

**CHERRYWOOD SDZ PLANNING SCHEME**

**PROJECT MANAGEMENT PROTOCOLS**  
**FOR CONSRUCTION OF COMMON INFRASTRUCTURE**

**Version 2023.1**





## PROJECT MANAGEMENT PROTOCOLS

### OTHERWISE PM PROTOCOLS

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## 1. introduction to the PM PROTOCOLS

- 1.1 By order of the Government dated 25 May 2010, the Local Authority was specified as the development agency in respect of the Cherrywood Strategic Development Zone (“the SDZ”) pursuant to Section 168 of the Planning and Development Act 2000 and in that capacity adopted the Cherrywood SDZ Planning Scheme in April 2014 which document must be read in conjunction with the Approved Amendments 1-4 in August 2017 to Chapter 7 of the Planning Scheme and Maps annexed thereto in December 2018 and in January 2018 – Car Parking Amendments and in April 2021 – changes to the alignment to Beckett Road (hereinafter collectively called “the **Planning Scheme**” which expression shall include any further amendments, alterations, revisions or extensions made subsequent to the publication of this version 1 of the PM Protocols).
- 1.2 The Local Authority adopted the Dun Laoghaire-Rathdown County Council Cherrywood Planning Scheme Development Contribution Scheme (2017-2020) (“the

**2017 Scheme**") pursuant to Section 48 of the Planning and Development Act, 2000 ("the 2000 Act") on the 12<sup>th</sup> day of June 2017.

- 1.3 Chapter 6 of the Planning Scheme sets out the infrastructure required to facilitate and service the development objectives contained in the Planning Scheme. Chapter 7 of the Planning Scheme sets out the sequencing and phasing of the provision of infrastructure and services in respect of the First Growth Area, the Second Growth Area and the Third Growth Area, as those expressions are defined in Chapter 7. This chapter also specifically identifies the requirement for the establishment of measures to fund the provision of infrastructure and services.
- 1.4 The SDZ comprises a land area of circa 360 hectares and the SDZ Lands are, as the date hereof, (severally) owned by Landowners and, as to an additional part thereof, by the Local Authority itself.
- 1.5 The 2017 Scheme provides inter alia for the payment of landowners' development contributions towards the cost of providing common infrastructure within the Cherrywood Planning Scheme Area (i.e., "Cherrywood Development Contributions") **ONLY** and it is intended that any New Scheme would make provision for similar development contribution payment obligations.
- 1.6 The purpose of the 2017 Scheme was to establish a mechanism for Landowners of land within the Cherrywood Planning Scheme Area to recover certain costs incurred by them in constructing common infrastructure having regard to the amount of development contributions payable pursuant to conditions contained in Planning Permissions.
- 1.7 As of the date of publication of this document, the 2017 Scheme continues to be in force and, subject to the adoption of any New Scheme, it is intended that the 2017 Scheme will continue to apply in its entirety to all planning permissions granted prior to the operative date of any New Scheme in respect of which actual physical development has commenced.
- 1.8 It is intended that the 2017 Scheme will be replaced by New Schemes in the future and it is intended that the regulation and administration of all such schemes will require compliance either with these PM Protocols or with any subsequent versions which may amend, vary, alter or extend the provisions of this document and which may be issued by the Local Authority at its absolute discretion to reflect changes in related professional practices and any relevant developments in the construction industry

and/or which may be considered by the Local Authority to be in ease of the administration of such Schemes. Any such subsequent version of the PM Protocols will be published on the Local Authority's website as soon as possible subsequent to adoption and will be clearly described as an updated or new version. The onus is and will be on all Landowners/Developers to familiarise themselves with this version of the PM Protocols and subsequent versions as published from time to time.

- 1.9 Where Landowners wish to avail of the benefits of the 2017 Scheme and or where Developers wish to avail of the benefits of any Future Scheme, each such Landowner will be required to enter into a legal agreement ("the Legal Agreement") with the Local Authority which will, inter alia, provide for the mechanism and procedures to be followed by the Landowner/Developer in collaboration with the Local Authority. Landowners/Developers with an interest in the foregoing should contact the Local Authority at [FPIadmin@DLRCOCO.ie](mailto:FPIadmin@DLRCOCO.ie) and request the issue of a draft legal agreement for approval.
  
- 1.10 The purpose of the PM Protocols is to assist Landowners/Developers in understanding the requirements of the Local Authority and the procedures involved in obtaining what will be called a "Validation Certificate" in the Legal Agreement in respect of what will be called "Qualifying Expenditure" (also described as "QE") in the Legal Agreement which will entitle the Landowner/Developer to avail of the benefits offered by the 2017 Scheme or any Future Scheme (as the case may be). The Local Authority considers it to be extremely important that Landowners are aware of the content of these PM Protocols prior to entering into a Legal Agreement with it. Landowners are therefore encouraged to read and consider this document carefully as it is very likely to have a significant impact on a Landowner's management of common infrastructure construction projects approved under the Scheme. Such an approach by Landowners will also be very much in ease of the process of establishing a Landowner's entitlement to avail of the benefits of the Scheme.

