



To the Chairperson and Members of  
The South East Committee

Meeting: July 2023

Item No:

**With reference to the proposed development of a Primary Care Centre at  
Gulistan Terrace, Rathmines, Dublin 6 by the Health Service Executive (HSE)  
and the proposed acquisition of the HSE Health Centre, Emmet Road, St Michael's  
Estate, Inchicore, Dublin 8 by Dublin City Council (DCC)**

In May 2021, the City Council approved the proposal as outlined above, Report 155/21 refers.

During the intervening period, in advance of the legal formalities completing, issues arose for the HSE around Public Spending Code procedures. It has therefore been necessary to renegotiate aspects which have resulted in a limited number of amendments to the previously agreed terms for the exchange. Agreement has now been reached for the disposal of the fee simple interest in part of the former DCC depot site at Gulistan Terrace, Rathmines, Dublin 6 to the HSE for the development of a Primary Care Centre Facility and in return the transfer of a property at Emmet Road, St. Michael's Estate, Inchicore, Dublin 8 to Dublin City Council.

The agreed purchase price is the sum of €5.5m. The purchase will be funded by the HSE by way of a land exchange and financial payment. The HSE will transfer the fee simple interest in the Health Centre site at Emmet Road, purchase price agreed at €3.5m, to DCC for the planned St. Michael's Estate regeneration project and make a balancing financial payment of €2m. In advance of the transfer of title to the Emmet Road site, the HSE will hand over possession of same to DCC by 1<sup>st</sup> July 2023 at the latest, as DCC urgently require possession to advance the St. Michael's regeneration project (for which a design team has been appointed).

The agreement now allows for:

1. The early transfer of title to DCC of the Health Centre at St. Michael's Estate, which is required for the disposal of the proposed commercial element of the development
2. The earlier delivery of a social housing scheme at Gulistan Terrace.

In the event that the HSE do not complete the acquisition of the Gulistan Terrace site, fail to apply for or receive planning permission or proceed with construction of the development, DCC will acquire the Emmet Road site in fee simple, at the agreed purchase price of €3.5m, on an unrestricted basis i.e. with no uplift clauses or conditionality around building, etc.

The HSE will be granted a temporary licence over the retained Public Realm/Open Space/Access areas to the extent required to develop the necessary access and public realm to service their development.

The revised agreement is outlined in the following terms and conditions which the City Valuer considers to be fair and reasonable:

1. That Dublin City Council shall, subject to conditions 8 and 9 below, dispose of the freehold interest with vacant possession in the property at Gulistan Terrace, Rathmines, Dublin 6 having a gross area of 0.6620 acres/ 2,679sq.m or thereabouts, as shown with the boundary hatched in red on map index no. SM-2020-0383, to the HSE. Dublin City Council shall take-in-charge upon completion the main access road at the approved development, as shown marked E and coloured yellow and hatched in orange on map index no. SM-2020-0383- see condition No. 12 below. A formal map shall be prepared for disposal purposes arising from the planning permission.

