

CUNNANE STRATTON REYNOLDS

CSR Ref: 22193/EMP/04052022

Senior Executive Officer
Planning and Strategic Infrastructure Department
Fingal County Council
County Hall,
Main Street,
Swords, Co. Dublin,
K67 X8Y2

20th December 2022

By Consultation Portal

Dear Sir/Madam,

RE: Submission on the Proposed Alterations on the Draft Fingal County Development Plan 2023-2029 Submission by Santiago Capital DAC on Proposed Alteration PA CH 9.8 Ecological Corridors and Stepping Stones including Trees and Hedgerows, Page 334

We, Cunnane Stratton Reynolds Ltd, make this submission on behalf of Santiago Capital DAC of 19 Grattan Street, Dublin2 in respect of the above.

Our client owns land at Clonsilla, shown in Figure 1 below. The site consists of an elongated piece of land along the Royal Canal which has been zoned for residential development in the emerging Draft Fingal County Development Plan 2023-2029. The Proposed Alteration seeks to effectively take this zoning away through the imposition of a 30m buffer which is to be kept free from residential development only on both sides of the canal but which affects our clients lands disproportionately from other similarly zoned sites.

Figure 1: Site Location



DUBLIN OFFICE
3 MOLESWORTH PLACE, DUBLIN 2
TEL: 01 661 0419 FAX: 01 661 0431
EMAIL: info@csrlandplan.ie

OFFICES ALSO AT:
COPLEY HALL, COTTERS STREET, CORK
TEL: 021 496 9224 FAX: 021 496 9012
EMAIL: corkinfo@csrlandplan.ie

DIRECTORS

Joe Cunnane BA (Hons) Dip TP MRTPI MIPI: Eamonn Prenter BA (Hons) Dip TP MSc MRTPI MIPI:
Declan O'Leary BAg Sc (Land-Hort) Dip LA MILI MLI: Jim Kelly BAg Sc (Landscape-Hort) Dip LA MILI CMLI:
Keith Mitchell MA (Hons) LA Dip EIA Dip Arb MILI CMLI:

ARDACONG, BALLYTRASNA, TUAM
CO GALWAY
TEL / FAX: 093 60854
EMAIL: galwayinfo@csrlandplan.ie
WWW.CSRLANDPLAN.IE

The Relevant Proposed Alteration

Fingal County Council issued a Proposed Alterations document on 11th November 2022 and have invited submissions on those Proposed Alterations by noon on Thursday 22nd December 2022.

Our client is most directly affected by Proposed Alteration PA CH 9.8 Section 9.6.8 'Ecological Corridors and Stepping Stones including Trees and Hedgerows' to be inserted into Page 334 of the Draft County Development Plan placed on public display until May earlier this year.

Proposed Alteration CH 9.8 proposes to include a new Objective after Objective GINHO41. This Proposed Alteration states the following:

'Objective GINHOXX Protection of Royal Canal

Protect the Royal Canal and associated habitats along its banks as a proposed Natural Heritage Area by establishing an ecological corridor free of new housing development with a buffer consisting of a minimum width of 30 metres from the top of each bank of the Canal.'

The above Proposed Alteration effectively seeks to prevent residential development only from encroaching within 30m of the top of the bank of the canal. The alteration, as currently worded, is focused exclusively on preventing residential within 30m of the canal. There is no prohibition on any other land use – not industry that might pollute the canal and its environment, not infrastructure and utilities that might restrict access to the same canal, nor employment uses and activities in its many guises.

The Effect of the Proposed Alteration

The effect of the proposed alteration in the context of our client's site is that although zoned for residential it will be effectively sterilised for future development. For the rest of the County it will prevent residential from availing of proximity to the canal as an amenity to be enjoyed by all and will also more generally restrict access to that canal by preventing residential access.

We would consider the Proposed Alteration to be discriminatory against residential in a grossly unfair manner.

Our Case for Rejecting the Proposed Alteration

We believe that the proposed alteration should be rejected for the following reasons.

1. The prohibition on only residential is completely unjustified. If the protection of the canal is paramount then there should be other uses that should be banned and the prohibition should not just be limited to residential. There are surely more impactful uses than residential. Residential development is one of the more benign land uses that one could have in very close proximity to a canal.
2. The prohibition on residential only is completely unjustified within a time of worsening housing crisis. It is more homes that need to be provided and not less.
3. The preliminary 2022 national census results released relatively recently, and post publication of the Draft Fingal County Development Plan, indicate a population growth within the State of 361,671 persons since the last sentence. Recent newspaper headlines in the Irish Independent identified that population growth over the period from 2016 to 2022 was twice the rate of house completions over the same period. In other words, housing *demand* is increasing at twice the

rate of housing supply over the same period. Housing delivery is half what growth is on its own. In other words, the housing crisis is getting worse and there are more people looking for homes than what developers and the various agencies of the State can provide.

