

Material Contravention Statement

Proposed Strategic
Housing Development at
Moygaddy, Maynooth
Environs, Co. Meath





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1. INTRODUCTION

This Statement of Material Contravention has been prepared by MKO on behalf of Sky Castle Ltd, in support of an application to An Bord Pleanála (ABP) for permission for a strategic housing development located on lands at Moygaddy, Maynooth Environs, Co. Meath. The application is made pursuant to the provisions of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended).

This Statement of Material Contravention has been prepared in accordance with Section 8(1)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) in order to address one aspect of the proposed development which may be deemed to potentially materially contravene the provisions of the Meath County Development Plan 2021-2027:

1. 'MAY OBJ 1 (Masterplan 16)' requires the submission with any application for development of lands at Moygaddy of a Master Plan for the prior written agreement of the Executive of the Planning Authority [Our emphasis added].

2. SITE CONTEXT

2.1 Site Location

The subject site is located on the southernmost extent of County Meath in an area known as the Maynooth Environs. The lands are located within the Dublin Metropolitan Area Strategic Plan (MASP), within a radius of 20km distance to Dublin City Centre. The subject site is also situated within the M-4 strategic corridor, circa 2km from the motorway and railway networks. See **Figure 1**.

The administrative area of Kildare County Council is located immediately south of and adjacent to the subject lands. It is proposed to provide infrastructure improvements located within the Kildare County Council (KCC) administrative area under a separate planning application to connect to the infrastructure upgrades proposed on the subject site and the wider landholding held by the Applicant. **Figure 2** illustrates the extent of the proposed lands located within Co. Kildare which are highlighted green. The subject site is located approximately 1.5km north from the town of Maynooth, Co. Kildare. Maynooth is identified in the Eastern and Midland Regional Spatial & Economic Strategy as a key town with the assets and capacity to grow in a sustainable manner while minimising impacts on the receiving environment.

There are no environmental or ecological designations on the site. The Rye Water Valley/ Carton SAC is located circa 320m to the east of the subject site. The Rye Water Valley/Carton Special Area of Conservation (SAC site code 001398) is located between Leixlip and Maynooth extending along the River Rye Water, a tributary of the River Liffey. A portion of this SAC site is located in the south-eastern portion of the Maynooth Environs lands in Carton Demesne situated to the east of the R157 at Kildare Bridge extending approximately 600m to the eastern side of Carton Bridge. This area is also a proposed Natural Heritage Area (pNHA). This area has been identified as H1 High Amenity in the land use zoning objectives map where it is an objective, 'To protect and improve areas of high amenity'.

There is a Protected Structure and a National Monument located within the prospective applicant's wider landownership boundary:

- Moygaddy House: Three-bay two storey over basement house, built c. 1850, hipped roof with pilastered porch, ranges of outbuildings forming narrow rectangular courtyard. Gates, piers and boundary walls. (Note: Moygaddy House is located outside the red line application boundary).
- Moygaddy Castle and tower house (Note: Moygaddy Castle is located inside the red line application boundary).

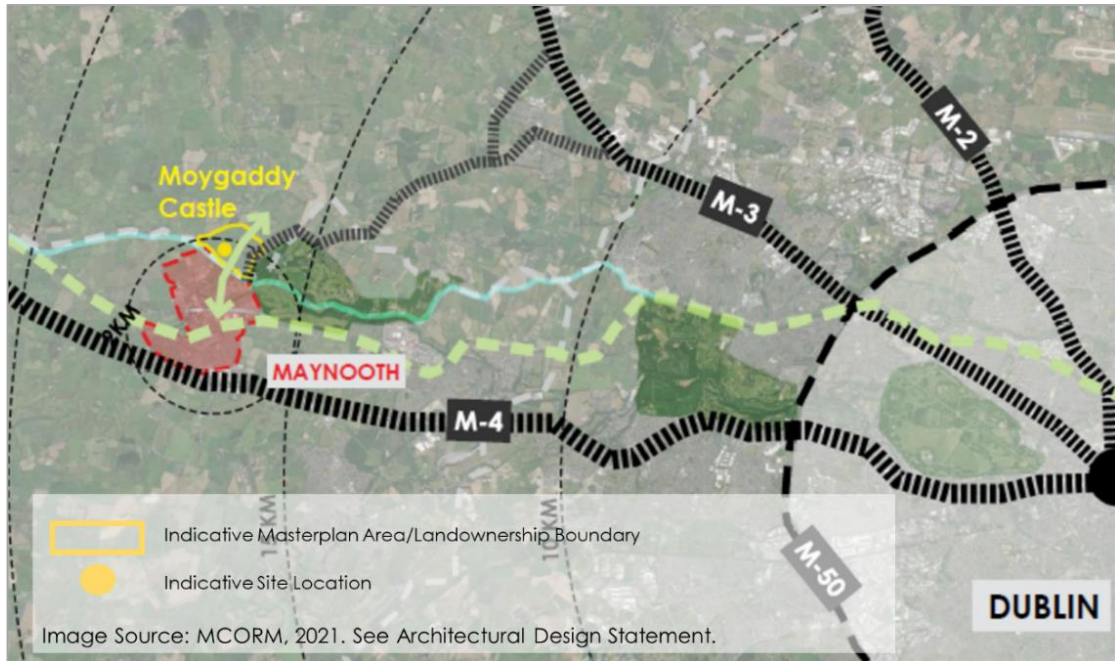


Figure 1: Location of the development within the Dublin metropolitan area. Source: MCORM, 2022

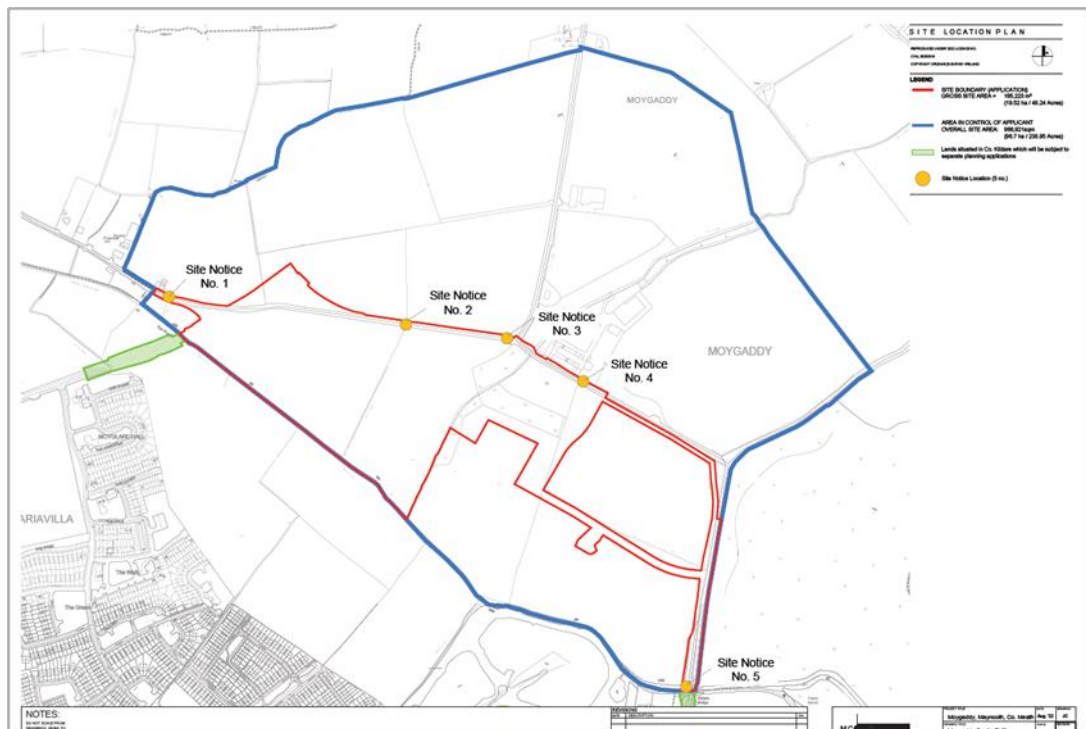


Figure 2: Extract from Site Location Map. Please refer to MCORM Dwg PL100 Site Location Map

2.2 Site Description

The overall prospective application gross site area extends to 19.52 ha (195,200 sqm), including 6.93 ha (69,291 sqm) of high amenity lands. The net developable area extends to 7.89 ha (78,940 sqm). The site forms part of a larger strategic landbank on zoned lands within the Maynooth Environs which extend to circa 96.7 ha.