## 2. DEFINITIONS

In these PM Protocols (save where the context otherwise requires) the following words and expressions shall have the following meanings:

“Appendix/Appendices”	means, where the context so admits or requires, references to an Appendix or Appendices in the 2017 Scheme or to similar Appendices or references contained in New Schemes whether or not bearing nomenclature and or numeration identical to that contained in the 2017 Scheme;
“2000 Act”	means the Planning and Development Act, 2000 as amended;
“AQEA”	means an application for QE assessment in respect of CI which has been completed or in respect of CI to be constructed submitted by a Landowner or Developer to the Local Authority with all supporting documentation and the expression “QE Assessment” and “QE Assessment Process” shall be construed accordingly;
“BOQ”	means a bill of quantities.
“Building Regulations”	the Building Control Act 1990 together with any amendments or modifications thereto and all regulations issued thereunder;
“Certificate/s of Title”	means the certificates of title from the Landowner’s/Developer’s solicitors for the benefit of the Local Authority identifying and certifying good marketable title to the lands upon which CI has been constructed;
“Cherrywood Development Contributions”	means the development contributions so described in Clause 1.5 above;
“Cherrywood Planning Scheme Area”	means that part of SDZ Lands so described in the 2017 Scheme.
“CI”	means the entire of the common infrastructure and other

	facilities and amenities as described in Appendix III, Cherrywood Planning Scheme Projects List, of the 2017 Scheme and as may be described in any New Scheme;
“CI Contracts”	means the Completion Documents;
“CIWs”	means the works undertaken by a Landowner/Developer to construct CI;
“Collateral Warranties”,	the collateral warranties as may be required in a Legal Agreement;
“Completion Documents”	all documents described in Clause 7.5;
“Core Design Team”	means such (i) architects; (ii) engineers; (iii) individuals or entities providing planning application consultancy services;, (iv) individuals or entities providing supplementary design services to i-iv; (v) individuals or entities providing non-design services providing project management and cost control services. All necessary to design and construct the relevant CIW’s only.
“Core Design Team Fees”	means such professional fees as may be incurred by the Core Design Team all or part of which qualify as QE subject to the provisions of Clause 5.6 and Clause 5.7 below.
“Declaration of Identity”	means such declarations of identity as may be required under the Legal Agreement;
“Design Documents”	means the plans, drawings, specifications, engineering calculations and all other documents which accompany a planning application and any replies to requests for further information same to be available in hard and soft copy;
“DCRA”	means a development contribution reduction agreement to be entered into by a Landowner pursuant to the 2017 Scheme or by a Developer under a New Scheme (as the circumstances may require) of the one



part and the Local Authority of the other part and the word “reduction” shall include the word “offset” as utilised in the 2017 Scheme which agreement shall be in a form and with content acceptable to the Local Authority and which shall include but not be limited to the issues described in general terms in a Scheme;

“Developer” means any Landowner or Developer who has completed or who intends to develop CI within the Cherrywood Planning Scheme Area under a New Scheme;

“Good Practice” means the exercise of that degree of skill diligence prudence and foresight in relation to the design and construction of CI to enable a Landowner/Developer to deliver the completed CIWs (and in relation to all related services and duties performed or undertaken or to be performed or undertaken under the PM Protocols) which would reasonably be expected of a skilled and experienced professional member of a design team and/or a contractor engaged in Ireland in the provision of large scale construction works and services similar in scale, nature and complexity to the works and services to be provided hereunder;

“Landowner/s” means for the purpose of the application of the 2017 Scheme, the several legal owners (severally entitled) to the SDZ Lands (but excluding the Local Authority) and upon whose lands CI has been, is being and/or is intended to be constructed pursuant to planning permission issued by the Planning Authority to Landowners in respect of which actual physical development shall have commenced;

“Landowner’s/Developer’s” means as regards “Landowner/s” such persons or entities entitled to make an AQEA pursuant to the 2017 Scheme and as regards “Developer/s” such persons or entities who make an AQEA pursuant to a New Scheme;

“Laws”	all European and Irish legislation, statutes, statutory instruments, regulations and by-laws of any legally constituted public authority;
“Letters of Appointment”	the letters or agreements pursuant to which each member of the Landowners’/Developers’ professional team/ design team have been appointed;
“Opinions on Compliance”	means the Opinions on Compliance with Planning Permissions and where applicable with Building Regulations to be given by or on behalf of the Landowner/Developer. See <b>Appendix G</b> for a copy of a proforma letter to be used.
“Parties”	the parties hereto and “Party” shall be construed accordingly;
“Planning Authority”	the Local Authority in its capacity as the Planning Authority;
“PM Protocols”	this document, its schedules and appendices prescribing the several protocols to which Landowners/Developers shall subscribe and comply with for the purpose of identifying and Validating QE and Value for Money and any similar document which may be appended to a New Scheme;
“Project”	means the design, construction, completion, certification and commission of each item of CI or part thereof;
“QE”	means qualifying expenditure comprising any expenditure properly incurred or to be incurred by Landowners pursuant to the 2017 Scheme or by Developers under any New Scheme in designing and constructing CI which QE may be subject to the limitations prescribed in Clause 5.6 and Clause 5.7 and which must be confirmed by the Local Authority by the issue of a Validation Certificate.;

“Safety File”	the safety file as specified in the Safety and Health legislation;
“Relevant Consents”	“Relevant Consents” means the planning permissions, fire safety certificates, any regulations about the requirements under the Building Regulations and all other consents, certificates, approvals or licences required in connection with the construction of CI from all competent authorities which remain unaffected by legal proceedings for 28 days from the date of issue of any such proceedings
“the 2017 Scheme”	the development contribution scheme described in Clause 1.2;
“Scheme”	means any new scheme which may be adopted by the Local Authority at any time in the future pursuant to the provisions of Section 48 of the 2000 Act and, for the avoidance of any doubt, the expression “Scheme” shall where the context so admits or requires include the 2017 Scheme and the expressions and references in these PM Protocols to “Future Scheme/s” and “New Scheme/s” shall be construed to exclude references to the 2017 Scheme.
“SDZ”	the Cherrywood Strategic Development Zone;
“Validation Certificate/s”	A Validation Certificate issued by the Local Authority subsequent to a successful AQEA by a Landowner/Developer and the expressions “Validation” and “Validating” shall be construed accordingly.
“Value for Money”	the value for money concept described in Clause 5;

