

24th December 2021

Senior Executive Officer,

Planning Department,

Dún Laoghaire-Rathdown County Council,

County Hall,

Marine Road,

Dún Laoghaire.

## Re: Proposed Amendments to the Draft Dún Laoghaire-Rathdown County Development Plan 2022-2028

A chara.

Thank you for your authority's work in preparing the material alterations to the draft Dún Laoghaire-Rathdown County Development Plan 2022-2028 (the draft Plan).

As your authority will be aware, one of the key functions of the Office of the Planning Regulator (the Office) includes strategic evaluation and assessment of statutory plans to ensure consistency with legislative and policy requirements relating to planning. The Office has evaluated and assessed the material alterations to the draft Plan under the provisions of sections 31AM(1) and (2) of the *Planning and Development Act 2000*, (as amended), and within the context of the Office's earlier recommendations and observations.

As outlined in the submission of the Office to the draft Plan, the Office considered the draft Plan to be generally consistent with policies in the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA) area, and recommended changes to enhance its alignment with national and regional policies in the aforementioned, and for consistency with, inter alia, the NPF Implementation Roadmap (2018), the Housing Supply Targets Methodology Guidelines for Planning Authorities (2020) and The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).

#### Overview

The Office is generally satisfied that the material amendments to the Core Strategy have sufficiently addressed the concerns raised in Recommendations 1 and 2 of the Office's submission on the draft Plan, particularly in view of timing of the emerging issuing of the Housing Supply Target (HST) Guidelines by the Minister for Housing, Local Government and Heritage, as well as the subsequent publication of the *Development Plans Guidelines* for Planning Authorities, Draft for Consultation (August 2021).

Given the geographical and spatial context that the planning authority is in, as part of the metropolitan area of the GDA and proximate to a number of high capacity public transport routes, development along such corridors will generally support the achievement of the broad objectives of the National Planning Framework (NPF) in relation to compact growth and sustainable urban development.

The Office also welcomes the amended zoning objective for lands at Rathmichael (M19) as introducing an additional level of prioritisation of development lands across the county, in response to Recommendation 3 (prioritisation of preferable locations) of the Office's submission on the draft Plan.

Having considered the Chief Executive's report in relation to Recommendation 5 (tiered approach to zoning), and Recommendation 6 (retail hierarchy), the Office is similarly satisfied that the draft Plan is consistent with the national and regional policy framework relevant to these issues.

The Office welcomes the material amendments included in response to Recommendation 7, including the ambitious modal share targets for the plan period under MA 321, but the planning authority will note there is some conflict with the target for cycling in MA 68. The insertion of SLO 143 (MA 302) addresses the concerns raised in Recommendation 8 (strategic infrastructure capacity) and the Office strongly welcomes the insertion of new Policy Objective T2 Local Transport Plans (Area Based Transport Assessments) (ABTAs) to prepare Local Transport Plans (ABTAs) in tandem with the preparation of LAPs and for strategic land-banks under MA 69.

The Office acknowledges the proposed amendments to the Strategic Flood Risk Assessment (SFRA) in response to the part of Recommendation 9 (Flood Risk Management). It is noted, however, that no amendments have been proposed to the zoning

objectives of lands within flood risk zones A/B to accord with the sequential approach and the conclusion of the Justification Tests for relevant lands. There is a concern, therefore, that the draft Plan, without minor modification, will not provide adequate protection for uses that are vulnerable or highly vulnerable to flood risk, and will be inconsistent with the provisions of *The Planning System and the Flood Risk Management Guidelines* (2009), as amended.

The Office notes the decision of the members not to accept the omission of the zero/zero zoning objective recommended by the chief executive in response to Recommendation 4 of the Office's submission. While the Office appreciates the desire to protect these areas from unacceptable forms of development, much of the area concerned has been designated as an Architectural Conservation Area and further controls have been introduced by SLO 130 (MA 296). The Office remains of the view that the heritage and amenity of these areas is fully protected by these, and other objectives, within the draft Plan and that the limitations on further residential development by way of the zero/zero zoning objective is not consistent with providing homes for people in well serviced areas.

The Office also notes that a number of amendments have been proposed to the development management standards for 'Built to Rent' development, which are inconsistent with the Sustainable Urban Housing: Design Standards for New Apartments (December 2020).

The planning authority is advised that section 12(10) of the Act provides the members of the planning authority with scope to make a further modification to an alteration subject to the limitations set out in subsection 10(c) parts (i) and (ii).