Notable features of the site include:

- The site is currently greenfield and in agricultural use. It is immediately bound by the L-6219 to the north, agricultural fields to the west and east and the River Rye Water to the south.
- The Blackhall Little Stream (also known as the Moyglare Stream) traverses the site in a north-easterly/south westerly direction.
- The site boundaries comprise agricultural hedgerows.
- The site falls gently from north to south, with a sharp decline at the southern boundary, which aligns with the River Rye Water.
- There is currently no point of access to the site to the R157, with the land being accessed from the local road network (L2214-3/L6219) within the wider landholding only.
- Habitats found within the site include agricultural grassland, broadleaved woodland, scattered trees and parkland, lowland depositing river and hedgerow/treeline.
- There is also 1 no. Recorded Monument within the prospective application site boundary - a Castle- tower house (ref: ME053-001) located in the north-eastern part of the site.

3.

PROPOSED DEVELOPMENT

The full development description as per the public notices is as follows:

'Planning Permission is sought by Sky Castle Ltd. for the development of a site which extends to 19.52 hectares gross site area in the townland of Moygaddy, Maynooth Environs, Co. Meath. The net developable area equates to 7.89 hectares which equates to a residential density of 45.6 units per hectare.

The proposed development will consist of the following:

1. Construction of 360 no. residential dwellings comprising:
 - i. 196 no. houses (including 19 no. 2 beds, 156 no. 3 beds and 21 no. 4 beds).
 - ii. 102 no. duplexes (including 51 no. 1 beds and 51 no. 2 beds) set out in 6 no. blocks.
 - iii. 62 no. apartments (including 26 no. 1 beds and 36 no. 2 beds) set out in 2 no. blocks.
2. Provision of a public park and playground with associated 42 no. car parking spaces adjacent to Moygaddy Castle and pedestrian and cyclist links along the River Rye Water. The overall public open space (including the High Amenity Lands) equates to 7.98 hectares.
3. Provision of private open spaces in the form of balconies and terraces is provided to all individual apartments and duplexes to all elevations.
4. Development of a two-storey creche facility (514 sqm), outdoor play area and associated parking of 29 no. spaces.
5. Provision of a single storey Scout Den facility, including a hall, kitchen, meeting room and ancillary facilities (220sqm) and associated parking of 6 no. spaces.
6. Provision of 4 no. bridge structures comprising:
 - i. an integral single span bridge at Moyglare Hall over the River Rye Water to connect with existing road infrastructure in County Kildare and associated floodplain works and embankments.
 - ii. a new pedestrian and cyclist bridge at Kildare Bridge which will link the proposed site with the existing road network in County Kildare.
 - iii. a new pedestrian and cycle bridge across Blackhall Little Stream (also known as the Moyglare Stream) on the L2214-3 adjacent to the existing unnamed bridge.
 - iv. a new pedestrian and cycle bridge over the Blackhall Little Stream (also known as the Moyglare Stream) linking the proposed residential site with the proposed Childcare Facility, Scout Den and Moygaddy Castle Public Park.
7. Provision of 500m of distributor road comprising of 7.0m carriageway with turning lane where required, footpaths, cycle tracks and grass verges. All associated utilities and public lighting including storm water drainage with SuDS treatment and attenuation.
8. Proposed road improvement and realignment works including:
 - i. realignment of a section of the existing L6219 local road, which will entail the demolition of an existing section of the road which extends to circa 2,500 sqm.
 - ii. Provision of pedestrian and cycle improvement measures along the L6219 and L2214-3 which abuts the boundary of Moygaddy House which is a Protected Structure (RPS ref 91558).
 - iii. Provision of pedestrian and cycle improvement measures along the R157 which abuts the Carton Demense Wall which is a Protected Structure (RPS Ref 91556).
9. Provision of 2 no. vehicular and pedestrian accesses from the L6219 local road, 1 no. vehicular and pedestrian entrance from the L2214-3 and an additional vehicular and pedestrian access from the R157 to the Childcare and Scout Den facilities.
10. The proposed development will provide 283 no. of bicycle parking spaces, of which 200 no. are long term spaces in secure bicycle stores and 83 no. are short term visitor bicycle parking spaces. 12 no. bicycle spaces are provided for the creche and 12 no. bicycle spaces are provided for the Scout Den.
11. A total of 667 no. car parking spaces are provided on site located at surface level. The car parking provision includes 10 no. Electric Vehicle charging and Universally Accessible spaces

allocated for the Apartment & Duplex units. All Houses will be constructed with provision for EV Charging.

12. Provision of site landscaping, public lighting, bin stores, 3 no. ESB unit substations, site services and all associated site development works.
13. A Natura Impact Statement (NIS) and Environmental Impact Assessment Report (EIAR) has been included with this application.

4.

LEGISLATIVE CONTEXT

This application for permission for a strategic housing development on lands located at Moygaddy, Maynooth Environs, Co. Meath, is made pursuant to the provisions of the *Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended)* (“the 2016 Act”).

Under Section 8(1)(iv)(II) of the 2016 Act, where a proposed strategic housing development materially contravenes the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), then the application must include a statement indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Planning and Development Act 2000 (as amended) (“the 2000 Act”).

This statement on Material Contravention is submitted in accordance with Section of 8(1)(iv) of the *Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended)*.

In accordance with Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended)* the Board may grant permission for a proposed strategic housing development that materially contravenes the development plan or local area plan, other than in relation to zoning:

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

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

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

Section 37(2)(b) of the 2000 Act (as amended) provides that where a proposed development materially contravenes the development plan, the Board may grant permission 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.*

5. PLANNING POLICY CONTEXT

5.1 National Planning Policy

5.1.1 Housing for All

'Housing for All - a New Housing Plan for Ireland' is the government's housing plan to 2030. It is a multi-annual, multi-billion-euro plan which will improve Ireland's housing system and deliver more homes of all types for people with different housing needs. The government's overall objective is that every citizen in the State should have access to good quality homes:

- to purchase or rent at an affordable price
- built to a high standard and in the right place
- offering a high quality of life

The government's vision for the housing system over the longer term is to achieve a steady supply of housing in the right locations with economic, social and environmental sustainability built into the system. It is estimated that Ireland will need an average of 33,000 new homes to be provided each year from 2021 to 2030. The policy has four pathways to achieving housing for all:

1. supporting home ownership and increasing affordability
2. eradicating homelessness, increasing social housing delivery and supporting social inclusion
3. increasing new housing supply
4. addressing vacancy and efficient use of existing stock

The pathways contain actions to be taken by government departments, local authorities, State agencies and others. The pathways are supported by actions to enable a sustainable housing system.

Housing for All contains 213 actions which will deliver a range of housing options for individuals, couples and families, including:

- The plan identifies that Ireland needs an average of 33,000 homes constructed per annum until 2030 to meet targets set out for additional households, as outlined in the National Planning Framework. These homes need to be affordable, built in the right place, to the right standard and in support of climate action. They need to satisfy demand for housing across four tenures – affordable, social, private rental and private ownership.
- In addition, the Housing for All plan identifies the need to deliver 90,000 social homes by 2030. This includes over 10,000 social housing homes each year over the next five years, with an average of 9,500 of those being new-build social homes.

5.1.2 National Planning Framework

The Department of Housing, Planning, Community and Local Government recently published the National Planning Framework (NPF) entitled '*Ireland 2040*¹ to succeed the NSS. The NPF comprises the Government's proposed long-term strategic planning framework to guide national, regional and local planning and investment decisions over the next 25 years. The NPF is a high-level document which provides a framework for future development and investment in Ireland, providing a long-term and place-based aspect to public policy and investment, and aiming to coordinate sectoral areas such as housing,

¹ Available on: <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownLoad,19164,en.pdf>

jobs, transport, education, health, environment, energy and communications, into an overall coherent strategy.

Part of the vision of the NPF is managing growth and targeting at least 40% of all new housing in existing built-up areas of cities, towns and villages through infill and brownfield sites while the rest of new homes will be targeted on greenfield edge of settlement areas and within rural areas. The NPF also sets out a number of National Strategic Outcomes which include Compact Growth and Strengthened Rural Economies and Communities.

The NPF has a number of directly relevant national policy objectives that articulate delivering on a compact urban growth programme. These include:

- The population target for the Eastern and Midland Region is for an additional 490,000-540,000 people to be living in the region by 2040.
- NPO 4 relating to attractive, well-designed liveable neighbourhoods;
- NPO 5 relating to sufficient scale and quality of urban development;
- NPO 6 relating to increased residential population and employment in urban areas;
- NPO 9 relating to increased population targets for settlements not identified in NPO 2a or 2b;
- NPO 11 relating to the presumption in favour of development that encourages more people and jobs within the existing towns and cities in accordance with urban development requirements;
- NPO 13 relating to planning and related standards, in particular car parking and building heights, seeking to achieve well-designed high-quality outcomes to achieve targeted growth;
- NPO 32 relating to targeting the delivery of 550,000 additional households to 2040;
- NPO 33 relating to the prioritising of the provision of new homes at locations that can support sustainable development at an appropriate scale of provision relative to location; and
- NPO 35 relating to increasing residential densities in settlements through a range of measures including infill development schemes.