## 16. RECITALS

- 3.1. Following the objective described in Clause 1.10, the Local Authority has compiled the PM Protocols in order, inter alia, to describe its requirements in an AQEA made by a Landowner or Developer.
- 3.2. The procedures and practices used in procuring and delivering CI need to be sufficient to establish oversight by the Local Authority in the management of Cherrywood Development Contributions and to satisfy its rigorous audit and accountability standards and requirements.
- 3.3. The PM Protocols set out the common standards and procedures which the Local Authority require all Landowners and Developers to comply with to provide certainty that good corporate governance principles have been followed by them regarding their respective expenditure on CI and that Value for Money has been sought and achieved. They provide clear direction to Landowners and Developers of the minimum standards that need to be adhered to so that an AQEA can be properly and comprehensively considered and assessed by or on behalf of the Local Authority.
- 3.4. It is noted and agreed that the requirements of the Local Authority set out in the PM Protocols are based on construction industry norms and do not represent any major deviation from contemporary development practices. The intention is that all AQEAs will be reviewed against a consistent standard which is applicable to all Landowners and Developers in terms of budgets, procurement, documentation and site management procedures.
- 3.5. It should be noted that the PM Protocols correspond to and reflect private development practices.
- 3.6. The PM Protocols are not intended to, do not and will not:
  - (i) create any obligation whatsoever on the part of Landowners or Developers to construct any CI;
  - (ii) impose any obligation on the Local Authority to construct any CI;

- (iii) create any right in favour of any Landowner to an offset or other right under the 2017 Scheme; or
- (iv) create any right in favour of any Developer to a reduction in Cherrywood Development Contributions which may be provided for under a New Scheme.

## 17. Common Infrastructure

- a. As Cherrywood is still partly a greenfield site, there is an extensive suite of CI to be delivered including roads, bridges, underpass, bus and cycle facilities, flood attenuation, public parks, open spaces and greenways. Appendix III of the 2017 Scheme contains the Cherrywood Planning Scheme Projects List which requires the construction of CI.
- b. It is anticipated that an updated Cherrywood Planning Scheme Projects List will be included in all Future Schemes.
- c. The following elements of infrastructure are not classified as CI and the Landowners'/Developers' corresponding costs are **not and will not** eligible to be considered as QE and will not be considered in any AQEA:
  1. Roads Infrastructure, Community & Parks facilities, and Surface Water Infrastructure that are not listed in Appendix III of the Scheme or in any Scheme;
  2. Potable water and foul drainage works;
  3. Telecommunication works;
  4. Electrical distribution network works (except electrical supply to public lighting and traffic signals);
  5. Gas distribution network works; or
  6. Maintenance, upgrade, tie-in, or rectification works associated with the works projected in Appendix III of the Scheme or in any Scheme;
- d. Column A of **APPENDIX A** of this document provides a Table which describes those elements of CIWs which **will** be considered in an AQEA . Column B of Appendix A contains further details of other infrastructure which will **not** be considered in an AQEA in addition to those described in Clause 4.3 above.

## 18. Value for Money

- a. As outlined above, it is anticipated that some Landowners will deliver CI on lands owned by them within the SDZ. Landowners who deliver CI on their own lands (subject to the provisions of the 2017 Scheme) and Developers who deliver CI under a New Scheme will be entitled to submit the costs which they incur in constructing the CI to the Local Authority for QE Assessment to be undertaken by the Local Authority (i.e. an AQEA). The outcome of this assessment may result in the Local Authority validating a QE Amount by way of the issue of a Validation Certificate in respect of such QE. A detailed description of this process will be contained in the DCRA. It is therefore imperative that Landowners and Developers who deliver CI do so in a way which maximises the Value for Money achieved and demonstrates that the costs are in line with industry norms.
- b. In this context, the necessity for seeking and obtaining Value for Money should always be pursued by a Landowner/Developer and their respective professional teams in the delivery of CI. It should be central to the development team's strategy when designing the CIWs, compiling specifications and tendering for prices.
- c. When designing the CIWs, the Landowner/Developer and its team should undertake a series of value engineering workshops throughout the design process and produce and deliver to the Local Authority a value engineering report which documents the steps undertaken to minimise the expenditure on CI and maximise the Value of Money achieved.
- d. The specifications for the CIWs should specify the most competitively priced type of products and materials which fulfil the minimum standards required by the relevant infrastructure planning permission. If a Landowner/Developer wishes to deliver CI to a higher specification than that which would generally be required by the Local Authority, then these additional costs will be borne by the Landowner/Developer, unless otherwise agreed in writing or by email with the Local Authority. The Local Authority will however examine and consider the Landowner's/Developer's specification and may form an opinion on whether a more competitively priced alternative was available on the market which would generally have been specified or accepted by the Local Authority. This initial assessment will be undertaken within four weeks of the submission by a Landowner/Developer of a comprehensive AQEA.
- e. When procuring the CIWs, contractors should be encouraged to indicate areas where better Value for Money can be achieved (e.g. alternative but compliant materials, construction methodologies, subcontracting partners etc.). All efforts to maximise Value for Money must be recorded, documented and auditable. An AQEA will not be undertaken until all supporting documentation is presented in a manner acceptable to the Local Authority.
- f. Given the fact that Landowners/Developers have control over the programming and phasing of CIWs at their discretion, the Core Design Team Fees necessarily incurred to design and construct the relevant CI which are the subject of a QE Assessment Process and which will or

may be eligible for Validation will be limited to a maximum of 15% of the Validated QE (which percentage the Local Authority considers to be in line with standard industry benchmarks). For the purpose of this Clause 5.6 only all the Core Design Team Fees submitted for QE Assessment shall be deducted from the amount of Validated QE for the purpose of calculating the 15% limit on Design Team Core Fees PROVIDED however that if extenuating or unusual circumstances arise which are notified and explained by the Landowner/Developer to the Local Authority in advance of the former agreeing to any excess of such professional fees over and above the aforementioned 15% limit (unless it is not intended to include such excess in an AQEA) the Local Authority may at its discretion admit a claim for all or part of any such excess to a QE Assessment Process. In this regard, Landowners/Developers are referred to the importance of Clause 6.5 below.

