of the setting of Auburn. It is also important to note that the character of the road will be altered regardless of this development as it is separately proposed to signalise the junction of the R107 and Back Road to facilitate a junction.

This report and assessment concluded that Option 1 (the new entrance and signalised junction at Back Road) is the most suitable and least impactful of the 4 reasonable options and alternatives considered. This can be summarised as follows:

- Option 1 is considered to be most sensitive to the woodland edge of the R107 and it ensures that the historic entrance to Auburn House is maintained intact and used most appropriately.

- Option 1 is by far the most appropriate from an engineering and traffic safety perspective. This was also made clear to the applicant and design team during the Section 247 pre-planning meeting with Fingal County Council and was essentially endorsed by the Roads Department of the Council at that meeting.
- Option 1 retains the best balance of mitigation against conservation impacts of the 4 options considered. It retains the original gateway in a viable use for pedestrians and bicycles and avoids any damage or alteration to the material, character or form of the existing gateway. The proposed new entrance does not compete visually with the retained existing entrance. The impacts on the setting of the estate are relatively modest and are the least impactful on the tree beltway of the options considered.

It is submitted that justification has been suitably provided to the Board as to why the subject lands must be served by either a new or widened access from the Malahide Road (R107) and as such there can be no avoiding the loss of some trees and canopy along this stretch of road. The Board are invited to refer to the Development Access Report and other documentation submitted with this application for further details.

In relation to Objectives CH20 and CH21 as well as Objectives OM64 and DMS77, in comparison to the previous application on the lands, significant changes have been made to the design of the proposed development and its layout, massing, scale and height such that it is more sympathetic and respectful to the setting of Auburn House and its attendant grounds and as such is consistent with Objective CH20 and Objective CH21. These changes include:

- The removal of Block 7 from the woodland.
- Moving apartment Block 3 in a westerly direction to preserve the historic tree/hedgerow.
- The reduction in height of apartment blocks 1-3 by a single storey, to ensure that they are not impacting on the visual setting of Auburn and are completely below the existing tree line.
- Removal and reconfiguration of housing clusters in the front field, which protect the setting of Auburn House but also retain additional tree stands and hedgerows.
- The removal of the previous 'rain garden' attenuation area in the front field which preserves an existing historic hedgerow.
- Improved and updated Woodland Management Plan (prepared by The Tree File).
- Approximately 25% reduction in tree loss as indicated in the Arborists reports prepared by The Tree File.
- A net increase in tree planting compared to tree loss (please refer to The Big Space Landscape Architects reports).

The removal of the previously proposed community use building from the Walled Garden and increasing the separation distance from the closest apartment block.

### ***Section 37(2)(b) Criteria***

Section 37(2)(b) of the Act sets out 4 distinct criteria which at least 1 of which needs to apply in order for the Board to materially contravene a development plan. It is the opinion of Downey Planning that this current proposal satisfies at least 1 of these criteria as follows:

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

There is a clear and urgent need for housing at a national level within Ireland, which is particularly prevalent within the larger cities and towns, including Dublin. This is acknowledged by the Government as well as planning authorities and other such bodies. The result of this crisis has been a significant change in planning policy and guidance, which seeks to increase the output of housing with a focus being on increased densities within appropriate urban locations and zoned and serviceable sites. Key policy changes include:

- Rebuilding Ireland, an Action Plan for Housing and Homelessness (2016);
- Project Ireland 2040 – National Planning Framework;
- Sustainable Urban Housing: Design Standards for New Apartments (2020); and
- Urban Development and Building Heights Guidelines for Planning Authorities (December 2018).

All of these documents acknowledge the current need and demand for additional housing and seek to bring forward the delivery of housing units. This current proposal offers the opportunity to bring forward 368 no. new housing units as well as a childcare facility.

Having regard to this legislative and policy context, it is considered that this proposed Strategic Housing Development is, by definition, of strategic importance for the purposes of section 37(2)(b) of the 2000 Act as amended. Therefore, should the Board determine that the proposed development is a material contravention of any of the policies of the Development Plan, then the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b) of the Planning and Development Act 2000, as amended.