5.1.3 **Local Area Plans Guidelines for Planning Authorities (2013)**

The Planning and Development Act 2000 (as amended), introduced a more plan-led system aimed at ensuring proper planning and sustainable development of land through a hierarchy of inter-related and complementary plans and policies at national, regional and local levels.

The 2000 Act introduced, inter alia, the concept of local area plans within the framework of higher-level plans (such as Regional Planning Guidelines and City and County Development Plans) local area plans provide more detailed planning policies for areas where significant development and change is anticipated, without having to prepare very detailed local planning policies and objectives for many specific areas within city and county development plans.

5.2 **Regional Planning Policy**

5.2.1 **Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy 2019-2031**

The elected members of the Eastern and Midland Regional Assembly (EMRA) agreed to make the Regional Spatial and Economic Strategy (RSES) 2019-2031, on June 28th 2019.

The principal statutory purpose of the RSES is to support the implementation of Project Ireland 2040 – National Planning Framework and National Development Plan 2019-2027 and the economic policies of the Government by providing a long-term strategic planning and economic framework for the development of the Regions.

The RSES will be implemented by way of a review by local authorities of all development plans and Local Economic and Community Plans (LECPs). Key state agencies and sectoral bodies will also consider their strategies and investment plans, post adoption of RSES, to support the achievement of National and Regional Strategic Outcomes set out in the NPF and RSES.

The RSES provides a:

- Spatial Strategy – to manage future growth and ensure the creation of healthy and attractive places to live, work, study, visit and invest in.
- Economic Strategy – that builds on our strengths to sustain a strong economy and support the creation of quality jobs that ensure a good living standard for all.
- Metropolitan Plan – to ensure a supply of strategic development areas for the sustainable growth and continued success and competitiveness of the Dublin Metropolitan Area.
- Investment Framework – to prioritise the delivery of key enabling infrastructure and services by government and state agencies.
- Climate Action Strategy – to accelerate climate action, ensure a clean and healthy environment and to promote sustainable transport and strategic green infrastructure.

The regional policy objectives set down specifically for Maynooth in the RSES include the following:

- ‘RPO 4.33: Support the continued development of Maynooth, co-ordinated with the delivery of strategic infrastructure including pedestrian and cycle linkages within the town and to the Royal Canal Greenway, DART expansion and road linkages forming part of the Maynooth Outer Orbital Route in a manner which supports future development and population growth and builds on synergies with Maynooth University promoting a knowledge-based economy.
- RPO 4.34: Support Maynooth as a key town to act as an economic driver for north Kildare and provide for strategic employment at key locations to improve the economic base of the town and provide for an increased number of local jobs.

5.3 Local Planning Policy

The application site is governed by the policies and provisions contained in the *Meath County Development Plan 20121-2027 (MCDP)*. The current MCDP sets out an overall strategy for the proper planning and sustainable development of the functional area of Meath County Council.

The MCDP was formally adopted on the 22nd September 2021 and it became operative on the 3rd November 2021.

Volume 1 of the MCDP contains the Core Strategy. The purpose of the Core Strategy is to set out an evidence-based strategy for the future spatial development of the Plan area. The Core Strategy is required to demonstrate that the Plan is in accordance with National and Regional planning policy outlined in the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Region. The strategy includes details of the settlement hierarchy and where future growth is to be distributed in the County together with details of population and household projections and the quantum of lands to be zoned for residential and mixed-uses. An overview of the quantum of lands zoned for employment uses is also provided.

Volume 2 of the MCDP contains the ‘Maynooth Environs’ Written Statement and maps which relates to the subject lands.

The relevant planning policy objective the subject of this Material Contravention Statement includes:

- ‘MAY OBJ 1 (Masterplan 16)’

See Sections 5.3.1 and 5.3.2 for further details.

5.3.1 Objective 'MAY OBJ 1 (Masterplan 16)'

Objective 'MAY OBJ 1 (Masterplan 16)' is of particular relevance to the subject lands. The objective states:

'It is an objective of the Planning Authority to require the submission with any application for development of lands at Moygaddy of a Master Plan for the prior written agreement of the Executive of the Planning Authority which shall address the following [our emphasis added]:

- 1. A Design Statement outlining the evolution of the design process for the proposed development. An emphasis on exemplar sustainable design and aesthetic quality shall be required*
- 2. Proposals for the accessing of lands which shall adhere to the permitted Part VIII realignment of the junction of the R157 Regional Road and Moygaddy Road.*
- 3. Proposals providing for the delivery of the Maynooth Outer Relief Road which shall be developer driven in tandem with the overall development;*
- 4. Proposals for piped water services to be agreed with Irish Water compliant with any existing consents in place;*
- 5. Mobility Management Plan for the development⁴. This Plan shall be to the fore in establishing the agreed quantum of employees which can be accommodated within individual locations predicated on maximising public transport opportunities and the use of innovation in reducing associated carbon footprint.*
- 6. Urban design and landscape design statement.*

Any development within the subject lands shall be subject to compliance with the requirements of the Habitats Directive and shall be phased with the delivery of the MOOR in Phase 1 of the development.'

[Our emphasis added]

5.3.2 Maynooth Environs Written Statement Section 11

Section 11.0 Master Plans of the Maynooth Environs Written Statement affirms:

'There are 2 Master Plan areas identified in Maynooth. The purpose of a Master Plan is to ensure an integrated approach is taken to the phasing, management, and development of lands within the Master Plan Area. A planning application will not be considered in the absence of the Master Plan being agreed in writing with the Planning Authority unless it can be demonstrated that the application will not undermine the objectives of the Master Plan being achieved.'

[Our emphasis added]

6. MATERIAL CONTRAVENTION

This Statement of Material Contravention has been prepared in accordance with Section 8(1)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) in order to address one aspect of the proposed development which may be deemed to potentially materially contravene the provisions of the Meath County Development Plan 2021-2027:

‘MAY OBJ 1 (Masterplan 1)’ requires the submission with any application for development of lands at Moygaddy of a Master Plan for the prior written agreement of the Executive of the Planning Authority.

6.1 Objective ‘MAY OBJ 1 (Masterplan 16)’

The proposed Strategic Housing Development (SHD) scheme the subject of this application forms part of a wider non-statutory draft masterplan for the Moygaddy lands which form part of the Maynooth Environs.

‘MAY OBJ 1 (Master Plan 16)’ of the extant MCDP states:

‘It is an objective of the Planning Authority to require the submission with any application for development of lands at Moygaddy of a Master Plan for the prior written agreement of the Executive of the Planning Authority which shall address the following:

- 1) *A Design Statement outlining the evolution of the design process for the proposed development. An emphasis on exemplar sustainable design and aesthetic quality shall be required*
- 2) *Proposals for the accessing of lands which shall adhere to the permitted Part VIII realignment of the junction of the R157 Regional Road and Moygaddy Road.*
- 3) *Proposals providing for the delivery of the Maynooth Outer Relief Road which shall be developer driven in tandem with the overall development;*
- 4) *Proposals for piped water services to be agreed with Irish Water compliant with any existing consents in place;*
- 5) *Mobility Management Plan for the development. This Plan shall be to the fore in establishing the agreed quantum of employees which can be accommodated within individual locations predicated on maximising public transport opportunities and the use of innovation in reducing associated carbon footprint.*
- 6) *Urban design and landscape design statement.*

Any development within the subject lands shall be subject to compliance with the requirements of the Habitats Directive and shall be phased with the delivery of the MOOR in Phase 1 of the development.’

[Our emphasis added]

An integrated non-statutory proposed masterplan document and drawing has been developed by Sky Castle Ltd. in accordance with the 6 no. criteria itemised in ‘MAY OBJ 1 (Master Plan 16)’ of the MCDP 2021-2027.

A final copy of proposed Moygaddy Masterplan (dated 30th August 2022) is enclosed with this planning application in accordance with the requirements of ‘MAY OBJ 1 (Master Plan 16)’ of the MCDP 2021-2027. The proposed Moygaddy Masterplan addresses:

- The Design Brief
- Consultation with Public Stakeholders

- Planning Policy Framework
- Site Context
- The Development Strategy; and
- Phasing and Delivery

The non-statutory proposed **Moygaddy Masterplan** and associated drawing ‘**21006 PL101 Site Layout Plan – Masterplan**’ prepared by MCORM Architects is enclosed with this application.