- g. For the further avoidance of doubt, Core Design Team Fees will not include ancillary professional fees such as legal fees, any costs incurred by the Landowner/Developer in the financial management, costs involved in the funding of construction of CI or any costs incurred during the QE Assessment Process



## 19. Engagement Protocol

- a. The Local Authority will carry out the numerous functions described in this document via its own in-house resources at the initial stages of any AQEA. It may, however, at any stage in that process appoint third party project managers (“Project Managers”) and/or project monitors (“Project Monitors”) to manage, assist or provide other services in connection with all or part of any AQEA process. In such circumstances, the respective functions, terms of reference and third party contact details will be notified to the Landowner/Developer by the Local Authority. As regards a Project Manager, Clause 12 of these PM Protocols will apply unless varied, altered or excluded by the Local Authority.
- b. In such circumstances, references in the PM Protocols to the Local Authority shall, where the context so admits or requires, mean the relevant appointed Project Managers and/or Project Monitors.
- c. Where references in the PM Protocols to Project Managers occur in circumstances where no Project Managers have been appointed, the expression “Project Managers” shall be deemed to refer to the Local Authority.
- d. The Landowner/Developer will notify the Local Authority at FPIadmin@DLRCOCO.ie of their intention to carry out CI and this must be done in advance of incurring any expenditure. This notice should set out project information details, specifically programme details and order of magnitude costings. NOTE: Failure to contact the Local Authority at this stage may result in an AQEA being disallowed in full or in part. Upon receipt of such notice, the Local Authority shall inform the Landowner/Developer of the representative with whom to engage in respect of the processes described in these PM Protocols.
- e. Landowners/Developers will design and deliver each Project in line with Clauses 7-12. The Landowner/Developer will be obliged to provide regular updates to the Local Authority in line with Clauses 7-12. Failure to do so may result in all or part of an AQEA being disallowed. **THE IMPORTANCE OF COMPLIANCE WITH THE OBLIGATIONS DESCRIBED IN THIS CLAUSE 6.5 CANNOT BE OVER EMPHASISED.**
- f. The Local Authority will engage with Landowners/Developers throughout the development process to track key issues across the SDZ including budget, program, risk, third party interfaces and planning considerations. However, it is the Landowner’s/Developer’s responsibility to satisfy the Local Authority that expenditure constitutes QE and that Value for Money has been achieved.
- g. Whilst any appointed Project Managers or Project Monitors will discuss the overall principles governing QE, CI and any associated AQEAs with Landowners/Developers, they will remain independent from the development and construction decision making process. At no stage during the development process will the Project Managers have the authority to confirm that

any amount of expenditure incurred by Landowners/Developers constitutes QE. Project Managers and Project Monitors will only make interim recommendations to the Local Authority for its consideration and final agreement.

- h. Where variations have been agreed with the Local Authority, Landowners/Developers will clearly detail the instruction, the background and reason for such variation, the added cost and any supporting evidence as may be required by the Local Authority within their claim submission.
- i. It is understood and appreciated that information relating to budgets and programmes is commercially sensitive.

## 20. DOCUMENTARY SUPPORT FOR AQEAs

- a. the documentation which will need to be generated by each Landowner/Developer during the development process - will have to be provided to the Local Authority in support of an AQEA. A non-exhaustive list of such documents is contained in **APPENDIX B**. This list may be supplemented by the Local Authority from time to time.
- b. The form required to be completed by Landowners/Developers so as to commence the QE Assessment Process will be provided to the Landowners/Developers upon execution of a DCRA
- c. Documentation provided by Landowners/Developers will be used by the Local Authority/Project Managers/Project Monitors to;
  1. assess Landowners'/Developers/ AQEAs and to recommend quantum entitlement;
  2. review the procurement processes undertaken and expenditure incurred against Value for Money objectives;
  3. update long term forecasting of budget and programme for the SDZ;
  4. ensure that AQEAs are based on robust supporting documentation which will stand up to future scrutiny and/or audit; and
  5. maintain a consistent standard of documentation for assessment across the SDZ.
- d. It should be noted that this QE Assessment Process is separate to the planning application process and stands alone. It is acknowledged that there may be some overlap between information provided as part of the planning process and information provided as part of the process outlined in the PM Protocols.
- e. Upon completion, and prior to the issue of a Validation Certificate all Landowners/Developers must procure and deliver to the Local Authority their Completion Documents. These documents may include but are not limited to the following:
  1. Health and Safety File
  2. All Collateral Agreements/Warranties
  3. Opinions on Compliance with Planning Permissions and, where applicable, Building Regulations
  4. 'As Built' Drawings in digital form and 3 complete hard copies all fully indexed
  5. Commissioning Certificates

6. Operating manuals
7. Certificates of Practical Completion
8. Planning Compliances
9. The construction contract between the Landowner/Developer and the contractor
10. Certified copies of Letters of Appointment of Landowners'/Developers' Design Teams
11. Certificates of Title to land upon which the CI has been constructed
12. Declarations of Identity regarding the title as above
13. Other documents deemed relevant by the Landowner/Developer, and the Local Authority.

## 21. Information required to Assess QE

- a. Core Design Team Fees are eligible for consideration as QE subject to the provisions of Clause 5.6 and Clause 5.7.
- b. Landowners/Developers must provide all information required and respond to all queries and requests for clarification made by the Local Authority/ Project Managers/ Project Monitors with supporting documentation in a timely and efficient manner, and in any event, by not later than 8 weeks subsequent to the delivery of a Certificate of Practical Completion in respect of the Project to the Local Authority;
- c. Landowners/Developers must provide the following information in relation to Consultants' appointments:
  1. Tender report or equivalent for each appointment;
  2. Lump Sum Fee
  3. Detailed description of scope and services associated with the Lump Sum
  4. Hourly and Daily rates for agreed scope variations
  5. Consultants Insurances
  6. Collateral Agreements/Warranties
  7. and any other documents deemed relevant or necessary by the Local Authority.
- d. Where a consultant's scope includes design of both CI and other infrastructure, the fee proposal submitted must itemise each separately to facilitate an AQEA.
- e. If a Landowner/Developer approves a variation to a consultants' fee for the design of CI and intends to include the variation within its AQEA, the variation and associated supporting documentation must be provided to the Local Authority. The variation must be supported with evidence of:
  - a) Clear description of the reason for the scope change
  - b) Challenge (where appropriate) by the Landowner/Developer
  - c) Assessment by the Landowner/Developer as to legitimacy and value
  - d) Agreed Cost
  - e) Final Instruction to the consultant.