2. That the HSE shall, subject to conditions 8 and 9 below, transfer to Dublin City Council the freehold interest with vacant possession in the property at the HSE Health Centre, Emmet Road, St. Michael's Estate, Inchicore, Dublin 8 having an area of 1,785sq.m or thereabouts, as shown outlined in red on map index no. SM-2021-0132, for no monetary consideration.
3. That the balancing consideration payable for the Council site at No. 1 above in full and final settlement shall be in the sum of €2,000,000 (two million euro) which shall be payable as follows:
  - a. €1,000,000 per annum with the first payment being made no later than a date two months after the date of final grant of planning permission for a Primary Care Centre on the site at No. 1 above and the final payment of €1,000,000 on or before the next anniversary of that date, or the date of entry on the site for the purposes of commencing construction of the Primary Care Centre, whichever is the earlier.
  - b. Interest at the rate of 5% per annum may apply to outstanding amounts which have not been paid as they have fallen due.
4. That the Law Agent shall prepare the necessary contract documents, to be ready for execution by the parties within twelve weeks of the date of issue of the formal approval of the transaction by the Council. The Applicant must execute and return such documentation within twelve weeks of receipt of same. The Applicant shall transfer title to No. 2 not later than four weeks after the signing of contracts.
5. That the Applicant must lodge a planning application for the development of a Primary Care Centre and access road at the lands outlined at No. 1 above within eighteen months of receipt of the requisite approvals of the City Council to this proposed disposal. If this does not occur the City Council, at its absolute discretion, may decide to rescind this agreement. The HSE will issue a report to Dublin City Council at a date 9 months after City Council approval on the progress made by the design team appointed in preparing the design of the building and outlining any pre-planning consultations with the planning Authority, in anticipation of submitting the planning application.
6. That the Applicant shall submit a valid planning application to Dublin City Council and, if required, an appeal to An Bord Pleanála. If necessary, a second application may be submitted within three months of the Council or An Bord Pleanála refusal.
7. That if planning permission for a Primary Care Centre development, in accordance with provisions of condition No. 6 above, is either refused (by Dublin City Council or n Bord Pleanála), or granted subject to onerous conditions, then either party may rescind the agreement within eight weeks of the refusal or final grant of planning permission, without penalty or compensation due to the other party. All related costs to be borne by the Applicant. In the case of a grant of permission the Applicant must indicate in writing that it is an acceptable grant of planning permission and will use reasonable endeavours to do so within four weeks of the decision but in any event not more than ten weeks, or in the case of a decision by Dublin City Council that the applicant intends to appeal to An Bord Pleanála.
8. That Dublin City Council shall use its best endeavours to ensure that the transfer of title to the lands at No.1 above shall be completed no later than a date two months after the date of final grant of planning permission for a Primary Care Centre at No.1 above. The HSE shall use its best endeavours to vacate the site at No. 2 above and handover clear possession to Dublin City Council, on or before 1<sup>st</sup> July 2023. DCC shall have the right to call for a full works licence (to include for demolition and construction works) from the Applicant in relation to the site at No. 2 above, at any time after 1<sup>st</sup> July 2023. The transfer of title to No. 2 shall occur in the timeline as outlined at No. 4 above.
9. That in the event that Dublin City Council receive title to site No. 2 for no consideration and if the agreement is ultimately rescinded under No. 5 or 7 above, the Council shall become liable to transfer a total sum of €3.5million, inclusive of VAT, to the HSE, payable in three equal yearly instalments. Interest at the rate of 5% per annum may apply to outstanding amounts which have not been paid as they have fallen due.

10. That the Applicant shall use its best endeavours to commence work on the proposed Primary Care Centre on site No. 1 above within thirteen months of the date of final grant of planning permission and to complete the entire development within twenty months from that date.
11. That Dublin City Council reserves the right to re-purchase the site at No.1 for €3.5 million plus any payments made by the HSE under No. 3a above and resume possession thereof, should the Applicant fail to substantially commence the development of the Primary Care Centre within three years of the date of final grant of planning permission for same.
12. That Dublin City Council shall provide a letter of consent to the applicant to make a planning application for the lands outlined at No.1 above. In addition, the following shall occur:
  - (a) Dublin City Council shall grant a short term temporary licence and ROW to the Applicant, who must construct an enhanced vehicular and pedestrian access road marked E (East), within the lands outlined at No.1 above and as hatched in orange on map index. No. SM-2020-0383. Dublin City Council shall take the area in-charge on completion and also retain title to the area outside of the site No.1 above.
  - (b) The balance of the HSE development area shall be subject to the freehold disposal to the Applicant, subject to the Council retaining wayleaves to any services as agreed with the HSE. Dublin City Council or an Approved Housing body shall construct the pedestrian access routes and wider public realm areas marked W (West) and coloured yellow on the attached map index. No. SM-2020-0383.
13. That Dublin City Council shall provide the site at No1 cleared of any buildings only, to the applicant and shall be prepared to grant a short term temporary occupational licence to the Applicant of plot W (West) outlined at No. 12 (b) above, if required, in the event the Applicant's development precedes the Council works at plot W (West).
14. That if necessary, either party shall be entitled to construct the entire of the works at 12 (a), 12(b) and 13 above to facilitate project scheduling and, in those circumstances, to recover the vouched expenses due from the other party in accordance with their respective responsibilities, subject to an open book approach on costs.