## **6.0 MATERIAL CONTRAVENTION OF DEVELOPMENT MANAGEMENT OBJECTIVES**

As previously stated, an argument may be made that the proposed development may also materially contravene certain development management objectives of the Development Plan, specifically regarding the number of units/apartment per core per floor and also in relation to car parking standards.

### **Objective DMS23 - Units Per Core**

Objective DMS23 of the Fingal County Development Plan states the following:

*“Permit up to 8 apartments per floor per individual stair/lift core within apartment schemes”.*

With regards to permitting up to 8 apartments per floor per individual stair/lift core within apartment schemes, the proposed apartment developments may be considered to conflict with Objective DMS23 of the Development Plan as some of the blocks contain between 6-12 units per core per floor.

### **Table 12.8 – Car Parking Standards**

Table 12.8 of the Fingal County Development Plan requires the following car parking standards:

Description	Car Parking Norm	No. of Units Proposed	Car Parking Requirement
House – Urban / Suburban (3 or more bedrooms)	2 spaces within the curtilage	88 Units	176 Spaces
Apartment / Townhouse (1 bedroom)	1 Space per unit plus 1 visitor space per 5 units	135 Units	162 Spaces
Apartment / Townhouse (2 bedrooms)	1.5 spaces per unit plus 1 visitor space per 5 units	138 Units	235 Spaces
Apartment / Townhouse (3 bedrooms)	2 spaces per unit plus 1 visitor space per 5 units	8 Units	18 Spaces
Crèche	0.5 spaces per classroom	6 Classrooms	3 Spaces
<b>Total</b>	-	-	<b>593 Spaces</b>

The proposed development complies with the Development Plan standards for the houses and creche. However, the provision of car parking for the apartments is below the standard set out in the Development Plan (please refer to the Table below for details).

Land Use/Blocks	No. of Units	Under Croft/ Under Podium	Podium/ Street	Total	Notes
<b>Houses</b> (excluding Auburn House)	87	-	177	177	Each House provided 2 spaces. (In Curtilage) plus 3 x visitor spaces in Back Field
Auburn House and Stables	1	-	2	2	2 car spaces for Auburn House in existing gravel parking court to the front of the house.
<b>The Backfield</b> (Blocks 1, 2 & 3)	Block 1	153	8	161	1 car parking space per unit plus 24 x visitor spaces
	Block 2				
	Block 3				
<b>Streamstown</b> (Blocks 6 & 7 and Duplex Block 1)	Block 6	-	24	24	1 car parking space per unit plus 3 x visitor spaces
	Block 7	-	28	28	1 car parking space per unit plus 3 x visitor spaces
	Duplex 1	-	9	9	1 car parking space per unit plus 3 x visitor spaces
<b>The Avenue</b> (Blocks 4 and 5, Duplexes 2A, 2B, 2C, 2D)	Block 4	94	2	96	1 car parking space per unit plus 4 x visitor spaces.
	Block 5				
	Duplex 2A				
	Duplex 2B				
	Duplex 2C				
	Duplex 2D				
Creche	-	3 Staff Spaces	5 Drop-Off Spaces	8	5 x additional creche drop off spaces can be used for residential drop off/visitors outside of creche hours.

Land Use/Blocks	No. of Units	Under Croft/ Under Podium	Podium/ Street	Total	Notes
<b>Total</b>	<b>369</b>	<b>250</b>	<b>255</b>	<b>505</b>	-

A total of 497 no. resident spaces are being provided with 8 additional car parking spaces then being provided for visitors and parking for the proposed childcare facility. This leaves a shortfall of 88 no. car parking spaces from the County Development Plan standards.

## 7.0 JUSTIFICATION FOR MATERIAL CONTRAVENTION OF DEVELOPMENT MANAGEMENT OBJECTIVES

### ***Section 37(2)(b) Criteria***

Section 37(2)(b) of the Act sets out 4 distinct criteria which at least 1 of which needs to apply in order for the Board to materially contravene a development plan. It is the opinion of Downey Planning that this current proposal satisfies at least 2 of these criteria as follows:

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

There is a clear and urgent need for housing at a national level within Ireland, which is particularly prevalent within the larger cities and towns, including Dublin. This is acknowledged by the Government as well as planning authorities and other such bodies. The result of this crisis has been a significant change in planning policy and guidance, which seeks to increase the output of housing with a focus being on increased densities within appropriate urban locations and zoned and serviceable sites. Key policy changes include:

- Rebuilding Ireland, an Action Plan for Housing and Homelessness (2016);
- Project Ireland 2040 – National Planning Framework;
- Sustainable Urban Housing: Design Standards for New Apartments (2020); and
- Urban Development and Building Heights Guidelines for Planning Authorities (December 2018).