- f. Financial retainers payable to consultants will not be accepted as eligible for consideration as QE. QE is for defined scope of work only.
  
- g. Landowners/Developers must communicate the contents of the PM Protocols to their consultants. The commercially sensitive nature of information relating to fees and *per diem* rates is understood by the Local Authority. If required by a Landowner/Developer, any appointed Project Managers and Project Monitors will execute a Non-Disclosure Agreement (“NDA”) with the Landowner/Developer to ensure the QE Assessment Process can proceed. It is the Landowner’s/Developer’s responsibility to ensure that their design consultants are aware of the QE assessment process which is to be undertaken. A copy of the draft NDA as approved by the Local Authority is appended in **APPENDIX C**.

## 22. Pre-Contract Protocols

- a. Landowners/Developers are required to provide quarterly updates to their cost estimates for the CI which they propose to deliver. For all updates, Landowners/Developers should demonstrate an understanding and consideration of all internal and external factors affecting cost, and include appendices stating clearly the design information used in their preparation; assumptions; exclusions etc. Cost estimates must be quantified, and rates/costs benchmarked with comparable works.
- b. Cost estimate updates are to be provided by Landowners/Developers at the following junctures:
  1. *Feasibility*: Based on initial drawings and specifications.
  2. *Order of Magnitude Cost Estimate (OMC)*: Based on preliminary drawings/planning drawings and specifications.
  3. *Detailed Design*: Based on detailed design information and specifications
  4. *Pre-Tender Estimate*: Based on tender information and specifications.
  5. Contract sum prior to commencement.
- c. The information to be provided by a Landowner/Developer during the pre-contract period includes but is not limited to the following;
  1. Estimated CI costs, including preliminaries
  2. CI design fees
  3. Documented risk assessment
  4. Inflation allowances
  5. Detailed development programme (indicating planning phase, tender phase, construction phase)
  6. Value Engineering Report
  7. Consultant's Report containing all the Local Authority compliance sign-off for grant of Planning Permission for the CI in question. The Landowner/Developer should take into account the time periods necessary for planning permissions.

- d. As per item 9.3(g) above, a report on Value Engineering options should be prepared by each Landowner/Developer for each separate project. This report should clearly demonstrate and broadly enumerate the value engineering activities undertaken by a Landowner/Developer and its team in the design and procurement of CI.



## 23. Procurement Protocols

- a. It is a Landowner's/Developer's responsibility to ensure that the procurement methods they employ in delivering CI result in demonstrable Value for Money being achieved. In terms of selecting a contractor to undertake the CIWs, while this is typically achieved by undertaking and documenting a competitive tender process, it is recognised that certain Landowners/Developers will negotiate completion of CIWs with a preferred contractor or complete the CIWs directly using in house resources. It is expected that most Landowners/Developers who are successful in their QE applications will have followed a competitive procurement route, where appropriate. The procedures and documentation referred to in **APPENDIX D** entitled "Cherrywood – Procurement Strategy – Full Tender" and **APPENDIX E** entitled "Cherrywood Procurement Strategy Negotiated Tender" respectively should be considered in this regard.
- b. Where a Landowner/Developer does not competitively tender the CIWs, it must demonstrate to the satisfaction of the Local Authority that QE represents Value for Money and explain the extenuating circumstances which might allow for a derogation from the requirements of the PM Protocols which shall be reviewed on a case by case basis. Such Landowners/Developers should provide a detailed and itemised BOQ with rates provided against each element of the CIWs with CI and other infrastructure separately identified.
- c. Outlined below is the set of procurement protocols which, where appropriate, should be implemented by all Landowners/Developers who will be making AQEAs.
  - i. Pre-Qualification and Pre-Contract Protocols

All contractors proposed by a Landowner/Developer for inclusion on their tender list should complete a pre-qualification questionnaire ("PQQ"), confirming their;

1. financial standing;
2. suitability for the type of work involved in terms of scale, complexity and experience;
3. capacity in terms of order book and current commitment; and
4. project understanding and demonstration of Value for Money in the undertaking of similar projects.

Potential tenderers should be shortlisted based on the PQQ and the list submitted for review by the Local Authority.

ii. Pre-Tender Interview

Those contractors shortlisted following the PQQ process should be invited to present to the Landowner/Developer to demonstrate their understanding of the project and capability to deliver the CIWs. The Landowner/Developer should use the pre-tender interviews to fully brief the contractor on the particulars of the project.

iii. Tender List

The Landowner/Developer should prepare and submit a list of proposed tenderers for the CIWs for review by the Local Authority. Each Project should be tendered to a minimum of three tenderers.

iv. Instructions to Tenderers (ITT)

The Landowner/Developer should include within their ITT, clear instructions to tenderers outlining the tender process, timelines and award criteria.

v. BOQ/Pricing Schedule

Tenders for the CIWs should be invited on a competitive basis; the Landowner/Developer should provide a full BOQ for the CIWs. The contract should not be re-measurable. BOQs must clearly itemise CI and other infrastructure works separately to allow an accurate determination of the potential QE Amount. Failure to do so will impact on the outcome of an AQEA and may reduce a Landowner's/Developer's overall entitlement.

vi. Schedule of Preliminaries

The Landowner/Developer should include within the ITT a fully itemised preliminaries pricing document to enable full analysis of fixed and time related preliminary costs.