4. This *actual* population growth considerably exceeds the population *projected* over the same period presented by the ESRI and which is the basis for population targets in each of the local planning authorities within the State. These reduced, and now proven incorrect projections by the ESRI, are the basis on which the zoning land was greatly reduced to what was previously estimated and which culminated in the conservative zoning of residential lands across the State including within Fingal County.
5. Fingal County experienced the third highest rate of population growth in the State at an increase of 11% in the county's population over this 6 year period and third only to Meath (14% increase) and Longford (12.9%).
6. In a time of housing need the County Council should not be reducing the amount of zoned land within the county as it would be doing by imposing this Proposed Alteration. The County Council should be promoting the zoning of residential land in these circumstances not reducing it. This is the dezoning of residential land by stealth.
7. Train stations in the following locations are within 30m of the canal and are typically suitable locations for residential development and in particular higher density development as advocated in national planning guidance - Ashtown, Navan Road Parkway, Castleknock, Coolmine and Clonsilla Rail Station itself.
8. Water features of all types including the canal are highly attractive places to live and the enjoyment of such locations should not be denied where impact is not significant. Ashtown within the County is an example of where the presence of the canal is a major attraction for development of varying uses and activities including residential.
9. The provision of residential in relative proximity to canals without being obtrusive in amenity and visual terms, provides passive surveillance ensuring their safe enjoyment. The provision of residential along canals and use of greenways associated with these encourages healthy living and use of slow and healthy modes of transport which is now a fundamental tenet of planning and the facilitation of the proper planning and sustainable development of an area.
10. We would point out that Inland Fisheries Ireland in their published guidance advocate a development free buffer of 10m from all the State's inland waterways comprising streams and rivers.
11. This firm has undertaken research of Council policy on development in close proximity of canals within Dublin. Dublin City Council which has two canals, and a substantially higher proportion of its land area directly adjoining canals than Fingal County Council. Dublin City Council has no prescriptive distance barrier for development from canals in their recently adopted City Development Plan 2022-2028 but stipulates that a 'riparian buffer' be provided free from development along all canals. No distance is specified.
12. South Dublin County Council have the following objective for the Grand Canal in their adopted County Development Plan which states without reference to any specific distance the following: *'NCB9 Objective 4: To ensure that development along and adjacent to the Grand Canal protects and incorporates natural heritage features including watercourses, wetlands, grasslands, woodlands, mature trees, hedgerows and ditches and includes an appropriate set-back distance*

or buffer area from the pNHA boundary to facilitate protected species and biodiversity and a fully functioning Green Infrastructure network. Regarding all other non-canal water courses G13 Objective 3 states that South Dublin County Council will seek *‘To promote and protect native riparian vegetation along all watercourses and ensure that a minimum 10m vegetated riparian buffer from the top of the riverbank is maintained / reinstated along all watercourses within any development site.’* Please note therefore that there is buffer distance prescribed in South Dublin County for canals and a buffer of 10m for rivers and streams consistent with Inland Fisheries Ireland guidance. We believe that a 10m buffer would be more appropriate if Fingal County Council are of the view that such a distance needs to be prescribed, which we believe not to be the case.

13. Dun Laoghaire Rathdown has no canals located within their jurisdiction. In regard to rivers and other waterways their Policy Objective G1B24 states that *‘It is a Policy Objective to maintain and protect the natural character and ecological value of the river and stream corridors in the County and where possible to enhance existing channels and to encourage diversity of habitat and nature-based solutions that incorporate biodiversity features. It is also policy (subject to the sensitivity of the riverside habitat), to provide public access to riparian corridors, to promote improved passive recreational activities.’* In accompanying guidance it is stated that that a minimum of 10m be provided for amenity and biodiversity and up to 30m for areas where the ecosystem functioning of the catchment requires it. It is also stated by way of guidance that no development shall take place within a minimum distance of 10m measured from each top of bank of any river, stream or watercourse where practical.
14. We are aware that Fingal County Council has an existing prohibition of 30m along rivers but this is unjustified for canals in our view as canals are man-made, previously industrial generated infrastructure, often with hard edges, likely requiring ongoing maintenance and management and consequently access, which frequently entails development and works requiring planning permission.
15. Please note that as the governing body for canals within the State, Waterways Ireland have no such arbitrary limits to development within a certain distance of canals. They have no prescribed distances which is borne out by the approach of other local authorities to avoiding prescriptive measurements.
16. SHD permission under An Bord Pleanála reg. ref. 309622, lodged by a previous owner of the site, was refused on two grounds. The first, was that the scale and positioning of the blocks proposed then directly over the canal bank and the removal of a significant amount of vegetation and trees along this area of the site would adversely alter the character of this location and would then have significantly impacted upon the Royal Canal. This first reason for refusal does not mean that development should be precluded from the site and the view of our client is that the proposed development can be located further away from the canal from that previously proposed if the 30m residential prohibition is removed and following justification of a revised scheme allowing further ecological assessments to allow a comprehensive evaluation of the impacts on the flora, fauna and natural habitats and in particular the dry calcareous and neutral grasslands occurring on the site, the Royal Canal pNHA, badger, Daubenton’s Bat and other bat species and otter, all of which formed the Board second reason for refusal. In short, the proposed scheme can be amended to address the Board’s previous concerns. The new owner

