



Handmaids of the Sacred Heart of Jesus
Ireland – RCN 20011925

Planning Department

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Development Plan Team
Planning and Property Development
Department
Dublin City Council
Wood Quay
Dublin 8

10 February 2022

**RE: DRAFT DUBLIN CITY DEVELOPMENT PLAN 2022-2028
SUBMISSION BY: HANDMAIDS OF THE SACRED HEART OF JESUS**

Dear Sir or Madam

We, the Handmaids of the Sacred Heart of Jesus, write to provide our comments on the Stage 2 draft Dublin City Development Plan (2022-2028).

We are part of a Roman Catholic Religious Congregation, with houses in four continents - we have communities in 26 countries - founded with the aim of providing education at all levels. At the present time we have one community in Ireland with both Primary and Secondary schools, and our presence in Stillorgan dates back to 1971. Previously, we had a residence for students in Blackrock and a Retreat House in Finglas. We closed the residence in Blackrock when we moved to Stillorgan and re-opened it on the present campus.

This correspondence outlines our strong concerns with the changes in approach to Z15 lands in the draft Development Plan. These concerns are shared by many school directors, patrons, and trustees that we have engaged with. We request that Dublin City Council engages directly with representative bodies for trustees and patrons to discuss these concerns prior to publication of the Stage 3 draft Development Plan.

Obligations on Patrons and Trustees

Prior to outlining our specific concerns with the new Z15 policy objectives, it is important to understand the obligations placed on patrons and trustees of charitable bodies. The operation and activities of trustees is governed by many acts, regulations, and guidelines. Of particular relevance to this submission are the Charities Act 2009 (as amended) and the Companies Act 2014 (as amended). These acts place significant obligations on us to efficiently utilise our properties.

Most trusts operate as registered charities. Section 2 of the Charities Act states that to qualify as a 'charitable trust', it must be:

- *established for a charitable purpose only*
- *established under a deed of trust that **requires the trustees of the trust to apply all of the property (both real and personal) of the trust in furtherance of that purpose** except for moneys expended in the management of the trust*



A charitable trust is obliged to ensure its property portfolio advances its charitable purpose. Any donations or income from its properties, except for costs for maintaining the trust, must be used for the betterment of the trust and its charitable endeavours. Accordingly, income derived from land sales or leasing of properties cannot be directed to non-charitable purposes.

Furthermore, one of the functions of the Charities Regulatory Authority itself, as set out in the Charities Act, is to **'promote the effective use of the property of charitable trusts or charitable organisations'**. This demonstrates the importance of prudent property management.

Many charitable organisations are established as companies. Charities are, therefore, also subject to company law and the obligations within. Under the Companies Act, directors have many fiduciary responsibilities. This includes a requirement to act in accordance with the company / charity's best interests. As charities rely on donations and property income for their ongoing viability, ensuring that its property assets achieve full market value is clearly one of the key fiduciary responsibilities of directors.

Falling School Enrolments

In November 2021, the Department of Education published the *'Projections of Full-Time Enrolment – Primary and Second Level 2021-2040'* and accompany regional projections. These confirm that there will be a significant fall in primary level enrolments nationally over the next two decades. The peak of primary school enrolments nationally was in 2018 at 567,772. This will fall by 120,000 over the next decade and not recover to 2018 levels until post 2051. Secondary enrolments will also experience large reduction nationally, although not as large a drop as primary enrolments.

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The Department of Education's projections see a continuing pattern of young families moving out of Dublin to more affordable housing in other regions. This will result in primary school enrolments falling in Dublin from 144,936 in 2022 to 109,180 in 2037. This represents a fall of 25%. Secondary school enrolments in Dublin will fall from 100,924 in 2022 to 89,998 in 2037. This represents a fall of 11%.

While these falls present an opportunity for lower class sizes, it is inevitable that they will result in the rationalisation of schools in Dublin. This rationalisation is likely to be more pronounced in older established residential areas that typically experience less new residential construction. It is therefore important that the new City Development Plan supports schools that require alternative viable uses in the coming years.

Social and Community Infrastructure Policies

We agree with the City Council's view that local areas require a range of services and facilities to contribute to a good quality of life. The draft Development Plan policies provide helpful support for existing schools and seek to ensure that new schools are delivered in areas within growing populations.

We are concerned however, that there are no policies addressing the likelihood of school rationalisation during the plan period (2022-2028). As stated in the draft Development Plan, *'national policy highlights the importance of aligning demographics with educational provision'*. In areas within significant projected enrolment declines, the



Development Plan should provide clear policy direction on the support that will be provided by the City Council.

Accordingly, we request that Policy QHSN51 is amended to include the additional text highlighted in red:

QHSN51 - Education Provision

(i) To support the provision of new schools and the expansion of existing school facilities having regard to the requirements of the DES.

(ii) To support the ongoing development and provision of third level education, further education and lifelong learning in the city.