vii. Form of Tender

The Landowner/Developer should include within the ITT a form of tender,

requiring the tenderer to confirm his price in numbers and words; VAT obligations; qualifications and exclusions. The tender should remain open for acceptance for 90 days.

viii. Tender Period

The tender period should be a reasonable period for the scope of work involved.

ix. Tender Returns

Tenders should be returned in hard and electronic form. The Landowner/Developer should convene a formal tender opening and invite the Local Authority to attend. Details of the tender returns should be formally recorded, and the opening sheet signed by all present. Copies of the opening sheet and the tender returns (electronic) shall be provided to the Local Authority.

x. Tender Assessment and Recommendation

The Landowner/Developer should carry out a holistic tender analysis and provide an assessment based on price, suitability and quality of the respective tender returns.

xi. Contract Award

Based on the tender assessment the Landowner/Developer should award the contract based on the most economically advantageous tender (MEAT) and advise the Local Authority of the outcome.

## 24. FORM OF CONTRACT

- a. The construction contract should be a standard form of contract with amendments and should include:
  1. A schedule of the contract drawings and specifications in respect of the CIWs
  2. A schedule of any other contract documents which have been relied upon in pricing e.g. site investigation, planning grant requirements
  3. A fixed price lump sum
  4. Contract programme
  5. A measured BOQ
  6. A schedule of dayworks rates (plant and labour)
  7. A percentage for profits and overheads
  8. Any other relevant documentation
- b. The construction contract and associated documentation will be reviewed by the Local Authority and feedback may be provided to the Landowner/Developer on suitability as appropriate. The construction contract should provide for a fair and reasonable percentage for profits and overheads which will be benchmarked by the Local Authority as against market rates.
- c. The Local Authority understands that some Landowners/Developers may undertake the construction of CIWs from their own resources. This is acceptable in principle to the Local Authority. However, the Landowner/Developer will provide full disclosure of their contract documents in order to demonstrate compliance with the PM Protocols and the 2017 Scheme or a New Scheme as appropriate.

## 25. Construction Period Protocols

- a. Role of the appointed Project Managers where applicable.

During the construction period, the Project Managers may attend monthly site meetings on behalf of the Local Authority to monitor the progress of CIWs on site, brief the Local Authority on live project issues and check that reasonable levels of project management and governance are being implemented by the Landowner's team. The Project Managers will report back to the Local Authority on pertinent site issues as appropriate. For avoidance of doubt, Project Managers attendance at monthly site meetings on behalf of the Local Authority is purely in a monitoring capacity. It may also be appropriate for Landowners / Developers to arrange separate, and regular meetings with the Project Managers or Project Monitor to administer the terms of these PM protocols.

- b. Quarterly Documentation Update

A non-exhaustive list of the documents which should be provided to the Project Managers throughout the construction period is outlined in **APPENDIX B**.

- c. Programme and Progress

The progress of the CIWs on site must be tracked and communicated via an updated construction programme which is to be provided to the Project Managers on a quarterly basis. The Programme must be;

1. MS Project format or similar Gantt chart format
2. Tracked against the contract programme
3. Identify the timeline and dependency relationships of tasks
4. Identify the critical path
5. Identify percentage complete for each task.

- d. Contractor Site Meetings in relation to CI

Contractor site meetings must be held monthly at a minimum, or more frequently as appropriate. The Landowner/Developer should ensure that the Project Managers are invited to these site meetings and included on the issue of agendas and minutes.

It is expected that the agenda for site meetings will cover the normal items that arise during a construction project. However, the following topics must be included on the agenda:

1. Programme – Status, Delays, EOTs, Program Risk
2. Financial – Status, Claims, Variations, Financial Risk

The minutes of the site meetings are to be provided to the Project Managers quarterly, or more frequently as necessary.

e. Cost Planning (“Cost Plan”) in relation to CI

The Landowner/Developer shall provide the Local Authority with a detailed Cost Plan quarterly to be issued on an agreed date.

The Cost Plan shall state in a General Summary the agreed Contract Sum, identifying separately, measured works, provisional sums, prime cost sums and contingency expenditure.

The General Summary must be supported by a detailed elemental breakdown. The General Summary and the elemental breakdown must identify agreed changes; submitted / unapproved changes and advance warnings – each shown beside the element against which they occur.

The Cost Plan must show the anticipated final account; taking account of the changes and adjustments to provisional sums; prime cost sums and contingency expenditure. The Cost Plan should also include a column to show change in the period. The Cost Plan shall include the following sections;

1. General Summary
2. Elemental Summary
3. Cost of Work Complete
4. Change Order/Variation Log
5. Provisional Sum Drawdown Log
6. Contingency Expenditure Log
7. Anticipated QE

In relation to the reporting of change orders/variations, Landowners/Developers must provide a process of change control that facilitates early warning of potential cost and time variations. This process must be reported quarterly throughout the construction

period, providing the opportunity for the Local Authority and the Project Managers to update contract completion estimates and inform longer-term forecasting for the SDZ.

The status of contract variations should be reported in the following 3 categories:

**Advance Warning** – being early indication of a potential variation, particularly variations of a larger time or cost impact, with an estimated time/cost impact.

**Unapproved Estimates** – submissions from the contractor of a proposed variation order with status. These may or may not be considered legitimate variation claims by the Landowner.

**Authorised Variations** – the variations accepted and instructed for incorporation into the scheme.

f. Change Control

It is the Landowner's/Developer's responsibility to ensure that the contract sum agreed is based on a complete and fully detailed design. As such, if planning is secured, it is a requirement to ensure that all the Local Authority compliance reporting as stipulated within the planning conditions attached to the infrastructure project have been provided for in the detailed design and tender. See Clause 8.3 above. Where planning has not been secured at tender stage, the Landowner/Developer will report separately to the Project Managers outlining the compliance approval and associated costs.