Figure 3: Extract from the proposed Moygaddy Masterplan prepared by MCORM Architects



Figure 4: Extract from drawing ‘21006 PL101 Site Layout Plan – Masterplan’ prepared by MCORM Architects

The proposed Masterplan has been developed in conjunction and with regard to the published policies and objectives envisaged for the Maynooth Environs in the Meath County Council Development Plan (2021-2027) and the Kildare County Council Development Plan 2017-2023. The future growth and expansion of Maynooth town as a sustainable and attractive location to live, work and play is contingent upon the delivery of the following strategic infrastructure that will be facilitated by this non-statutory proposed masterplan:

- 1) The installation of a “new pumped rising main” by Irish Water to address existing capacity constraints in the Maynooth plant.
- 2) The developer lead construction of the Northern section of the Maynooth Outer Orbital Route (MOOR) to address traffic congestion in Maynooth town.
- 3) The construction of a new Elective Public Hospital as part of the Government’s new Slainte Care strategy, to enhance public healthcare in the region.
- 4) The construction of a new Primary Care Centre facility to provide non-acute healthcare services within the community, and for the benefit of Maynooth.
- 5) The creation of a Strategic Employment zone that can accommodate inward investment from Multinational Employers in the Med-Tech, Bio-Tech and Life Sciences sectors aimed at promoting employment in Maynooth, and the wider region which will be delivered in conjunction with strategic transport linkages and research collaboration with Maynooth University.
- 6) The delivery of a mid-density (45.6units/ha) residential development which will be delivered on a phased basis over the next 2 to 3 years, within a mixed-use community, complying with the 500-unit residential allocation established in the Core Strategy Housing Allocation of the Meath County Council Development Plan (2021-2027)

The non-statutory proposed masterplan therefore provides a context for each planning application which will be brought forward and, in this regard, we wish to draw An Bord Pleanála’s attention to the fact that this proposed SHD is one of six planning applications that are currently being lodged in respect of the wider landholding. The proposed SHD scheme comprises 360 no. residential dwellings, a childcare facility and Scout Den located in the south-western area of the proposed masterplan.

A summary of the proposed schemes compliance with Objective ‘MAY OBJ1 (Masterplan 16)’ is set out below in tabular format.

Table 1: Potential material contravention of specific elements of Objective ‘MAY OBJ1 (Masterplan 16)’

Objective ‘MAY OBJ1 (Masterplan 16)’	Potential Material Contravention?
<p><i>‘It is an objective of the Planning Authority to require the submission with any application for development of lands at Moygaddy of a Master Plan for the prior written agreement of the Executive of the Planning Authority which shall address the following</i></p>	<p>Potentially Yes – the ‘prior written agreement of the Executive of the Planning Authority’ of the proposed masterplan has not been achieved in advance of making the SHD application.</p> <p>However, we note that Section 11 of the Written Statement for the Maynooth Environs states that “A planning application will not be considered in the absence of the Master Plan being agreed in writing with the Planning Authority <u>unless it can be demonstrated that the application will not undermine the objectives of the Master Plan being achieved.</u>” [Our emphasis added].</p> <p>The Material Contravention Statement which supports this application, contends that there are conflicting objectives between the specific</p>

Objective 'MAY OBJ1 (Masterplan 16)'	Potential Material Contravention?
	<p>wording of 'MAY OBJ1 (Masterplan 16)' and Section 11 of the Written Statement for the Maynooth Environs in relation to the prior written agreement of the Executive of the Planning Authority on the proposed masterplan.</p> <p>For the avoidance of doubt, this paper contends that this is the only part of the wording of 'MAY OBJ1 (Masterplan 16)' which potentially contravenes the adopted MCDP. Compliance with all 6 no. criteria itemised in 'MAY OBJ1 (Masterplan 16)' has been achieved, as detailed below.</p> <p>The Board's attention to draw to Appendix 1 of this Statement which provides a legal opinion from Stephen Dodd (Senior Counsel) to justify why the Board can still grant planning permission for the proposed scheme notwithstanding the Chief Executive's prior written agreement is not in place for the proposed Moygaddy Masterplan.</p>
<p><i>1. A Design Statement outlining the evolution of the design process for the proposed development. An emphasis on exemplar sustainable design and aesthetic quality shall be required</i></p>	<p>No – the proposed Moygaddy Masterplan includes a design statement outlining the evolution of the design process for the proposed development. See sections 2, 3 and 4 of the proposed Moygaddy Masterplan.</p> <p>The Board's attention is also directed towards the site-specific Design Statement prepared for the SHD site by MCORM Architects.</p>
<p><i>2. Proposals for the accessing of lands which shall adhere to the permitted Part VIII realignment of the junction of the R157 Regional Road and Moygaddy Road.</i></p>	<p>No - the proposed MOOR adheres to the permitted Part VIII realignment of the junction of the R157 Regional Road and Moygaddy Road.</p>
<p><i>3. Proposals providing for the delivery of the Maynooth Outer Relief Road which shall be developer driven in tandem with the overall development;</i></p>	<p>No – the proposed masterplan includes proposals providing for the delivery of the Maynooth Outer Relief Road (MOOR) which is developer driven in tandem with the overall development.</p> <p>As detailed in Chapter 1 of the Environmental Impact Assessment, the applicant has prepared a planning application for the MOOR which consists of approximately 1.7km of new distributor road, 2. no single span bridges, pedestrian and cycle improvement measures, 2 no. pedestrian and cycle bridges, upgrade works</p>

Objective 'MAY OBJ1 (Masterplan 16)'	Potential Material Contravention?
	to existing road network and all associated utilities.
<i>4. Proposals for piped water services to be agreed with Irish Water compliant with any existing consents in place;</i>	No - Proposals for piped water services have been agreed in principle with Irish Water. See Appendix D of the Engineering Services Report for a copy of the Irish Water Confirmation of Feasibility.
<i>5. Mobility Management Plan for the development. This Plan shall be to the fore in establishing the agreed quantum of employees which can be accommodated within individual locations predicated on maximising public transport opportunities and the use of innovation in reducing associated carbon footprint.</i>	No – a Mobility Management Plan has been prepared by O'Connor Sutton Cronin Engineers to support the proposed development.
<i>6. Urban design and landscape design statement.</i>	No- urban design and landscape proposals are addressed in the proposed Moygaddy masterplan. In addition, a site-specific Design Statement and Landscape Rationale have been prepared for the subject lands in support of this application.
<i>Any development within the subject lands shall be subject to compliance with the requirements of the Habitats Directive and shall be phased with the delivery of the MOOR in Phase 1 of the development.'</i>	No- development within the subject lands has been subject to compliance with the requirements of the Habitats. Please refer to the Natura Impact Statement for further details. Section 5.1 of the proposed masterplan sets out the phasing plan and timeline for the delivery of the MOOR, commencing in phase 1 of the proposed phasing plan.

As demonstrated by **Table 1** above, this report contends that the proposed development does not undermine the objectives to be achieved by the masterplan as set out in 'MAY OBJ1 (Masterplan 16)'. The development plan should be read as a "whole" so the qualification on the Masterplan requirement in section 11 of the Written Statement for Maynooth Environs, can be read to be part of MAY OBJ1, namely: "A planning application will not be considered in the absence of the Master Plan being agreed in writing with the Planning Authority unless it can be demonstrated that the application will not undermine the objectives of the Master Plan being achieved".

We direct the Board's attention to paragraphs 23 and 26 of Stephen Dodd's legal opinion in **Appendix 1**, which are extracted below:

‘23. *However, irrespective of this matter of timing as to when the written agreement to the Masterplan is required, OBJ MAY 1 when read together with Section 11.0 means that there is no requirement for an agreed Masterplan where it is demonstrated that the application will not undermine the objectives of the Master Plan being achieved. Thus Section 11.0 qualifies the requirement for the prior written agreement of a Masterplan. Thus an application for development at Moygaddy can be both considered and granted in the absence of an agreed Masterplan where it is demonstrated that the application will not undermine the objectives of the Master Plan being achieved. This qualification is understandable as otherwise the development could be indefinitely delayed by the failure of the planning authority to agree to the Masterplan, in particular where there is no prescribed time limit or set procedure for the planning authority to agree.’*

And;

‘26. *It follows that it is demonstrated that the application will not undermine the objectives of the Master Plan being achieved as described above, then the proposed development will not be in material contravention of OBJ MAY 1, when read in the light of Section 11.0. In order of the Board to grant permission for such development it will not require to invoke its material contravention jurisdiction under section 9(6)(b) of the 2016 Act by justifying the same by reference to reasons set out in section 37(2)(b) of the 2000 Act.’*

In the event that:

- (i) the Board has a different interpretation of the development plan (i.e. MAY OBJ 1 is not to be read in light of section 11 of the WS); or
- (ii) the Board does not accept that it can be demonstrated that it does not undermine the objectives to be achieved by the Masterplan;

Section 7 of this Material Contravention Statement provides a justification for the potential material contravention, that in applicant’s opinion, permission should nonetheless be granted, having regard to a consideration specified in section 37(2)(b) of the Planning and Development Act of 2000 (as amended). Section 7.1 to 7.3 of this report address items Section 37(2)(b)(i), Section 37(2)(b)(ii) and Section 37(2)(b)(iii) respectively.