All of these documents acknowledge the current need and demand for additional housing and seek to bring forward the delivery of housing units. This current proposal offers the opportunity to bring forward 368 no. new housing units as well as a childcare facility.

Having regard to this legislative and policy context, it is considered that this proposed Strategic Housing Development is, by definition, of strategic importance for the purposes of section 37(2)(b) of the 2000 Act as amended. Therefore, should the Board determine that the proposed development is a material contravention of any of the policies of the Development Plan, then the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b) of the Planning and Development Act 2000, as amended.

***(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***

The proposed development is in accordance with the following national and regional planning policies, including guidelines issued under Section 28 of the Planning & Development Act, 2000 (as amended), which have been outlined above and include the Design Standards for New Apartments.

While the proposed development provides more than 8 no. apartments per floor/per floor. However, the development and number of units per core/per floor is in accordance with the ‘*Design Standards for New Apartments Guidelines for Planning Authorities*’ (2020) and therefore meets criteria (iii) as set out above and which would supercede the standards set out in the Development Plan.

**Justification Relating to Car Parking Standards**

***Section 37(2)(b) Criteria***

Section 37(2)(b) of the Act sets out 4 distinct criteria which at least 1 of which needs to apply in order for the Board to materially contravene a development plan. It is the opinion of Downey Planning that this current proposal satisfies at least 2 of these criteria as follows:

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

There is a clear and urgent need for housing at a national level within Ireland, which is particularly prevalent within the larger cities and towns, including Dublin. This is acknowledged by the Government as well as planning authorities and other such bodies. The result of this crisis has been a significant change in planning policy and guidance, which seeks to increase the output of housing with a focus being on increased densities within appropriate urban locations and zoned and serviceable sites. Key policy changes include:

- Rebuilding Ireland, an Action Plan for Housing and Homelessness (2016);
- Project Ireland 2040 – National Planning Framework;
- Sustainable Urban Housing: Design Standards for New Apartments (2020); and
- Urban Development and Building Heights Guidelines for Planning Authorities (December 2018).

All of these documents acknowledge the current need and demand for additional housing and seek to bring forward the delivery of housing units. This current proposal offers the opportunity to bring forward 368 no. new housing units as well as a childcare facility.

Notwithstanding the above, the proposed development in itself is covered within the definition of a Strategic Housing Development as set out under Section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended. In light of this, Downey Planning submit that this current proposed development is strategic in nature and therefore is of strategic national importance.

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

The proposed development is in accordance with the following national and regional planning policies, including guidelines issued under Section 28 of the Planning & Development Act, 2000 (as amended), which have been outlined above and include the Design Standards for New Apartments.

As outlined, the proposed development proposes to provide a total of 505 car parking spaces, serving residents, visitors and staff car parking and drop off spaces for the creche. The reduced provision of 1 car parking space per apartment / duplex unit reflects the location of the development in relation to public transport services. This is in line with the Design Standards for New Apartments (2020) which states:

*“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.”*

Waterman-Moylan Consulting Engineers have prepared a Travel Plan and TTA that clearly outlines a justification for the level of car parking being proposed as part of this development. The Travel Plan is submitted under separate cover as part of the application and the Board are invited to refer to that report for further details.