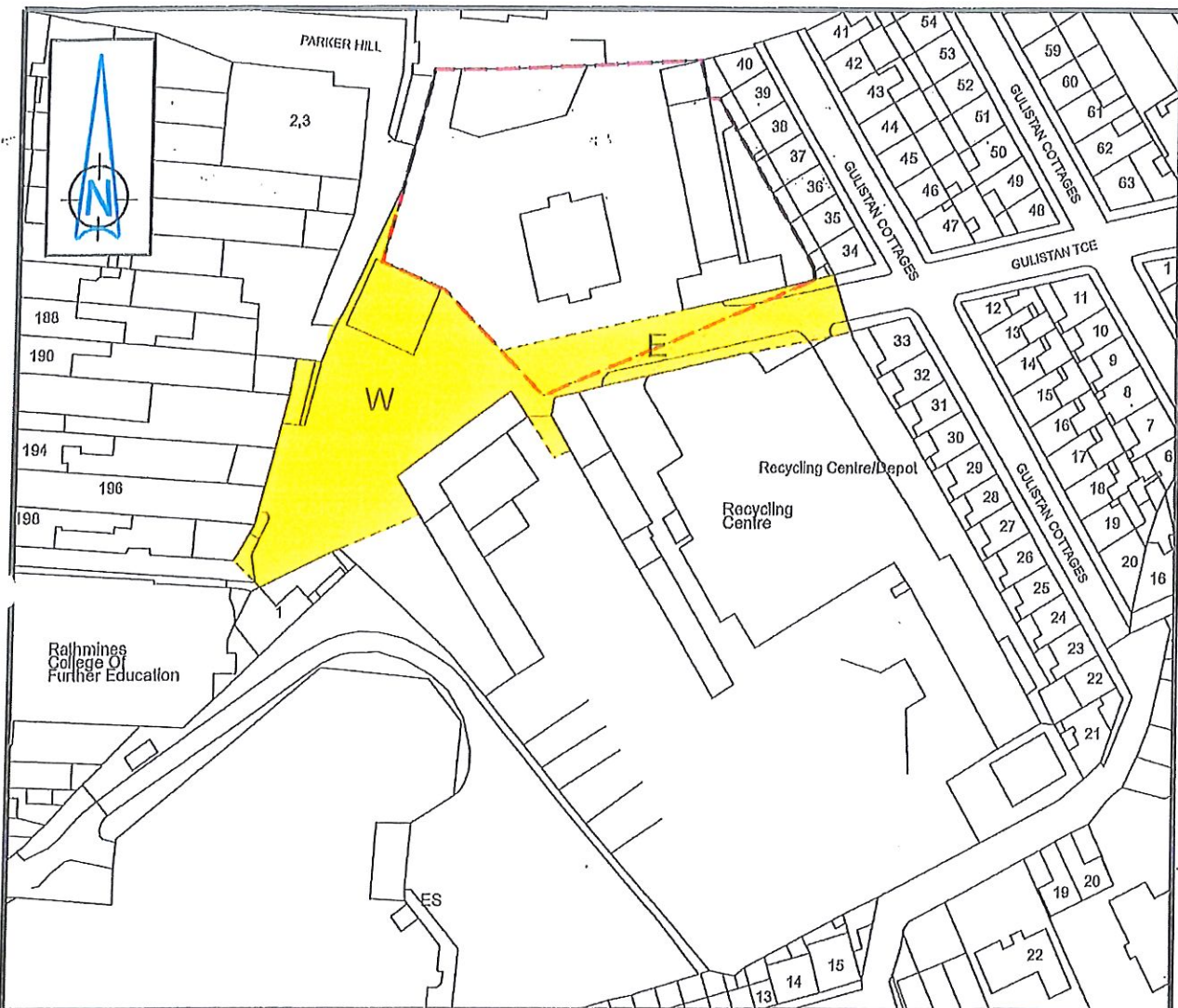
If the Council is to carry out the works, it shall receive an appropriate Works Licence from the HSE (if title in site No 1 has already transferred to the HSE).
15. That all site investigations (including archaeological investigations), ground works, services connections or reasonable diversions, planning fees, development and associated professional costs incurred in the delivery of the completed development on the property at No.1 above, shall be borne by the Applicant. If, in the event, major infrastructure diversions works are required to accommodate the works, then the costs will be borne by both parties equally.
16. That the Applicant shall ensure that all necessary safety precautions are taken in accordance with Health & Safety Regulations and all other statutory requirements.
17. That the Applicant shall undertake not to use the said site at No. 1 for, or build on the site, anything other than the buildings shown on the approved drawings and for which planning permission is obtained.
18. That during the building period, the Applicant will insure the buildings at No.1 above against fire and all other insurable risks with an appropriate insurance policy and pay all necessary premiums.
19. That the Applicant agrees to commission and fund a new piece of public art in accordance with the Per Cent for Arts Scheme as part of the development in line with the revised funding limits and bands as announced by the Department of Culture, Heritage and the Gaeltacht in July 2019.
20. That the provision for HSE older persons services will be catered for within the Schedule of Accommodation (along with other PCC services) in the Primary Care Centre. Local day care community group requests to use potential/ available PCC space/s in the evenings shall be applied for through HSE older persons services and will be subject to HSE property protocol oversight.