During discussions with Meath County Council in late July 2022 in respect of this planning process, the requirement for a Strategic Environmental Assessment (SEA) of the applicant’s proposed masterplan was raised by the Planning Authority. Please refer to the opinion of Stephen Dodd SC in **Appendix 1** which sets out why a Strategic Environmental Assessment of the proposed masterplan is not required.

7. JUSTIFICATION FOR MATERIAL CONTRAVENTION

As is evident in the preceding sections and the technical documentation and justification furnished to the Board with this application, while the proposed development may potentially materially contravene the extant Meath County Development Plan in relation to:

‘MAY OBJ 1 (Masterplan 16)’ requires the submission with any application for development of lands at Moygaddy of a Master Plan for the prior written agreement of the Executive of the Planning Authority [Our emphasis added]

The proposed development in the prospective applicant’s opinion, permission should nonetheless be granted, having regard to a consideration specified in section 37(2)(b) of the Planning and Development Act of 2000 (as amended).

Section 37(2)(b):

- (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.

Section 7.1 to 7.3 of this report address items Section 37(2)(b)(i), Section 37(2)(b)(ii) and Section 37(2)(b)(iii) respectively.

7.1 (i) The Proposed Development is of Strategic Importance

Strategic Housing Development is defined in Section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) to include:

(a) the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses,

The proposed scheme meets the statutory definition for ‘Strategic Housing Development’, as confirmed by An Bord Pleanála in correspondence received on the 6th January 2022 referenced ABP-312213-21. The proposed development will deliver 360 no. residential dwellings, of which 36 no. units are intended to be social and affordable housing (as per Part V proposals outlined in the planning application submission). The proposed development will also deliver a childcare facility. The development is situated in an accessible and sustainable location helping to deliver on objectives for efficient use of land and compact urban development. Noting the national importance of delivering housing and sustainable neighbourhoods given the current housing crisis, it is considered reasonable to conclude that the proposed development, which is the subject of this Strategic Housing Development application, is of strategic importance.

7.2

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

This paper contends that there are conflicting objectives between the specific wording of ‘MAY OBJ1 (Masterplan 16)’ and Section 11 of the Written Statement for the Maynooth Environs in relation to the prior written agreement of the Executive of the Planning Authority on the proposed masterplan.

‘MAY OBJ 1 (Master Plan 16)’ states that:

‘It is an objective of the Planning Authority to require the submission with any application for development of lands at Moygaddy of a Master Plan for the prior written agreement of the Executive of the Planning Authority’.

However, we note that Section 11 of the Written Statement for the Maynooth Environs states that

‘A planning application will not be considered in the absence of the Master Plan being agreed in writing with the Planning Authority unless it can be demonstrated that the application will not undermine the objectives of the Master Plan being achieved.’ [Our emphasis added].

7.3

(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 strategic goals of the Government in relation to the delivery of new residential development, and their national importance, is reflected in the policies and objectives of the National Planning Framework and ‘Housing for All - a New Housing Plan for Ireland’.

The population target for the Eastern and Midland Region is for an additional 490,000-540,000 people to be living in the region by 2040, as set out in the National Planning Framework. The National Planning Framework has a number of directly relevant national policy objectives that articulate delivering on a compact urban growth programme. The proposed development is considered to be consistent with the national housing policy and the National Planning Framework in general – please see Appendix 5 of the Planning Report and Statement of Consistency for a detailed breakdown of the proposed scheme’s compliance with policy objectives of the National Planning Framework.

The *Housing For All: Housing Plan for Ireland* published by the Government of Ireland in September 2021 is the government’s housing plan to 2030. It is a multi-annual, multi-billion-euro plan which will improve Ireland’s housing system and deliver more homes of all types for people with different housing needs. The government’s overall objective is that every citizen in the State should have access to good quality homes:

- to purchase or rent at an affordable price
- built to a high standard and in the right place
- offering a high quality of life

Housing for All contains 213 actions which will deliver a range of housing options for individuals, couples and families, including:

- The plan identifies that Ireland needs an average of 33,000 homes constructed per annum until 2030 to meet targets set out for additional households, as outlined in the National Planning Framework. These homes need to be affordable, built in the right place, to the right standard and in support of climate action. They need to satisfy demand for housing across four tenures – affordable, social, private rental and private ownership.
- In addition, the Housing for All plan identifies the need to deliver 90,000 social homes by 2030. This includes over 10,000 social housing homes each year over the next five years, with an average of 9,500 of those being new-build social homes.

It is also noteworthy that the recent Census data release highlighted the severe pressure being experienced in the State's housing supply. The increase in the State's population is continuing to outstrip the growth in the number of new houses being built, according to the preliminary Census 2022 data recently published². The country's housing stock grew by 120,945 dwellings, or 6 per cent, between 2016 and 2022 to more than 2.1 million, a slower rate of increase than the 8 per cent increase in the population. Preliminary 2022 Census data for counties Meath and Kildare show that the population growth for both counties is significantly higher than anticipated, with a 12.9% and 11% increase since the previous Census³.

The Irish Institutional Property Group commissioned Dr. Ronan Lyons, an assistant Professor of Economics at Trinity College, Dublin to review the ESRI report in August 2020. Lyons contrasts the predictions of Project 2040 starkly with what he believes will be the actual outcome based on his analysis of current and likely future demographic and economic trends. Key findings of the review include:

- The Lyons review states that demand for housing up to 2025 will require an annual build of 47,000 units and not 25,000 units as previously envisaged.
- Furthermore, that estimate is based on demand created by net migration of just 20,000 whereas if the pre Covid pattern re-emerges (and global trends suggest that it will), then immigration is likely to be higher than that, of at least 33,000 every year.
- The Lyons review also reflects on another interesting dimension to the housing market, which is the radical change in household composition. Between the 1996 and 2016 Census, 66% of new households were one and two person households, which now constitute over 50% of all households.
- Another significant statistic is that 40,000 new households are what are described as "crammers," that is households made up of people who are not related to one another. That cohort constituted 35% of the overall increase in all households between 2011 and 2016.
- In contrast to the ESRI report cited above which used a national household size of 2.75, the Lyons review states that the demographics imply a true household size in 2016 closer to 2.4, requiring an additional 217,000 households. If Ireland's average household size converges to the European average, it will create major demand, especially for homes for smaller households:
 - Even with a fixed population, rise in the fraction of 1-2 person households creates demand for a significant number of new dwellings

² *Irish Times* (23rd June 2022) 'Census 2022: Population increase continues to outstrip growth in number of new homes. Available on: <https://www.irishtimes.com/ireland/housing-planning/2022/06/23/census-2022-population-increase-continues-to-outstrip-growth-in-number-of-new-homes/>

³ *Central Statistics Office* (2022) 'Census of Population 2022 – Preliminary Results'. Available on: <https://www.cso.ie/en/releasesandpublications/ep/p-cpr/censusofpopulation2022-preliminaryresults/geographicchanges/>

- Relative to a 2.7 average household size, a population of 4.8m with an average household size of 2.5 requires 142,000 extra dwellings
- This is the equivalent of 11 years construction output at 2015 rates.
- Convergence to EU average of 2.3 would require an additional 300,000 dwellings.

The proposed development will deliver 360 no. residential dwellings (including 36 no. Part V units) and will assist in meeting the Housing For All's requirements to deliver:

- an average of 33,000 homes constructed per annum until 2030 to meet targets set out for additional households, as outlined in the National Planning Framework. These homes need to be affordable, built in the right place, to the right standard and in support of climate action. They need to satisfy demand for housing across four tenures – affordable, social, private rental and private ownership.
- 90,000 social homes by 2030. This includes over 10,000 social housing homes each year over the next five years, with an average of 9,500 of those being new-build social homes.

Maynooth is located within the Dublin Metropolitan Area. It is identified in the RSES as a key town with the assets and capacity to grow in a sustainable manner while minimising impacts on the receiving environment. It is recognised in the RSES that Key Towns should act as economic drivers and provide for strategic employment locations to improve their economic base by increasing the ratio of jobs to workers. While the number of people at work within the town is relatively high, a significant number of residents commute to Dublin. The development of the Maynooth Environs is envisaged by the Council as a natural extension to the town of Maynooth and as a location for employment generation and the establishment of a self-sustaining 'live work' community.

The proposed scheme will provide 360 no. residential units and a childcare facility, as part of a cohesive masterplan vision for the wider landholding. The proposed scheme aligns with RPO 4.33 and RPO 4.34 of the RSES.