## 8.0 POTENTIAL MATERIAL CONTRAVENTION OF CORE STRATEGY & HOUSING TARGETS

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

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

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

With respect to the timing and sequencing of planning applications in the area, there may be a potential material contravention of the proposed scheme with the Core Strategy of the Development Plan. An overview of the applications on housing provision in the area, mainly lodged through the SHD process, expects that an overall total of 691 no. units to be potentially delivered in Malahide up to 2023. This includes Seamount Road SHD providing for 142 no. dwellings (TA06F.305991 - granted permission on 20/03/2020), Lamorlaye, Back Road SHD providing for 100 no. dwellings (Ref. 313265-22 - in the pre-application stage), Broomfield SHD providing for 415 no. dwellings (ABP Ref. 308804-20 - in the pre-application stage), and Streamstown Lane development providing for 34 no. dwellings (PL06F.301848 - granted permission on 03/12/2018). Thus, there is still a remaining capacity of 323 no. residential units to be delivered in the area.

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

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

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

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

*Source: CSO StatBank*

Applying the foregoing activation rate to the overall recent permissions granted and/or pending under SHD in Malahide (691 no.) would potentially give rise to completion of 414 no. units over the Plan period, which is still below the housing target for Malahide outlined in the Core Strategy.

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

Prior to illustrating this comparison, it is important to note that the spatial breakdown of the dwelling completion has only been narrowed down to the Eircode area level by the CSO StatBank, and therefore, this scale has been utilised within the following justification. As for the case of Malahide, this area is labelled as Eircode K36 comprising of both Malahide and Donabate. Thus, the details on dwelling completion in the assessment area are summarised in the **Error! Reference source not found.** below.

*Dwelling Completion in the Eircode K36 Area (Malahide and Donabate Combined)*

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

*Source: CSO StatBank*

With respect to the above Table, a total of 1,232 no. residential units have been delivered in Malahide and Donabate over 2017-2021Q3. Considering that the Development Plan Variation 2 provides for a

combined housing delivery target of 4,488 no. units for this area (3,532 no. units for Donabate and 956 no. units for Malahide), there is a remained capacity of 3,256 no. residential units to be delivered over 2021Q4-2023 in both towns.

Therefore, it is submitted that the proposed development of 368 no. new units is still within the projected housing delivery target for the area and complies with the objectives of the Development Plan to promote sustainable development through densification of the existing urban form. And thus, it is considered for the proposed development to be consistent with the relevant policy and planning framework. However, out of an abundance of caution this has been included in this Statement as it may be considered to potentially materially contravene the Fingal Development Plan 2017-2023 by the competent authority in their assessment of the application.

## 9.0 JUSTIFICATION FOR POTENTIAL MATERIAL CONTRAVENTION OF CORE STRATEGY & HOUSING TARGETS

As outlined above, an argument may be made that the development may conflict with the Core Strategy and Housing Targets set out in the Fingal County Development Plan 2017-2023. This section of the Material Contravention Statement provides justification for contravening the Fingal Development Plan, suggesting the granting of permission for the proposed development of the lands at Auburn. The justification herein is based upon the requirements of Section 37(2) of the Planning and Development Act 2000 (as amended).

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

### ***Section 37(2)(b) Criteria***

Section 37(2)(b) of the Act sets out 4 distinct criteria which at least 1 of which needs to apply in order for the Board to materially contravene a development plan. It is the opinion of Downey Planning that this current proposal satisfies at least 2 of these criteria as follows:

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

There is a clear and urgent need for housing at a national level within Ireland, which is particularly prevalent within the larger cities and towns, including Dublin. This is acknowledged by the Government as well as planning authorities and other such bodies. The result of this crisis has been a significant change in planning policy and guidance, which seeks to increase the output of housing with a focus being on increased densities within appropriate urban locations and zoned and serviceable sites. Key policy changes include:

- Rebuilding Ireland, an Action Plan for Housing and Homelessness (2016);
- Project Ireland 2040 – National Planning Framework;
- Sustainable Urban Housing: Design Standards for New Apartments (2020); and

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

All of these documents acknowledge the current need and demand for additional housing and seek to bring forward the delivery of housing units. This current proposal offers the opportunity to bring forward 368 no. new housing units as well as a childcare facility.

Having regard to this legislative and policy context, it is considered that this proposed Strategic Housing Development is, by definition, of strategic importance for the purposes of section 37(2)(b) of the 2000 Act as amended. Therefore, should the Board determine that the proposed development is a material contravention of any of the policies of the Development Plan, then the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b) of the Planning and Development Act 2000, as amended.