The only post-contract variations that will be considered for assessment as QE will be those which have been validated by the Local Authority in writing or by email in accordance with these PM Protocols. All other post contract changes are at the Landowners'/Developers' cost and risk. In order for the Local Authority to assess post contract changes, it is vital that a full narrative with supporting back up and associated costs, including effects on the programme be submitted at soon as the necessary post contract change is envisaged. Should all the necessary information be submitted, the Local Authority will provide initial feedback on the post contract change within three weeks of receipt by the Project Managers of all such documentation required. Any variation must be subjected to an AQEA in the normal way.

g. While it is expected that industry standard practice will be applied by the consultants and contractors in the operation of the contract and execution of the CIWs, including properly

recording and documenting any change to the scope of work in the contract, set out below is an indication of the processes which should be followed by Landowners and their teams in relation to post contract change control. This is intended to inform Landowners of the basic requirements and minimum levels of information which are considered to be required in support of a claim for the costs of a variation.

- h. This should not be considered a comprehensive list of requirements, as the circumstances which occur will vary. In some instances, more or less information may be required for QE Assessment purposes:
1. Notification from the contractor of the request for a change or variation order under the contract;
  2. Sufficient information to show the base position of what was bought in the contract and sufficient information to assess what is being claimed (e.g. contract drawing and revised drawing, photographs if relevant, relevant correspondence);
  3. An initial assessment by the Landowner/Developer to confirm whether the proposed change is a scope change under the contract;
  4. Description of the instructed change from the Landowner/Developer and its reasoning;
  5. Evidence of change instruction from the Local Authority where applicable;
  6. The variation costs submitted by the contractor, including a detailed breakdown;
  7. Documented assessment of costs by the Landowner/Developer (and/or its Quantity Surveyor ("QS")), including explanation of any adjustments and/or negotiated agreements;
  8. Where dayworks sheets or quantities are submitted these should be approved/signed by the Employers Representative/Resident Engineer as appropriate to the contract;
  9. Agreement / Rejection in writing in accordance with the contract; and
  10. Employers Representative/Resident Engineer Instruction where change is agreed.



- i. The Landowner/Developer must instigate and maintain a register of numbered contract variations. This register is to be updated monthly and each update forwarded to the Project Managers.

If the Landowner/Developer approves a variation to the contract value, for which QE is to be claimed, the documentation associated with the numbered variation is to be compiled in a logical and consistent format and forwarded to the Project Managers. If this is not adhered to, the Project Managers will not be in a position to assess the information. No assurance or representation is provided that any expenditure in regard to a variation will constitute QE.

A sample of a change management pro forma is contained in **APPENDIX F**.

- j. Interim Valuations

- i. Construction works:

The Landowner/Developer must provide the documentation associated with interim valuations of CIWs undertaken monthly to the Project Managers. This must include;

1. Contractors detailed interim payment claim
2. Landowners'/Developers' QS assessment of payment claim
3. Landowners'/Developers' QS payment recommendation
4. Contract Administrator/Resident Engineers payment certificate
5. Contractor's invoice
6. Evidence of Landowners'/Developers' payment to contractor
7. Cashflow projection to contract completion

- ii. Design Fees

The Landowner/Developer must forward the documentation associated with interim valuations of CI design works undertaken monthly to the Project Managers. This must include;

1. Consultant's monthly invoice
2. Landowner's/Developer's assessment and valuation of invoice
3. Cashflow projection to contract completion

4. Register of consultants' fee agreements including initial fee, agreed variations, fees paid to date, value of fees outstanding.

k. Final Account

Upon completion of the CIWs, the Final Account Statement agreed between the Landowner/Developer and the contractor should be forwarded to the Project Managers. The Final Account should be signed and dated by both parties to the contract.

All records and supporting information related to the Final Account Statement, and any financial settlements/agreements made between the Landowner/Developer and the contractor, should also be sent to the Local Authority or Project Manager (if applicable) to enable the Local Authority and its advisors to assess the Landowner's/Developer's subsequent AQEA accurately.

l. Deferred Works

If CIWs are deferred under the contract, the Landowner/Developer must communicate this clearly to the Local Authority and (where applicable) to the Project Managers. A list of the elements of deferred works must be highlighted on the contract BOQ and indicated on the construction drawings. The Landowner/Developer must advise the Local Authority of the reasons for the deferral and the revised timeframe for delivering the deferred works.

## **26. Landowner/developer warranties**

- a. As regards each Project, Landowners/Developers warrant and undertake with the Local Authority that same shall be constructed using good quality materials and in a good and workmanlike manner and in substantial conformity with:
  - b. the Laws;
  - c. the Relevant Consents;
  - d. the Design Documents;
  - e. the PM Protocols;
  - f. Good Practice;
- g. using materials and/or substances for the time being approved or recommended by the current Irish Standards and Codes of Practice insofar as they may be applicable to CI (and if there are no relevant Irish Standards and Codes of Practice, then the appropriate British ones may be so applicable) and no such materials or substances being of deleterious, unsatisfactory or unsuitable quality;
- h. if any material referred to in the design documents for CI shall not be procurable within a reasonable time or at a reasonable cost, Landowners/Developers may substitute such other materials of equal or superior quality and suitability as shall be or are procurable and are in accordance with the terms of the PM Protocols.

## **27. Landowner/developer undertakings**

- a. As regards each Project, Landowner/Developers hereby undertake with the Local Authority:
  - i. to appoint and continue to engage the services of competent project supervisors for the design process and construction stage of the CIWs who shall comply with their respective obligations under Health and Safety legislation;
  - ii. to maintain and repair the CIWs the subject of a Validation Certificate and to keep the same properly maintained and repaired to the standards and quality prevailing in respect of same as of the date of the Opinion/s on Compliance; and
  - iii. to take all necessary precautions to avoid any unreasonable nuisance, disturbance or danger to or unreasonable interference with the members of the public, the owners, the occupiers and the users of adjoining property or with other persons arising out of or in the course of or by reason of the construction and use of the CI.