A comprehensive assessment of the proposed development in respect of national, regional and local planning policies is enclosed with this planning application – See Appendix 5 of the **Planning Report and Statement of Consistency**. It is considered that the proposed development accords with the provisions of those documents.

8. CONCLUSION

It is submitted that permission for the proposed development of 360 no. residential dwellings should be granted, notwithstanding the potential Material Contravention of the MCDP, on the grounds that:

- The Proposed Development is of Strategic Importance in compliance with Section 37(2)(b)(i) of the Planning and Development Act 2000 (as amended);
- There are conflicting objectives in the development plan in 'MAY OBJ 1 (Masterplan 16)' and Section 11 of the Maynooth Environs Written Statement, insofar as the proposed development is concerned, in compliance with 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended).
- The proposed development will deliver 360 no. residential dwellings (including 36 no. Part V units) and will assist in meeting the objectives set out in the National Planning Framework, Housing For All and RSES requirements in compliance with 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended).

It is requested that An Bord Pleanála, having had regard to the justification set out within this statement, should grant permission for the proposed development pursuant to the provisions of Section 9(6)(c) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) and Section 37(2)(b) (i), Section 37(2)(b) (ii) and Section 37(2)(b) (iii) of the Planning and Development Act 2000 (as amended). The Board's attention is drawn to the fact that only one of the circumstances in s37(2)(b)(i) to (iv) needs to be achieved by the SHD in order to justify granting planning permission for the proposed development.

The Board's attention is drawn to **Appendix 1** of this report which provides a legal opinion from Stephen Dodd (Senior Counsel) to justify why the Board has the jurisdiction to grant planning permission for the proposed scheme notwithstanding the Meath County Council Chief Executive's prior written agreement is not in place for the proposed Masterplan; and notwithstanding the fact that a Joint Local Area Plan between Meath County Council and Kildare County Council has not been prepared.

The proposed development does not undermine the objectives to be achieved by the proposed masterplan. As detailed in the Planning Report and Statement of Consistency, the proposed masterplan complies with the six criteria itemised in 'MAY OBJ 1 (Master Plan 16)'.



APPENDIX 1

STEPHEN DODD

(SENIOR COUNSEL)

LEGAL OPINION

OPINION

QUERIST: *Sky Castle Limited*

AGENT: *Jay Sattin, Senior Associate, Mason Hayes & Curran Solicitors, Barrow Street, Dublin 4*

SUBJECT: *Lands at Moygaddy: Joint Local Area Plan and Masterplan Objectives*

I PRELIMINARY

1. The purpose of this Opinion is to address whether the An Bord Pleanála can or should consider granting planning permission for a proposed strategic housing development at Moygaddy, Maynooth, County Meath, in circumstances where:
 - (1) A Joint Local Area Plan between Meath County Council (“the Council”) and Kildare County Council has not been prepared
 - (2) A Masterplan has not been agreed by the Council

II BACKGROUND

2. It is proposed to set out the relevant development plan policies insofar as they relate to the preparation of a Joint Local Area Plan between Meath County Council and Kildare County Council and also a Masterplan for the development of the lands.

1. Joint Local Area Plan between Meath CC and Kildare CC

3. Section 1 of the written statement for Maynooth, and policies MAY POL 1 and CS OBJ 11, notes that a Joint Plan will be entered into, as a matter of priority, between the Council and Kildare County Council. Section 1 states:

“This written statement will provide a brief description and development strategy for Maynooth Environs in County Meath. A joint Local Area Plan will be prepared, in conjunction with Kildare County Council, for the town during the life of this Plan”.

It then cites RPO 4.35 of the RSES for the Eastern and Midlands Regional Assembly which states:

‘A cross boundary Joint Local Area Plan (LAP) shall be prepared by Kildare County Council and Meath County Council to provide a coordinated planning framework for the Maynooth area. The Joint LAP shall identify a boundary for the plan area, strategic

housing and employment development areas and infrastructure investment requirements and promote greater co-ordination and sequential delivery of serviced lands for development.”

4. This is then reflected in Policy MAY POL 1 which states:

“To prepare, as a priority, in conjunction with Kildare County Council a joint Local Area Plan for Maynooth, over the period of the Plan”

In addition, policy CS OBJ 11 states:

“to prepare, as a priority, a Joint Vision and Local Area Plan for Maynooth in partnership with Kildare County Council within the lifetime of this Plan in accordance with the requirements of Regional Policy Objective 4.35 of the RSES for the Eastern and Midland Region. As part of the preparation of this Plan, a detailed infrastructure assessment, consistent with the methodology for a Tiered Approach to Zoning under Appendix 3 of the NPF will be undertaken”

2. *Masterplan for Lands at Moygaddy*

5. There is a specific objective in the development plan relating to the preparation of a Masterplan for the lands at Moygaddy.

6. This is contained in the Maynooth Environs section of Meath County Development Plan 2021 – 2027 under the heading “Objectives” where it is stated:

“It is an objective of the Council:

“MAY OBJ 1 (Master Plan 16)

It is an objective of the Planning Authority to require the submission with any application for development of lands at Moygaddy of a Master Plan for the prior written agreement of the Executive of the Planning Authority which shall address the following:

- 1. A Design Statement outlining the evolution of the design process for the proposed development. An emphasis on exemplar sustainable design and aesthetic quality shall be required.*
- 2. Proposals for the accessing of lands which shall adhere to the permitted Part VIII realignment of the junction of the R157 Regional Road and Moygaddy Road.*
- 3. Proposals providing for the delivery of the Maynooth Outer Relief Road which shall be developer driven in tandem with the overall development;*
- 4. Proposals for piped water services to be agreed with Irish Water compliant with any existing consents in place;*
- 5. Mobility Management Plan for the development. This Plan shall be to the fore in establishing the agreed quantum of employees which can be accommodated within*

individual locations predicated on maximising public transport opportunities and the use of innovation in reducing associated carbon footprint.

6. *Urban design and landscape design statement.*

Any development within the subject lands shall be subject to compliance with the requirements of the Habitats Directive and shall be phased with the delivery of the MOOR in Phase 1 of the development.”

It may be noted that there is also an objective for a Masterplan for development at Carton Desmesne which is MAY OBJ 2 (Masterplan 17) .

7. Section 11.0 of the written statement for Maynooth Environs is entitled “Masterplan” which includes certain text and then a table referring to Masterplan 16 (Moygaddy) and 17 (Carton Desmesne) and provides:

“There are 2 Master Plan areas identified in Maynooth. The purpose of a Master Plan is to ensure an integrated approach is taken to the phasing, management, and development of lands within the Master Plan Area. A planning application will not be considered in the absence of the Master Plan being agreed in writing with the Planning Authority unless it can be demonstrated that the application will not undermine the objectives of the Master Plan being achieved.”

Master Plan	Description	Status
Master Plan 16	Master Plan 16 relates to lands incorporating a range of employment, residential and community support opportunities in both the Moygaddy lands and other designated lands within the boundary of this Master Plan excluding the MP 17 lands below.	Awaiting preparation
Master Plan 17	Master Plan 2 relates to employment lands adjacent to Carton Demesne, located in Co. Meath.	Awaiting preparation

III STATUTORY FRAMEWORK AND PRINCIPLES

8. The relevant governing provisions applicable to the Board determining a strategic housing development are set out in section 9 of the 2016 Act which states as follows:

9. (1) The Board shall, before making a decision to which subsection (4) relates in respect of the proposed strategic housing development, consider—

(a) (i) the report of the planning authority or, where the proposed development is in the area of more than one planning authority, the report of each such authority submitted in accordance with section 8(5) ,

(ii) any submissions or observations duly received by the Board consequent on—

(I) the publication of a notice pursuant to paragraph (a)(vii) of section 8(1), or

(II) the sending of a notice pursuant to subparagraph (ii) of paragraph (b), or to paragraph (c), of section 8(1),

and

(iii) any other relevant information, in so far as they relate to -

(A) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the development,

(B) the likely effects on the environment or the likely effects on a European site, as the case may be, of the proposed development, if carried out,

(b) where required, an environmental impact assessment report or Natura impact statement or both that report and that statement, as the case may be, submitted to the Board pursuant to section 8(2), and

(c) any report or recommendation prepared in relation to the application in accordance with section 146 of the Act of 2000, including the report of the person conducting any oral hearing of the proposed development.

(2) In considering the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the strategic housing development, the Board shall have regard to—

(a) the provisions of the development plan, including any local area plan if relevant, for the area,

(b) any guidelines issued by the Minister under section 28 of the Act of 2000,

(c) the provisions of any special amenity area order relating to the area,

(d) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c) of the Act of 2000, that fact,

(e) if the proposed development would have an effect on a European site or an area prescribed for the purposes of section 10(2)(c) of the Act of 2000, that fact,

(f) the matters referred to in section 143 of the Act of 2000, and

(g) the provisions of the Planning and Development Acts 2000 to 2016 and regulations made under those Acts where relevant.