Recommendations issued by the Office relate to clear breaches of the relevant legislative provisions, of the national or regional policy framework and/or of the policy of Government, as set out in the Ministerial guidelines under section 28. As such, the planning authority is required to implement or address recommendation(s) made by the Office in order to ensure consistency with the relevant policy and legislative provisions.

Observations take the form of a request for further information, justification on a particular matter, or clarification regarding particular provisions of a plan on issues that are required to ensure alignment with policy and legislative provisions. The planning authority is requested by the Office to action an observation.

The submission sets out 2 recommendations, 2 observations and a number of advisory notes under following four key themes:

Key theme	Recommendation	Observation
	4	4 10
Core strategy and zoning for	1	1 and 2
residential use		
Compact growth, (zero/zero zoning		
objective)		
Flood risk management	2	
Transport and accessibility		

## 1. Core strategy and Zoning for Residential Use

### 1.1 Recent revisions to policy context

Since the conclusion of the public consultation process on the draft Plan, the Department has published the *Development Plans Guidelines for Planning Authorities, Draft for Consultation* (August 2021) (draft DPGs). The Office notes that the chief executive's (CE's) report went to the members in July 2021 and therefore the planning authority was not in a position to take the draft DPGs into account in the preparation of the material alterations.

## 1.2 Core Strategy, Population and Housing Targets

The Office welcomes the material amendments made to the core strategy, in response to Recommendation 1 of the Office's submission on the draft Plan. These amendments include the realignment of the core strategy to match the plan period, with a commensurate recalibration of population and housing growth relevant to that six-year period.

Shortly before the draft Plan was published, the statutory guidelines titled, *Housing Supply Targets Methodology, Guidelines for Planning Authorities* (December 2020) (the HST Guidelines) were published. Subsequent to our evaluation and assessment of the draft Plan the Government's action plan for housing, *Housing for All* (2021) and the aforementioned *draft DPGs* have also been published.

The material amendments to the Core Strategy (table 2.10), including the insertion of the HST housing target of 15,225 are noted and accepted in this context.

Turning to the relationship between the population targets and the estimation of zoned land to deliver housing targets, the Office has considered the CE's report and the material amendments to the core strategy.

The Office has also taken into account the *draft DPGs* published by the Department of Housing, Local Government and Heritage in August 2021.

While these guidelines were published subsequent to the CE's report, they also signal ongoing and emerging strategic planning policy on appropriate provision of development land meeting HST guidelines derived housing targets and supporting evidence based planning.

The *draft DPGs* also focus on ensuring that infrastructure investment and delivery is carefully co-ordinated with housing delivery and that undeveloped lands closest to existing services and public transport routes, commensurate with the achievement of compact urban development, should have the greatest level of prioritisation in the zoning of land.

Taking account of the above and noting the anticipated housing yield and the corresponding quantum of zoned land needed to accommodate same, as set out in the revised core strategy table (table 2.4), the Office considers that this quantum is acceptable and reasonable.

In arriving at the above, the Office has also taken note of the concept of additional provision of residentially zoned lands provided for under section 4.4.3 of the *draft DPGs*. This provides that in certain circumstances, a development plan may provide a quantum of residential zoned land over that predicted by housing supply targets where there may be inhibitors in the release of suitable and developable zoned lands. It therefore ensures that a suitable range of alternate lands can come forward in a rational and organised way in tandem with infrastructure planning assumptions.

While such additional provision would normally be justified by the local authority in its development plan, taking into account the criteria specified in the *draft DPGs*, the Office is satisfied from its assessment of the draft Plan and its context (including the Infrastructure Assessment, compact growth targets, and the general location of zoned lands within the metropolitan area of the Greater Dublin Area) that a reasonable basis for incorporating such additional provision is already evident.

The Office further notes that the Core Strategy incorporates the ongoing development of Cherrywood SDZ, the completion of which will go beyond the life of the new development plan, providing in the order of 8,000 new homes, or more, in a strategic location benefitting from major public and private investment in infrastructure.

The planning authority will be aware that under the *draft DPGs*, only those parts of SDZs that will be phased or built out over a longer period than the six-year development plan should be included over and above the HST (and additional provision) requirement. Units that are projected to be delivered within the SDZ during the plan period should be included as part of the core strategy for the plan period.

For clarity and transparency, it would be helpful if the Core Strategy table included a broad assumed estimate for delivery of housing in Cherrywood over this development plan period, accepting that full delivery will ultimately span to future development plan(s).

Taking all of the above into account, the Office is satisfied that a reasonable basis has been set out in your authority's draft Plan for the quantum of zoned development that appropriately reflects the housing target set out in amended Table 2.10 (MA 16) and that at plan implementation phase, will enable a focus on developing land best located in terms of infrastructure and public transport.

