



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 (plus VAT @ 13.5%). 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 (plus VAT @ 13.5%), to DCC for the planned St. Michael's Estate regeneration project and make a balancing financial payment of €2m (plus VAT @ 13.5%). In advance of the transfer of title to the Emmet Road site, the HSE will hand over possession of same to DCC under licence, 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 does 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 (plus VAT @ 13.5%), 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) plus VAT @ 13.5% (+ €270,000 = €2,270,000) which shall be payable as follows:
 - a. €1,000,000 plus VAT @ 13.5% 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 plus VAT @ 13.5% 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. Where there is an extraordinary event causing a delay in the HSE making a planning application, the deadline of eighteen (18) months aforesaid shall be extended by a reasonable period of time equivalent to that during which HSE is so prevented or delayed. If the parties fail to agree such reasonable extension, the matter will be referred to the Independent Architect for determination as an "Expert". 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. 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 1st 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, plus VAT @13.5% (+ €472,500 = €3,972,500), 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 No.1 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 it's 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 an Independent Surveyor or Independent Architect (acting as "Expert") shall be such person as agreed between the parties or in default of agreement, shall be appointed by the President for the time being of the Society of Chartered Surveyors Ireland or in the case of the Independent Architect by the President for the time being of the Royal Institute of Architects of Ireland on the application of either party. Where a matter is referred to an Expert for determination, the decision of the Expert shall be final and binding on the parties.
25. That each party shall be responsible for their own professional costs arising in this transaction.
26. 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.
27. That the above proposal is subject to the necessary approvals and consents being obtained.

The site to be disposed of was acquired from the Earl of Meath and the ESB.

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

This proposal was presented to the South East Area Committee at its meeting on the 17th of July 2023 and was agreed to proceed to September City Council without recommendation.

This report is submitted in accordance with the requirements of Section 183 of the Local Government Act, 2001.

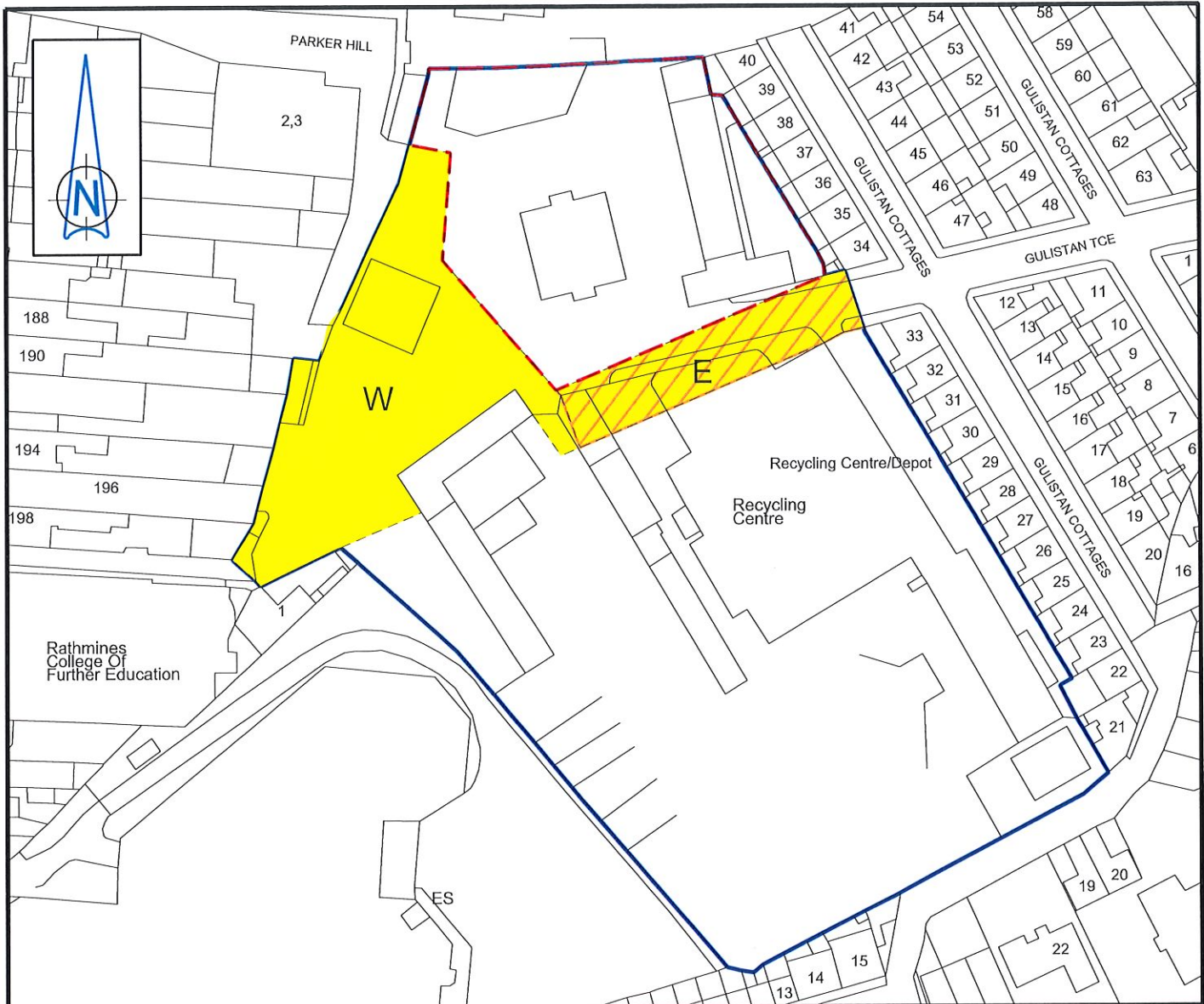
Resolution:

“That Dublin City Council notes the contents of this report and assents to the proposal outlined therein.”