9. Thus under section 9(2)(a) the Board is required to consider the provisions of the development plan, including any local area plan if relevant, for the area. The Board can grant permission for development where it is in material contravention of non-zoning objectives of the development plan based on the considerations set in section 37(2)(b) of the 2000 Act. It cannot grant permission for development which is in material contravention of the zoning objectives of the development plan. This is reflected in section 9(6) of the 2016 Act which states:

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

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

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

Principles of Interpretation of development plan

10. It is also relevant for the present purposes to outline general principles of interpretation of the development plan, which might be employed in considering the provisions relating to the Joint Local Area Plan and also the Masterplan requirement. The development plan is to be interpreted and considered from the perspective of a reasonably well informed member of the public. In *Re. X.J.S. Investments Ltd* [1986] IR 750, where McCarthy J stated:

“Certain principles may be stated in respect of the true construction of planning documents:-

(a) To state the obvious, they are not Acts of the Oireachtas or subordinate legislation emanating from skilled draftsmen and inviting the accepted canons of construction applicable to such material.

(b) They are to be construed in their ordinary meaning as it would be understood by members of the public, without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning”.

See also *Clonres v An Bord Pleanala* 2021] IEHC 303 for a recent discussion of the same. Furthermore, it is clear that a development plan is to be interpreted holistically as a whole. This approach has been affirmed in a number of cases. In *Eoin Kelly v An Bord Pleanala* [2022] IEHC 194, Barnville J, stated at para. 192:

“I propose to take the approach which McGovern J. took in Navan, to apply the interpretative principles in XJS, to bear in mind the observations of McGovern J. and, indeed, of Lord Reed in Dundee and to consider the planning documents at issue here, principally, the Retail Planning Guidelines, the Meath Retail Strategy (attached at Appendix 5 to the Development Plan) and the East Meath LAP, in a “holistic way” and to review those documents “as a whole” rather than focussing, as I believe the applicant does, on one part or policy, namely, the sequential approach”.

Similarly, in *Ballyboden v An Bord Pleanala* [2022] IEHC 7, Holland J observed at para. 123:

“...Barnville J in *Eoin Kelly*⁹⁶ and McGovern J in *Navan Co-Ownership*⁹⁷ emphasise the “holistic” interpretation of a development plan “as a whole” and that guidelines and planning strategies should not be interpreted in an excessively technical and over-legalistic manner.”

Also at para. 171:

“Counsel for the Board argued that the intelligent layperson, if surprised by 142 dph on reading the Development Plan as to density on Institutional Lands and in determining whether 142 dph contravenes the Plan, will look at other aspects of the Plan. I accept that the Plan must be read as a whole”.

IV ASSESSMENT

11. As noted above, in determining an SHD application, the Board is required to consider the provisions of the development plan. It may also grant permission for development in material contravention of the development plan, other than relating to zoning, where this is justified by reference to the criteria in section 37(2)(b) of the 2000 Act.
12. Neither the objectives in the Meath County Council development plan relating to the preparation of a Joint Local Area Plan with Kildare County Council nor the Masterplan objectives relating to the Moygaddy lands, constitutes zoning objectives. It therefore follows

that the Board clearly has jurisdiction to grant permission for the proposed development, even if it considers the development involves a material contravention of the development plan, which will be considered below. Each of the relevant objectives may be considered in turn.

1. Joint Local Area Plan between Meath CC and Kildare CC

13. There is nothing in the text of the development plan outlined earlier which in anyway restrains the grant of planning permission for lands in Maynooth pending the preparation and adoption of a Joint Local Area Plan between Meath County Council and Kildare County Council for Maynooth. The development plan refers to the adoption of the such Joint Area Plan during the lifetime of the plan and also refers to the preparation of such plan as a priority. However, to date no such draft plan has even been prepared and it is uncertain when this may be the case. The development plan does not suggest that substantial development should not be granted in the advance of the same. Moreover there is nothing in the objectives relating to the preparation of such joint plan which specifically relates to the lands at Moygaddy.

14. It is important to note that that Maynooth is described as Key Town in Core Strategy of the development plan and this in turn derives from the RSES for the Midlands and Eastern Region. The requirement for a Joint Local Area Plan with Kildare County Council for Maynooth also derives from the RSES and there is nothing in the RSES which suggests that development in Maynooth be put on hold pending the adoption of such Joint Local Area Plan. In fact such an approach would not appear consistent with the status of Maynooth as a Key Town under the RSES. Table 4.2 of the RSES sets out a settlement hierarchy and describes “*Key Towns*” which includes Maynooth as a Metropolitan Key Town. Key Towns are described as:

“Large economically active service and/or county towns that provide employment for their surrounding areas and with high-quality transport links and the capacity to act as growth drivers to complement the Regional Growth Centres”.

While RPO 4.35 refers to the preparation of the Joint Local Area Plan, other objectives in the RSES relating to Maynooth may be noted such as RPO. 4.34 which states:

“RPO 4.34: Support Maynooth as a key town to act as an economic driver for north Kildare and provide for strategic employment at key locations to improve the economic base of the town and provide for an increased number of local jobs”.

15. There is a requirement for the Board to have regard to the RSES under section 9(2)(f) which refers to:

“the matters referred to in section 143 of the Act of 2000”

Section 143 of the 2000 Act specifically refers to the RSES insofar as it states:

(1) The Board shall, in performing its functions, have regard to—

.....

(c) the National Planning Framework and any regional spatial and economic strategy for the time being in force”

16. For the Board to decline to grant permission on the basis that a Joint Local Area Plan has not yet been prepared or adopted would not appear to be in alignment with either the statutory framework, the development plan or RSES for the Eastern and Midland Region.
17. The judgment in *Element Power Ireland Ltd v An Bord Pleanála* [2017] IEHC 550 is of some note. In this case the Court held the Board had erred in refusing permission for a Strategic Infrastructure Development (SID) wind farm development on the grounds that it was premature, pending the adoption of a national wind energy strategy with a spatial dimension. Haughton J. held:

“49: The Board must operate within the four corners of the statutory framework established under European law and the relevant domestic legislation, particularly the 2000 Act and planning regulations, existing statutory guidelines, and local policy as set out in existing county development plans. The court may look at what might be said to be required or excluded, by implication, by virtue of the subject of matter, scope and purpose of this framework. The Board cannot take decisions based on considerations that fall outside this framework, or based on documents that are preliminary, scoping, proposed, consultative, or otherwise lack the status of statutory guidelines that the Board is obliged to consider.

50. It is also implicit from s.37G(1) of the 2000 Act that the Board cannot have regard to information that is not relevant, unless it is otherwise a matter to which it can have regard under by virtue of the Act.

51. Nothing in s.37G(2), or in s.143, authorises the Board to take into account drafts, or the prospect of new or modified government or local authority policy or objectives. I do not discern any provision in the 2000 Act which would entitle the Board to base a decision to refuse permission on the absence of national or local strategy or policy.”

52: I am of the view that the possibility, even probability, that the documentation considered by the inspector will lead to new government policy and objectives on wind energy strategy, including a spatial dimension, is not a relevant consideration, or one

that the Board is permitted to treat as a reason for refusing permission. The inspector erred in stating that "...the state of flux in the policy framework is a material consideration.

53. Moreover, it cannot be said when new policy or strategy will be adopted, if at all, and planners can only speculate as to its content. This uncertainty is compelling, because the effect of Reason 1 would be to suspend indefinitely the prospect of obtaining permission for a windfarm in this area. The national policy development may take a number of years, and there is no guarantee that it will result in strategy with a spatial dimension. Thereafter there is likely to be further time lapse as the local authorities adopt new local wind strategies with a wind dimension. This is precisely the sort of uncertainty and confusion decried in Ebonwood."

18. While that case concerned draft government policy as opposed to a proposed Joint Local Area Plan, nonetheless the considerations outlined above have certain application to the present context. The proposed Joint Local Area Plan has not even reached the stage of a draft plan being published and so would amount to a disproportionate interference with property rights to defer granting permission until the same is either published or adopted, in particular in circumstances where it is uncertain when it is to be adopted. In fact even if a draft plan had been published it is doubtful whether this is a relevant consideration for the purposes of a determination under section 9 of the 2016 Act. Section 18(3)(a) of the 2000 Act as amended provides for a draft local area plan to be considered in the context of an application under section 34:

"When considering an application for permission under section 34, a planning authority, or the Board on appeal, shall have regard to the provisions of any local area plan prepared for the area to which the application relates, and the authority or the Board may also consider any relevant draft local plan which has been prepared but not yet made in accordance with section 20"

However, the above only applies to an application under section 34 and there is no similar provision relating to an application for a strategic housing development application under section 4 of the 2016 Act. Furthermore section 9(2)(a) of the 2016 Act refers to the Board having regard to "*the provisions of the development plan, including any local area plan if relevant*" but does not refer to a draft local area plan or still less a proposed local area plan.