The Office is therefore generally satisfied that the Core Strategy is consistent with the recommendations of the Office, as submitted by the planning authority in its section 12(5)(aa) notice.

# 1.3 Phasing/ prioritisation of residential zoned land (Rathmichael and Old Connaught)

The issue of phasing and prioritisation of preferable locations was raised in Recommendations 2 and 3 of the Office's submission.

In this respect, the Office notes the decision to alter the zoning of the Rathmichael area from Objective A, 'To provide residential development and / or protect and improve residential amenity', to Objective A1 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans'. Objective A1 also applies to lands in Old Connaught.

The Office accepts, as inferred by MA 19 (of s.2.4.6 Phasing), that the revised zoning would provide for a level of prioritisation for the development of better serviced and located residential zoned lands, not least due to the time it will take to prepare the statutory local area plan (LAP) and to plan for the required infrastructure.

The wording of Objective A1 and an associated amendment (MA 24) would suggest the intention of the planning authority to defer any substantial development within Rathmichael and Old Connaught until the LAP is made. The Office considers, however, that greater clarity is required to ensure that development does not occur without sufficient social and physical infrastructure, consistent with the proper planning and sustainable development for this area. The Office considers that this matter can be addressed by the inclusion of a minor modification to MA 19.

In this regard, the Office also notes proposed amendments MA 306, M1019 and MA 208 concerning the accommodation of development on proprietary wastewater treatment systems on lands, which include Rathmichael. Such development has the potential to undermine the coordinated future development of strategic lands within the metropolitan area of Dublin. This serves to further underline the need for a clear policy objective approach to prevent inappropriate development coming forward before the LAP has been made.

### **MA Observation 1**

## MA Observation 1 – Residential Land Supply (Rathmichael and Old Connaught)

The planning authority is strongly advised to make a minor modification to the material amendment MA 19 of section 2.4.6 'Phasing', and / or to material amendment MA 24 of section 2.6.1.3 Local Area Plan Making Programme, to clarify that no applications for development other than for minor modifications and extensions to existing properties will be considered by the planning authority until the LAP has been made for the subject lands, consistent with the proposed land use zoning objective A1 for those lands.

## 1.4 Development management standards

The Office notes the proposed amendments to the development management standards of the draft Plan in respect of 'Build to Rent' development, under MA 160, MA 169 and MA 172.

MA 160 proposes to amend section 12.3.3 'Qualitative Standards for All Residential Development' (p.232), to the effect that the requirement for a certain proportion of 3-bed units in apartments shall apply to 'Build to Rent' as per the provisions for apartment mix requirements on page 233 (table 12.1) of the draft Plan.

Specific Planning Policy Requirement (SPPR) 1 of the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities* (DHLGH, 2020) provides that statutory development plans may specify a mix for apartment developments provided an evidence-based Housing Need and Demand Assessment (HNDA) has been agreed.

However, the above provision cannot be applied to 'Build to Rent' development which is subject to SPPR 8 of the Guidelines which states, in respect of 'Build to Rent' development, 'i) No restrictions on dwelling mix ... shall apply...'.

The planning authority will be aware of its obligation under sections 12(18) of the Act to ensure the development plan is consistent with SPPRs specified in section 28 guidelines and, under section 28(1C), to comply with the SPPRs in the carrying out of its functions.

This is reflected in section 12.3.6 of the draft Plan, which specifically acknowledges that 'Build to Rent' accommodation must comply with SPPR 8 (and SPPR7), however proposed MA160 renders the draft Plan in conflict with these statutory provisions.

### **MA Recommendation 1**

### MA Recommendation 1 - Build to Rent

In accordance with the requirements of sections 12(18) and 28(1C) of the *Planning and Development Act 2000*, as amended, the planning authority is required to make the Plan without amendment MA 160 which is inconsistent with SPPR 8(i) of the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities* (DHLGH, 2020).

MA 169 clarifies that the requirement that 'the majority of apartments in any proposed scheme of 10 or more shall exceed the minimum floor area standard for any combination of 1, 2 or 3 bed, by a minimum of 10%' is not applicable to 'Build to Rent' schemes. The amendment is welcomed as consistent with SPPR 8.

Section 12.3.6 *Build to Rent* of the draft Plan requires 'Built to Rent' development to comply with all apartment standards under section 12.3.5. However, in addition to providing that there shall be no restrictions on dwelling mix for 'Build to Rent' scheme, SPPR 8 provides that flexibility shall apply for storage and private amenity space, there shall be a default of minimal / significantly reduced car parking and the requirement for a maximum 12 apartments to be accessed per floor per core shall not apply to 'Build to Rent' schemes.