(iii) To work with schools in areas of projected significant enrolment declines to agree alternative community, commercial, or residential uses for the lands.

In addition to this amended policy, we believe that the draft Development Plan would benefit from explanatory text addressing the likelihood of school rationalisation in some locations.

Community and Social Infrastructure – Zone Z15

The draft Development Plan outlines a new approach to Z15 lands that is a significant departure from previous City Development Plans. We are highly concerned that the new zoning objectives, and changes to uses that are ‘permissible’ and ‘open for consideration’, will make the work of school patrons and trusts more challenging. This is a concern shared by many school directors, patrons, and trustees that we have engaged with.

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Schools operated by charitable trusts rely on donations or income from our property assets to generate the funds to make major improvements. The disposal of surplus lands and buildings in one location is often used fund investment in another school within the trust. While funding is provided by the Department of Education to assist with some day-to-day running costs, this financial support would decrease in line with any reduced enrolments.

In the absence of increased state or local government financial support, the projected decline in enrolment at some schools will make their ongoing viability highly challenging. In those circumstances, directors and patrons are obliged to act under the Charities and Companies Acts. To ensure the health of the charity, directors are obliged to seek full market value for any surplus lands or buildings. In most cases, this would be for residential or commercial uses. The draft Development Plan currently states that it must be demonstrated that an alternative social or community use is not viable before any rezoning can occur. Alternative social and community uses would generate significantly less value and therefore, constrain investment that can be made in other locations. The draft Development Plan states:

‘In instances where all or part of a Z15 landholding is sold or otherwise disposed of for development The cessation of an existing social/community use on a site or change in land ownership does not extinguish / negate the function of such lands for community and social infrastructure use. In these circumstances, (i.e. cessation of use on a Z15 site or disposal of all or part of a Z15 site), a variation



to the Development Plan will be required to develop such lands for other uses including residential / office purposes. Any such variation would need to be supported by a detailed masterplan which should clearly demonstrate why the land is not viable / suitable for social and community use'

This change will place the onus on the trustees to prepare a masterplan and seek the rezoning of lands prior to their disposal. This is a process that we do not have the resources or expertise to undertake. A private sector purchaser is unlikely to accept the risk of seeking the rezoning of land. It will result in a significant reduction in the value of our lands and the funds we can generate to invest in schools.

We also are concerned that disposal of surplus lands and buildings by school trustees is presented in highly critical terms by the Development Plan. As stated previously, any funds derived from asset sales must be reinvested in the charitable trust. These disposals have funded significant enhancements to sporting and educational facilities that would otherwise not have occurred. While the City Council must protect against the loss of necessary school facilities, it must also acknowledge the benefits that are gained by the sale of surplus facilities. These benefits can include the creation of new homes and enhanced school facilities that did not benefit from state support.

We note that the draft Development Plan does permit limited development on a school to fund the operation of the institution on the lands. The draft Development Plan states that:

*'Limited residential/office development on Z15 lands will only be allowed in highly exceptional circumstances where it can be demonstrated by the institutional landowner that the proposed development is required in order to maintain or enhance the function / operational viability of the primary institution **on the lands**' (Our emphasis)*

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This proposed text does not cater for the needs of multi-school trustees. For example, a school in significant need of investment may not benefit from surplus land or buildings. Another school in the trust may have excess land but is not in need of major investment. The draft Development Plan text would prejudice a trust's ability to manage our portfolio adequately and direct funds to where they are needed most.

We respectfully submit that school operators are best placed to decide whether school lands and building are surplus to requirements. We request therefore, that the Z15 zoning objectives revert to those contained in the current Development Plan (2016-2022). We believe the current Development Plan (2016-2022) achieves a suitable balance between the need to protect Z15 lands and allowing patrons / trustees to manage the needs of their schools. Critically, we request that:

- Residential and student accommodation are reinstated as 'open for consideration' uses on Z15 lands; and
- The Development Plan acknowledges that the disposal of land by a school body is clear evidence that it is surplus to local educational needs.

We also note that the courts have previously quashed Z15 zonings as they are highly restrictive on the operation of privately held lands. The courts required clear reasoning



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for such restrictions, and this is clearly also relevant to the draft Development Plan. Accordingly, we recommend that the major proposed changes to the Z15 land use zoning objective should not be brought forward until a full review of existing Z15 zoned lands has been undertaken as part of the Planning Authority's active land management functions, in consultation with the institutional landowners. As it is respectfully submitted, that there are surplus and underutilised Z15 lands which provide an opportunity to deliver high quality infill residential developments in the city, helping to address housing need without compromising the institutional and community uses on such lands.

We hope this correspondence provides the City Council with a clear understanding of our concerns.

Should you require any additional information or clarification, please do not hesitate to contact us.

Yours faithfully

Irene Guia, aci
Trustee
Handmaids of the Sacred Heart of Jesus