Máire Igoe

A/Executive Manager

22nd August 2023



GULISTAN TERRACE, RATHMINES

DEPOT/FORMER ESB - Shown thus

Area to be retained as Public Realm/Open Space Access - Identified as **W** and **E**

Proposed Primary Care Centre - Shown thus Area: 2,441m²

Temporary Licence shown thus



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

O.S REF

3328-05

SCALE

1:1000

INDEX No

DWG No

REV

FILE NO

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DATE

11-08-2020

SURVEYED /
PRODUCED BY

T. Curran

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SURVEY, MAPPING AND RELATED RESEARCH APPROVED

INDEX No.

SM-2020-0383

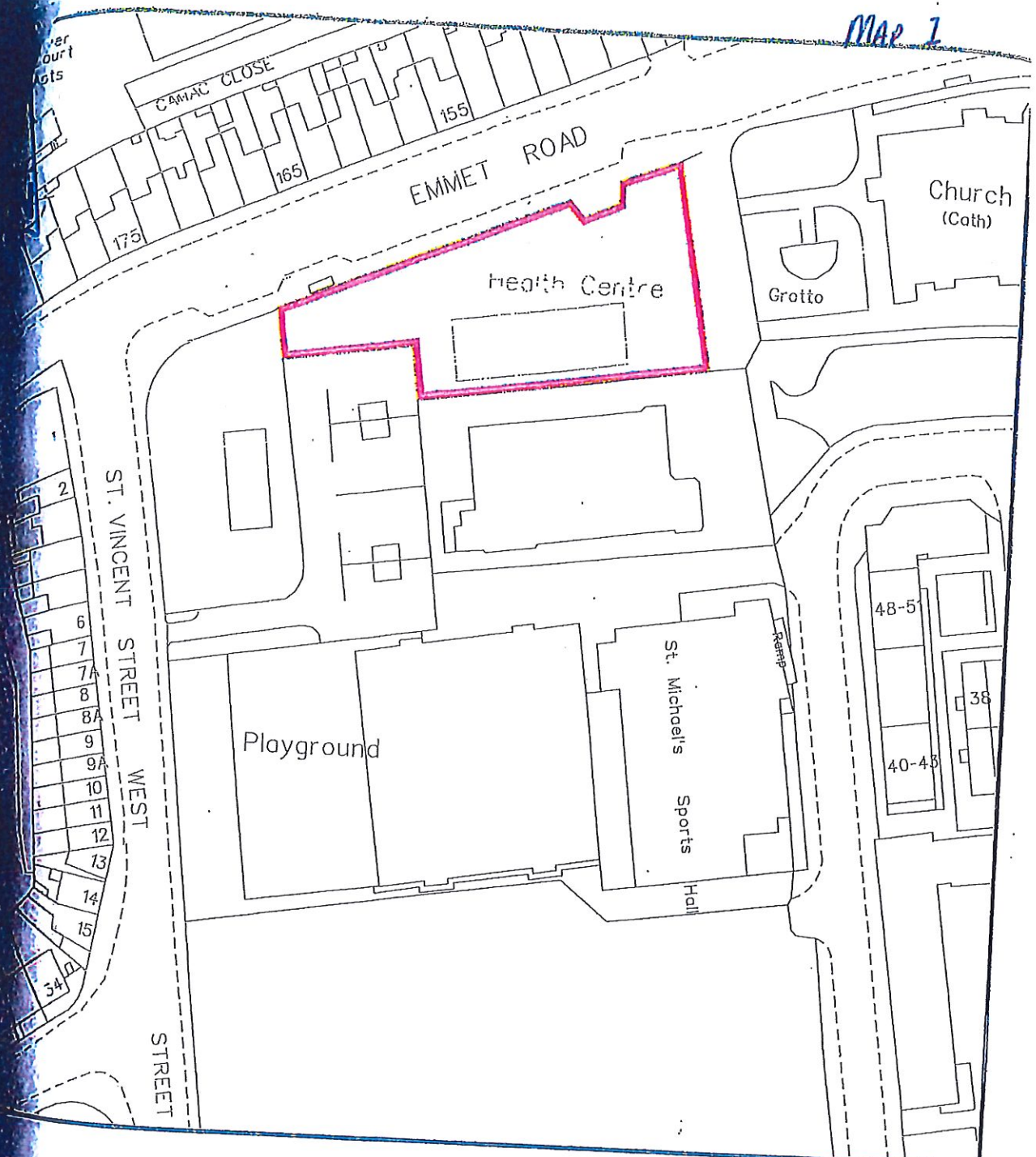
Dr JOHN W. FLANAGAN

CEng FIEI FICE
CITY ENGINEER

APPROVED

THOMAS CURRAN
ACTING MANAGER LAND SURVEYING & MAPPING
DUBLIN CITY COUNCIL

Map 1



EMMET ROAD - SITE AT
 LOCATION MAP

Area: 1785 sq m

DUBLIN CITY COUNCIL
 Comhairle Cathrach Bhaile Átha Cliath

DEVELOPMENT DEPARTMENT

An Roinn Forbartha

PHILLIPS
 ENGINEER

Date	By	Revisions :

SCALE	INDEX No.
1:1000	PD2008-083

DATE

01/11/2016

O.S. REF.

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