***(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***

The proposed development is in accordance with the following national and regional planning policies, including guidelines issued under Section 28 of the Planning & Development Act, 2000 (as amended), as previously set out in Section 3.0 of this report (the Board are invited to refer to Section 3.0 for details).

## 10.0 CONCLUSION

It is respectfully submitted that the justification set out within this statement clearly demonstrates that the proposed strategic housing development at Auburn House should be considered for increased density and building heights due to the location of the subject site adjacent to quality public transport corridors and the policies and objectives set out within the Section 28 Guidelines. Such justification includes:

- Objectives within Fingal County Development 2017-2023 which requires the preparation of a Masterplan which has not yet been formerly prepared and adopted and the timeline for which is not available contradicts national policy which seeks to ramp up the delivery of housing on suitable zoned lands.
- The government's guidelines on Development Management specifically deal with this issue in paragraph 7.16.1 and state 'development which is premature because of a commitment in a development plan to prepare a strategy, Local Area Plan or framework plan not yet completed should only be used as a reason for refusal if there is a realistic prospect of the strategy or plan being completed within a specific stated time frame'.
- There are conflicting objectives in the Development Plan with regards to Masterplans. The Development Plan notes that Masterplans are subsidiary to their parent plan (i.e., Local Area Plan, County Development Plan) and their associated zoning strategies and objectives. The masterplan is not a statutory plan under the Planning and Development Act 2000.

Masterplans are subsidiary to the Development Plan and would not typically have a statutory process albeit the current Fingal Development Plan provides for same. Conflicting objectives exist within Fingal County Development Plan 2017-2023 insofar as the proposed development is concerned.

- The making of this proposed application effectively constitutes the masterplan lands as the lands comprise the remaining lands available for development under the Streamstown Masterplan.
- The subject application complies with the specific objectives for the Masterplan as set out in the Fingal County Development Plan 2017-2023 and the making of this application does not prejudice the objective of the development plan to prepare a masterplan for the overall lands as the subject application ensures that the nature and form of the development does not prejudice the development of the surrounding lands into the future.
- There is planning precedent on surrounding lands to permit development in the absence of the preparation of a Masterplan by the Council.

The justification for the contravention of specific objectives of the Development Plan for the Masterplan lands in terms of low density and height of 6m to the north of the lands is set out as follows:

- Objectives within Fingal County Development Plan 2017-2023 which restrict the height and density at the application site contradict National Planning Policy and Section 28 Guidelines.
- The application site is on appropriately zoned lands, in a highly accessible location within the development boundary of Malahide.
- A frequent bus service is located within 100 metres of the application site on the Dublin Road/Malahide Road which provides a bus connection to Malahide and Dublin City Centre, i.e., Bus Stop No. 3579 on R107.
- National Policy promotes and encourages increased densities in the range of 35-50 dwellings per hectare on zoned lands in accessible suburban locations within existing settlement development boundaries. The current proposed development provides for a net density of 38 units per hectare.
- The National Planning Framework and its pertaining objectives place a strong emphasis on increased building heights in appropriate locations within existing urban centres and accessible suburban locations such as the application site.
- The proposed development is consistent with the *'Urban Development and Building Heights, Guidelines for Planning Authorities'*.

There is justification for the development to be granted, if the Board consider that the development materially contravenes Local Objective 57 of the Development Plan in terms of providing a safe means of access to the subject site.

In light of the foregoing, it is respectfully requested that An Bord Pleanála have regard to the justification set out within this statement and permit the proposed masterplan, density and height contravention of the Fingal County Development Plan 2017-2023, having consideration to section 37(2)(b)(i) and (iii) of the Planning and Development Act, 2000 (as amended), specifically the

conflicting objectives within Fingal County Development Plan 2017-2023 insofar as the proposed development is concerned, the policies and objectives set out within the Section 28 Guidelines and noting the national importance of delivering housing given the current housing crisis.

In the alternative, it is respectfully submitted that the Board is obliged to dis-apply any provisions of the Fingal County Development Plan in the event that there are conflicting strategic planning policy requirements. In this case, the application meets the criteria in SPPR1, SPPR2 and SPPR 3 of the 2018 Building Height Guidelines (including by incorporation of the development management criteria in Section 3.2 of the Guidelines).