While section 12.3.6 (and sections 12.4.5 Car Parking and 12.8 Open Space) of the draft Plan acknowledges that derogations from certain standards for apartment development apply to 'Build to Rent' schemes, including from dwelling/unit mix (as referred to in MA 172), it does not refer to all of the derogations under (i) to (v) of SPPR 8. In particular, it omits reference to the derogation on the maximum number of apartments to be accessed per floor per core.

This is likely to lead to confusion as to the standards that apply to Build-to-Rent development, which is not consistent with the clarity provided in the subject guidelines. The Office advises that this matter may be resolved through minor modification.

#### MA Observation 2

## MA Observation 2 – Build to Rent

Arising from MA 172, the Office advises the planning authority that a minor modification be made to section 12.3.6 Build-to-Rent to either include:

- (i) reference to all the derogations provided for under SPPR 8 of the Sustainable

  Urban Housing: Design Standards for New Apartments Guidelines for Planning

  Authorities (DHLGH, 2020); or
- (ii) a general statement that all derogations under SPPR 8 of the Guidelines shall apply to 'Build to Rent' development.

## 2. Compact Growth (zero/zero zoning objective)

The Office notes the decision of the members not to accept the recommendation of the chief executive to omit the zero/zero zoning objective in accordance with Recommendation 4 of the Office's submission, notwithstanding the CE's concurrent recommendation to include a rational and appropriate safeguard for this sensitive area under SLO 130 (MA 296).

Recommendation 4 advised that the subject zoning objective is inconsistent with national and regional policy objectives to implement compact growth within Dublin city and suburbs, including NPO 3b and RPO 3.2, and to the *Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities* (2009), which provide for increased residential density along public transport corridors, including in the interest of maximising the return on public transport investment.

The retention of the objective is also inconsistent with the strategic approach of the draft Plan to contribute to climate change mitigation through supporting compact growth with development focused on transportation corridors and minimisation of travel.

The Office concurs with the section 12(5)(aa) notice issued by the planning authority that the draft Plan, as amended, has not been complied with.

## 3. Flood Risk Management

It is a policy objective of the NPF (NPO 57) to enhance water quality and resource management by, inter alia, ensuring flood risk management informs place-making by avoiding inappropriate development in areas at risk of flooding in accordance with *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009).

The guidelines require the planning authority to avoid development in areas at risk of flooding, unless there are proven wider sustainability grounds that justify appropriate development and without increasing flood risk elsewhere. They also require the planning authority to adopt a sequential approach to flood risk management based on avoidance, reduction and mitigation of flood risk.

In particular, section 4.23 of the guidelines provides that where a planning authority is considering accommodating vulnerable development within flood risk areas, the planning authority must be satisfied that it can clearly demonstrate on a solid evidence base that the zoning or designation for development will satisfy the Justification Test.

Within existing undeveloped, zoned areas at risk of flooding, section 4.27 of the guidelines provides that the planning authority may, inter alia, remove the existing zoning, reduce the extent of zoning, replace the zoning with a zoning or specific objective for less vulnerable uses, or prepare an LAP informed by a detailed flood risk assessment prior to future development. The lands concerned are already zoned in the existing development Plan.

The Office issued a Recommendation (no.9) on the draft Plan, informed by the opinion of the Office of Public Works, which required the planning authority to review the SFRA to ensure consistency with the aforementioned guidelines, and to review and amend the zoning objectives in accordance with the application of the sequential approach and the Justification Test.

The Office welcomes the proposed extensive amendments to the Strategic Flood Risk Assessment (SFRA) in appendix 16 of the draft Plan, including in particular the provision of mitigation measures under criteria 3 of the Justification Test. It is noted, however, that lands that have failed the Justification Test in the SFRA are still proposed to be zoned for vulnerable and highly vulnerable uses and that no amendments to the zoning objectives, to specific objectives or to the policy objectives of the draft Plan have been proposed on foot of the SFRA.

The revised SFRA does, however, provide for specific mitigation measures under criteria 3 of the Justification test, such as applies to Rathmichael and a number of other sites where flood risk exist. However, these mitigation measures have not been included or referred to in the draft Plan and the flood risk management policy objectives under section 10.7 (Flood Risk) of the draft Plan, including Objective El23 Flood Risk Management, do not provide sufficient basis to ensure that those mitigation measures will be carried out in the future development of relevant lands. The draft Plan therefore remains inconsistent with the requirements of the guidelines and with the Office's recommendation.

The Office considers that the inconsistency with the guidelines can be adequately resolved through the minor modification of the draft Plan, consistent with the SFRA, in accordance with the recommendation below.