has appointed a new team of planning consultants and landscape specialists who will carefully consider all the feedback received on this previous scheme that was refused. The plans for the previous scheme have been abandoned.

17. The view of the County Council on the SHD was that insufficient surveys and assessments had been undertaken and submitted in support of the that previous application to allow a full and sufficient evaluation of the impacts of the proposed development on the flora, fauna and natural habitats and in particular the dry calcareous and neutral grasslands occurring on the site, the Royal Canal pNHA, badger, Daubenton's Bat and other bat species and otter as specified by the Board in their second reason for refusal. We believe that the necessary further assessment can be undertaken to address those concerns if the 30m prohibition as currently proposed is removed.
18. A reputable, qualified and experienced ecologist will be employed in any resubmitted application and will be involved at the very outset of any resubmitted application so that all concerns on ecology, the landscape and impact on the pNHA can be avoided.
19. The Proposed Alteration will affect the relatively recently adopted Kellystown Local Area Plan 2021 and this prohibition on development within 30m of the canal will negatively impact the residential quantum to be delivered within that plan.
20. The arbitrary restriction that is now sought to be proposed through this Proposed Alteration will jeopardise the delivery of the refurbishment of the Old School, with the surrounding area becoming abandoned, uncared for, vulnerable to anti-social behaviour, fly-tipping, the burning of cars and potentially squatters.

Our Suggested Amendments to the Proposed Amendments

Our client fully accepts that development of all types, activities, works, and not just residential development, could have an unacceptable impact on the ecology and environment of canals, but a great many will not. Our client therefore accepts that a buffer will be required but would be against a prescriptive limit in distance terms. We believe that such a buffer can be established on a case by case basis, without recourse to specific distances, and where each application and proposal can be considered on its own merits.

Whilst seeking to protect the ecology, the environment and enjoyment of the canal we propose the following rewording of Proposed Amendment PA CH 9.8 which will achieve the same objective of protecting ecology and the status of the proposed Natural Heritage Area without the unnecessary prescription:

'Objective GINHOXX Protection of Royal Canal

*Protect the Royal Canal and associated habitats along its banks as a proposed Natural Heritage Area by establishing an ecological corridor free of **development on a case by case basis based on the merits of each application.** ~~new housing development with a buffer consisting of a minimum width of 30 metres from the top of each bank of the Canal.~~*

The above indicates text in bold our additional proposed text and shown in strike through the text that we believe should be deleted.

A 'clean' version of the Proposed Amendment is set out as follows:

'Objective GINHOXX Protection of Royal Canal

Protect the Royal Canal and associated habitats along its banks as a proposed Natural Heritage Area by establishing an ecological corridor free of development on a case by case basis based on the merits of each application.'

Our suggested rewording of Proposed Alteration PA CH 9.8 has the following benefits. It allows a level of protection along the canal for all types of development and not just against residential. It allows each application to be considered on its own merits and where in the absence of a ban on just residential, which we see as discriminatory, allows development within a reasonable distance of the canal and where the ecology and enjoyment of the canal will be proven not to be impacted upon. The alternative to a ban on residential, apart from removing that singular ban altogether, in the interests of fairness would be to impose a blanket ban on all development within 30m of the canal that would potentially prohibit all works along the canal including resting points, works on, in or under the ground as potentially constituting development, and would exclude development requiring planning permission which might be necessary for the maintenance, upkeep, safe operation and enjoyment of the canal. We believe the above suggested rewording to be the fairest means of restricting development where this is considered necessary.

We trust that the local authority will consider the above in their deliberations on the emerging County Plan.

We ask that we are included on any mailing list that is created to provide updates on the plan making process (epreenter@csrlandplan.ie).

If further elaboration is required, please do not hesitate to contact us.

Yours sincerely,



Eamonn Prenter MIPI MRTPI
Director
CUNNANE STRATTON REYNOLDS
LAND PLANNING & DESIGN

www.csrlandplan.ie