19. It is therefore clear from all of the above that there is no jurisdictional obstacle to the Board granting permission for the proposed strategic housing development pending the preparation

and/or adoption of the proposed Joint Area Plan between Meath County Council and Kildare County Council. Moreover to indefinitely postpone granting permission for development in Maynooth pending the adoption of a Joint Local Area Plan is not warranted under the RSES and would appear to be at odds with the designation of Maynooth as a Key town.

20. In addition for the sake of completeness it is to be noted the proposed development does not constitute a material contravention of any objectives in the development plan relating to such proposed Joint Local Area Plan and so there is no requirement to invoke the reasons under section 37(2)(b) of the 2000 Act as amended, to justify the same.

2. Masterplan for Lands at Moygaddy

21. As noted under objective MAY OBJ 1 there is requirement to prepare a Masterplan for the development of the land insofar as it refers to the “... *submission with any application for development of lands at Moygaddy of a Master Plan for the prior written agreement of the Executive of the Planning Authority*”. The wording of this objective is somewhat ambiguous regarding the timing of any agreement to the Masterplan. The wording of “with” indicates that the proposed Masterplan is to be submitted “with” the planning application for the development of the plans and it is to be agreed by the Executive in that context. However, the phrase “*prior written agreement*”, is somewhat unclear as what it is “*prior*” to: such as whether prior to the carrying out of any development or prior to the determination of the planning application itself.
22. A development plan requires to be interpreted as a whole and so OBJ MAY 1 should not be read in isolation but must be read in the light of Section 11.0 entitled Masterplan. In fact this is very clear from the fact that the table in Section 11.0 specifically mentions Masterplan 16, which relates to the Moygaddy lands. The text of Section 11.0 states, inter alia:

“A planning application will not be considered in the absence of the Master Plan being agreed in writing with the Planning Authority unless it can be demonstrated that the application will not undermine the objectives of the Master Plan being achieved” (our emphasis underlined)

Thus reading Section 11.0 together with OBJ MAY 1, the timing of written agreement of the planning authority is still not entirely clear, in particular whether the written agreement can be obtained in the context of the application. If this was the case the only aspect of the application which might initially be considered is the Masterplan and if this is subject to written agreement, then further consideration might be given to the planning application. It is not clear whether this is procedurally practical or possible (if this is what the objective intended) in particular in the context of the time limits required for the determination of a planning application whether

under section 34 of the 2000 Act or under the 2016. If the Masterplan was subject to written agreement prior to the submission of the planning application, then this would not present these practical issues.

23. However, irrespective of this matter of timing as to when the written agreement to the Masterplan is required, OBJ MAY 1 when read together with Section 11.0 means that there is no requirement for an agreed Masterplan where it is demonstrated that the application will not undermine the objectives of the Master Plan being achieved. Thus Section 11.0 qualifies the requirement for the prior written agreement of a Masterplan. Thus an application for development at Moygaddy can be both considered and granted in the absence of an agreed Masterplan where it is demonstrated that the application will not undermine the objectives of the Master Plan being achieved. This qualification is understandable as otherwise the development could be indefinitely delayed by the failure of the planning authority to agree to the Masterplan, in particular where there is no prescribed time limit or set procedure for the planning authority to agree.

24. As regards what are the objectives of the Masterplan, these might be gleaned from the text of development plan in Section 11. 0 and OBJ MAY 1. Thus Section 11.0 refers to Masterplan:

“...to ensure an integrated approach is taken to the phasing, management, and development of lands within the Master Plan Area”

The Table in Section 11.0 also refers to development at Moygaddy:

“.....incorporating a range of employment, residential and community support opportunities.”

In addition OBJ MAY 1 sets out six matters which a Masterplan is required to address which could be said to reflect objectives which again may be reiterated:

1. *A Design Statement outlining the evolution of the design process for the proposed development. An emphasis on exemplar sustainable design and aesthetic quality shall be required.*
2. *Proposals for the accessing of lands which shall adhere to the permitted Part VIII realignment of the junction of the R157 Regional Road and Moygaddy Road.*
3. *Proposals providing for the delivery of the Maynooth Outer Relief Road which shall be developer driven in tandem with the overall development;*
4. *Proposals for piped water services to be agreed with Irish Water compliant with any existing consents in place;*

5. *Mobility Management Plan for the development. This Plan shall be to the fore in establishing the agreed quantum of employees which can be accommodated within individual locations predicated on maximising public transport opportunities and the use of innovation in reducing associated carbon footprint.*
6. *Urban design and landscape design statement.*

The underlined portions of the matters above could be said to reflect objectives of the Masterplan. If it is demonstrated that the proposed development will not “*undermine*” the objectives to be achieved, then the application can be considered and granted in accordance with Section 11.0. It is not therefore necessary that the proposed development itself achieves the objectives of the Masterplan, so long as it does not “*undermine*” the same. However, it is noted that in respect of the 6 planning applications to be lodged by the Querist this includes development for the Maynooth Outer Orbital Road.

25. Where a proposed draft Masterplan is submitted with the planning application which addresses the six matters set out in OBJ. MAY 1, (even if it not subject to the written agreement of the planning authority), this may serve to assist in demonstrating that the proposed development does not undermine the objectives to be achieved by the Masterplan. Moreover if the proposed development, the subject matter of the application, entails or does not undermine that:

“an integrated approach is taken to the phasing, management, and development of lands within the Master Plan Area”

and also does not undermine:

“...range of employment, residential and community support opportunities”

this will align the description of the development in Masterplan area as described in Section 11.0. It is noted that the 6 applications includes residential development for 360 residential homes (Site C), Site A (employment zone), Site B (Healthcare facilities) therefore aligns with Section 11.0 where it refer to lands incorporating a “... *range of employment, residential and community support opportunities*”.

26. It follows that where it is demonstrated that the application will not undermine the objectives of the Master Plan being achieved as described above, then the proposed development will not be in material contravention of OBJ MAY 1, when read in the light of Section 11.0. In order for the Board to grant permission for such development it will not require to invoke its material contravention jurisdiction under section 9(6)(b) of the 2016 Act by justifying the same by reference to reasons set out in section 37(2)(b) of the 2000 Act.

Material Contravention

27. In the alternative to the above, insofar it has not been demonstrated that the proposed development will not undermine the Masterplan objectives and where there is a potential material contravention of OBJ MAY 1, it is clear that the Board can justify the same by reference to the criteria set out in section 37(2)(b). The criteria to be applied by the Board are:

“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 matter for the planning application to address the same however, some brief observations may be made in respect of the above. As regards section 37(2)(b)(i), as the site, is the subject matter of specific objectives in the development plan, this would indicate that the development of the same is of strategic importance. In addition, the fact it is a large development site in Maynooth which is identified as a Key Town in the RSES would also support a claim that it is of strategic importance.

28. As noted above insofar as Section 11.0 of the Maynooth Environs of the development plan cannot be read in harmony with OBJ MAY 1 then this would constitute conflicting objectives within the meaning of section 37(2)(b)(ii). Also in terms of section 37(2)(b)(iii) Maynooth is identified as a key town and as such an economic driver for North Kildare under RPO. 4.34 of the RSES for the Eastern and Midlands Region.

Strategic Environmental Assessment

29. For the sake of completeness I might briefly address any issues relating to Strategic Environmental Assessment and the Masterplan. It is to be noted that the issue of whether an SEA screening may be required in respect of Masterplan is the subject of a preliminary reference for the European Court in *Kerins v An Bord Pleanála* [2021] IEHC 369. However, this simply does not arise in the present instances for the following reasons. Firstly, if the qualification to the Masterplan requirement is demonstrated, then no Masterplan is required. Secondly, the issue of an SEA could only potentially arise in the context of an agreement to the Masterplan by the Council. However, the Masterplan has not been agreed by the Council and there is no attempt to rely on an agreed Masterplan in the context of the planning application. An SEA has therefore no relevance to the consideration of the present planning application.

CONCLUSION

30. It is clearly within the jurisdiction of the Board to grant planning permission for the proposed strategic housing development at Moygaddy, Maynooth, County Meath, in circumstances notwithstanding that:

- (i) A Joint Local Area Plan between Meath County Council and Kildare County Council has not been prepared
- (ii) A Masterplan for the lands has not been agreed and adopted by the Council

STEPHEN DODD SC

4th September 2022