### MA Recommendation 2

## MA Recommendation 2 - Flood Risk Management

Having regard to NPO57 and sections 4.23 and 4.27a of *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009, as amended), and arising from the consideration of MA 399 to 440, the planning authority is required to amend Policy Objective El23 Flood Risk Management to as follows (insert the text in *red* and delete the strikethrough text in *blue*):

'Implementation of the above shall be via the policies and objectives, and all measures to mitigate identified flood risk recommended under criteria 3 (flood risk considerations) of the Justification Tests, in of the Strategic Flood Risk Assessment set out in Appendix 16 of this Plan'.

## 4. Transport and Accessibility

The Office welcomes the inclusion of modal share targets in the draft Plan in response to Recommendation 7 of the Office's submission. The planning authority is to be commended, in particular, for the inclusion in table 5.5 Transport and Mobility of Chapter 15 of clear and ambitious modal share targets as key performance indicators (KPIs) for monitoring and evaluation of implementation of policy objective T3 'Development of Sustainable Travel and Transport' to reflect the aspiration of the county.

There is, however, some conflict between the cycling mode share target included in MA 72 (to chapter 5 Transport and Mobility) and MA 321, which the planning authority should resolve in making the Plan.

The inclusion of 'Analysis of inclusivity in cycling' as a KPI for monitoring and evaluation of policy objective T10 walking and cycling is also considered to be a very positive addition, which recognises the need to expand the take up of cycling across the wider population.

The Office welcomes the insertion (under MA 69) of new Policy Objective T2 Local Transport Plans (Area Based Transport Assessments) (ABTAs) to prepare Local Transport Plans (ABTAs) in tandem with the preparation of LAPs and for strategic land-banks. This approach has the potential to support an integrated approach to land use transport planning for the future, significant expansion areas of Rathmichael and Old Connaught, and the delivery of relevant transport infrastructure and services in line with future growth.

The Office also notes the insertion of SLO 143 under MA 302, committing to the carrying out of ABTA in consultation with TII and NTA prior to the development of lands at Racecourse south. This is consistent with Recommendation 8 of the Office's submission on the draft Plan.

The Office notes proposed amendment (MA 191) of Section 12.4.15 and the proposed amendment (MA 255) of SLO 4, referring to the Dublin Eastern Bypass (DEBP), which provide that 'In the event that the corridor is no longer needed for the DEBP, a Dún

Laoghaire-Rathdown County Council lead study should be carried out to determine the best use of the corridor prior to development being permitted. This should include the consideration of sustainable transport, biodiversity and recreation projects'. The proposed wording is, however, inconsistent with Measure ROAD4 of the NTA's draft Transport Strategy for the GDA, which provides that it will be a matter for the NTA to undertake an assessment of the potential for the southern section of the corridor to be used as a transport corridor.

It is the requirement under section 9(6) of the Act that each planning authority within the GDA shall ensure that its development plan is consistent with the transport strategy of the NTA. Albeit that the Transport Strategy is currently under review and a draft strategy has been published for public consultation, the Office would still advise that the planning authority consider making a minor modification to MA 191 of Section 12.4.15 and MA255 of SLO 4 to align with Measure ROAD4 of the NTA's draft Transport Strategy.

The Office also notes that MA 287, inserting SLO 137, and MA 288, inserting SLO 138, provide for the development of lands at the Central Bank Mint, which have direct access to the M50 slip at Junction 13. The utilisation of the existing access for future development of these lands has the potential to impact on the operation and safety of the national road and junction, inconsistent with the requirements of section 2.7 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012).

The Office advises that the planning authority make a minor modification to MA 287 and MA 288 to provide that any future development that is subject to SLO 137 and SLO 138 must only be access via the local road network, and not by the national road network.

#### 5. Summary

The Office requests that your authority addresses the recommendations and observations outlined above. As you are aware, the report of the chief executive of your authority prepared for the elected members under section 12 of the Act must summarise these recommendations and the manner in which they will be addressed.

At the end of the process, your authority is required to notify this Office within five working days of the decision of the planning authority in relation to the draft Plan. Where your authority decides not to comply with the recommendations of the Office, or otherwise makes the plan in such a manner as to be inconsistent with the recommendations of the

Office, the chief executive must inform the Office accordingly and state the reasons for the decision of the planning authority. Please feel free to contact the staff of the Office in the context of your authority's responses to the above, which we would be happy to facilitate. Contact can be initiated through plans@opr.ie.

Is mise le meas,

Anne Marie O'Connor

AM C'Conna.

Deputy Regulator and Director of Plans Evaluations