21. That the Applicant and its design team shall indemnify the City Council against any claim for compensation which may be made by any party arising out of building works being carried out on the property at No.1 above, or any working areas or on any access points thereto.
22. That all VAT payable and any Stamp Duty liabilities, on this transaction and any proposed development, shall be the responsibility of the Applicant.
23. That as a condition of this disposal the Applicant shall provide evidence that it holds the unencumbered freehold title with full vacant possession in the former Health Centre site shown outlined in red on drawing index no. SM-2021-0132, for identification purposes only.
24. That each party shall be responsible for their own professional costs arising in this transaction.
25. That any of the dates/time frames outlined above may be extended by the Executive Manager at their absolute discretion and all notices must be given in writing.
26. That the above proposal is subject to the necessary approvals and consents being obtained.

No agreement enforceable at law is created or intended to be created until an exchange of contracts has taken place.

  
Acting Executive Manager

04/07/2023  
Date



## GULISTAN TERRACE, RATHMINES

DCC to HSE for Primary Care Centre - Shown thus        Area: 2,679m<sup>2</sup>

Public Realm/Open Space - Identified as **W** and **E**

Temporary Licence to HSE shown thus  Area: 278m<sup>2</sup>



Comhairle Cathrach  
Bhaile Átha Cliath  
Dublin City Council

An Roinn Comhshaoil agus Iompair  
Rannán Suirbhéireachta agus Léarscáilithe  
Environment and Transportation Department  
Survey and Mapping Division

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DWG No

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DATE

29-03-2021

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T. Curran

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SURVEY, MAPPING AND RELATED RESEARCH APPROVED

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SM-2020-0383

**Dr JOHN W. FLANAGAN**  
CEng FIEI FICE  
CITY ENGINEER

APPROVED

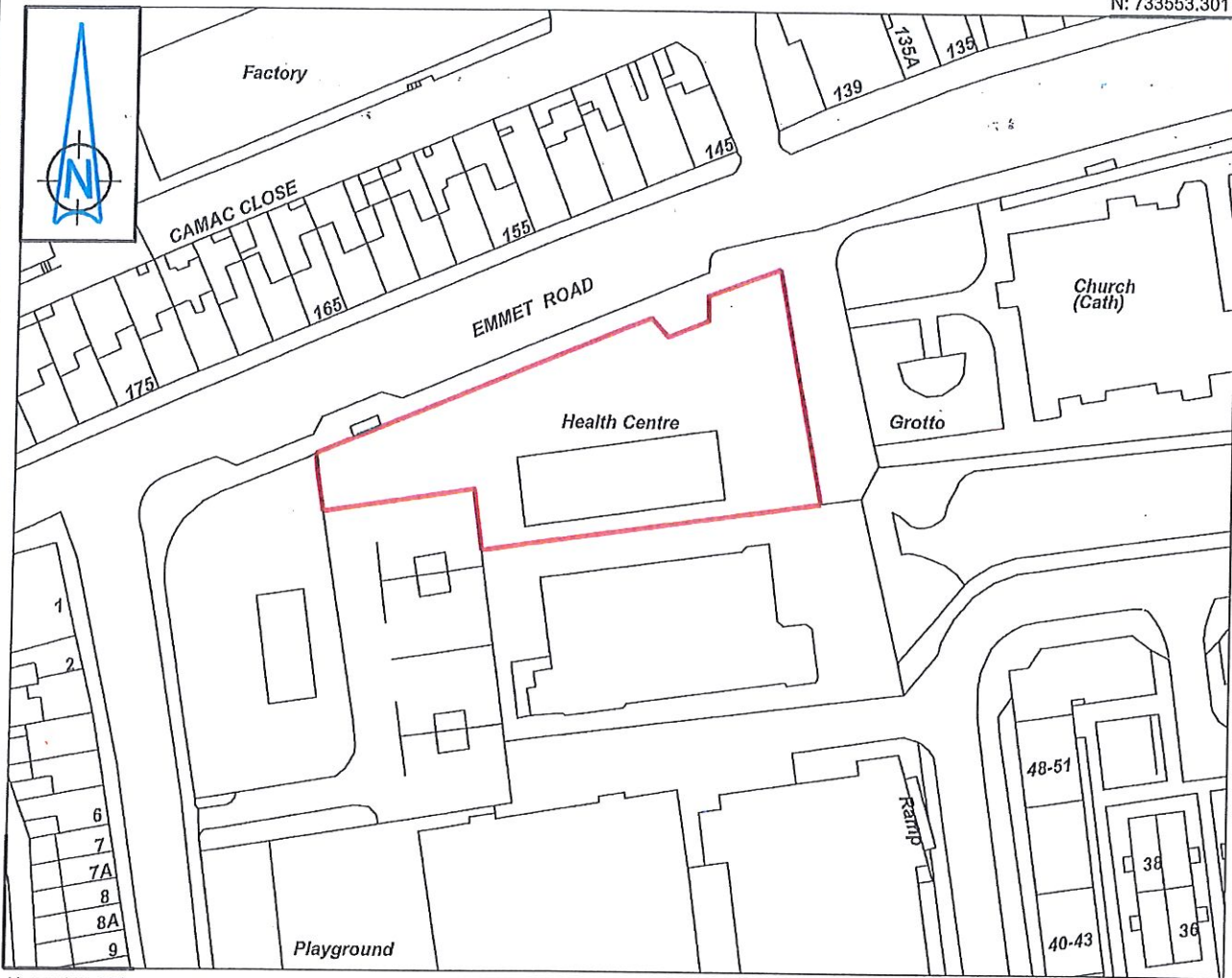
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ACTING MANAGER LAND SURVEYING & MAPPING  
DUBLIN CITY COUNCIL



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Emmet Road Health Centre - Site at  
 HSE to Dublin City Council  
 Acquisition of Fee Simple



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**DATE**  
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