## 28. AQEAs

- a. An AQEA will not be processed by the Local Authority unless and until a DCRA is executed by the Parties.
- b. Landowners/Developers are reminded and should take note of the provisions of Clause 6.5. above.
- c. All such applications will be reviewed by the Local Authority or by the Project Managers (where appointed) on behalf of the Local Authority with the intention of fairly and reasonably assessing the legitimacy of the cost of the CIWs claimed as QE by the Landowner/Developer.
- d. In line with Clause 5, the Local Authority will engage with the Landowner/Developer throughout the course of Projects confirming in principle that the Landowner/Developer is following the correct PM Protocols.
- e. Subject to Clause 15.1 above, a holistic review of AQEAs will commence when all the relevant information has been provided to the Project Managers. This includes information pertaining to the following:- the construction contract, BOQ, Final Account, Variation Account, Deferred Works, CI Design Fees and supporting information. Landowners/Developers will cooperate with the Local Authority and respond to any queries raised by it. AQEAs will be dealt with by the Local Authority within 6-8 weeks of the submission by a Landowner/Developer of a full and complete AQEA.
- f. Where Project Managers are appointed, they will report to the Local Authority having assessed the Landowner's/Developer's AQEA and make a recommendation in writing to the Local Authority as to whether or not a Validation Certificate should be issued and, if so, the QE Amount to be so validated. The Local Authority may share such assessments with the Landowner/Developer.
- g. Any such Project Managers will inform Landowners/Developers of the date on which its report and recommendation has been delivered to the Local Authority.
- h. In circumstances where the Local Authority decides to issue a Validation Certificate, it is intended that the Local Authority will issue such a Validation Certificate recording the QE Amount within 30 days of the receipt of the Project Manager's report and recommendation.
- i. It is intended that a Validation Certificate will be issued when the CI has been completed and where the Landowner/Developer establishes compliance with Clauses 7.5, 13.4 and 13.5 above.
- j. In the event of a dispute relating to any matter the subject of the PM Protocols the provisions of Clause 16 may be invoked by the Landowner/Developer and or by the Local Authority.

- k. Where the Local Authority does not appoint Project Managers and undertakes the entire QE Assessment Process via its own internal resources, the above provisions of this Clause 15 shall apply to the Local Authority as closely as possible.

## 29. DISPUTE RESOLUTION

- a. All disputes relating to any matter the subject of PM Protocols shall be dealt with in the following manner and in the following sequential order:

- 14.1.1. Firstly, by informal discussions between the Parties and, where after 28 working days from written notice from one party to another or others, the dispute has not been settled then,

- 14.1.2. Secondly, the matter shall be referred by either Party to an independent expert ("the Expert") for determination in which circumstances Clause 15 shall apply.

## **15. EXPERT DETERMINATION**

- 15.1. Where a dispute has been referred to determination by an Expert, the Parties shall appoint an independent chartered quantity surveyor with not less than 15 years' experience in the construction industry who shall, in the absence of agreement between the Parties, be appointed on the application at any time of either Party to the dispute to the Chairman for the time being, of the Society of Chartered Surveyors Ireland who shall, in his discretion, appoint the required Expert.
- 15.2. Within 5 (five) working days of being notified by any Party to a relevant dispute, the Expert shall require the Parties to submit in writing their respective arguments. The Parties in making their claims shall, in response to the Expert, provide all supporting evidence relating to the dispute. The Expert shall, in his absolute discretion, decide whether a hearing is necessary in order to resolve the dispute. The Expert shall be master of his own proceedings and shall have the power to call for such additional documents and evidence from the Parties as he shall, in his absolute discretion, require.
- 15.3. In any event, the Expert shall provide to both Parties his written decision on the dispute, within 14 (fourteen) days of the relevant notification of dispute referred to in Clause 14.2 above (or such other period as the Parties may unanimously agree).
- 15.4. The Expert's decision shall be binding on all Parties to the dispute who shall forthwith give effect to the said decision. If any Party does not comply with the Expert's decision, the other may bring legal proceedings to secure such compliance.
- 15.5. The Expert's costs arising out of the resolution of any dispute, shall be borne as the Expert shall specify or, in default of such specification, equally between the Parties. Save where otherwise determined by the Expert, each Party shall bear its own costs including legal costs and the costs and expenses of any witnesses.
- 15.6. The Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 2010 and the law relating to arbitration shall not apply to the Expert or to his determination or the procedure by which he reached his determination.
- 15.7. The Expert shall act impartially and may take the initiative in ascertaining the facts and the law. He may use his own knowledge and experience. He may visit the development or works the subject of the dispute. He may (acting reasonably) require the Parties to submit any information, or to conduct tests and the Parties shall do so. He may, having first notified the Parties as to likely costs, obtain from other persons information and advice, including information and advice on relevant legal, facilities



management and other technical matters.

- 15.8. The Expert shall not be held liable for anything done or omitted in the discharge or purported discharge of his function as Expert unless the act or omission is in bad faith. Any employee, advisor or agent of the Expert shall be similarly protected from liability.

## **16. EXCLUSION OF LIABILITY**

Neither the Local Authority nor any Project Managers or Project Monitors who may be appointed by the Local Authority shall accept liability for any design or other flaw or defect which may transpire in regard to any CIWs notwithstanding the examination by the Local Authority, Project Managers, Project Monitors or their respective servants or agents, of any documents (including all documents relating to the AQEA and the QE Assessment Process) and the issue of a Validation Certificate. All obligations and liabilities regarding fitness for purpose of the CIWs are at the sole risk of the Landowner/Developer. The role of the Local Authority/Project Managers/Project Monitors is solely and exclusively limited to that described in the PM Protocols and does not extend to the provision of any duty of care to any Landowner/Developer or third party whatsoever.

**Cherrywood SDZ - PM Protocols**  
**APPENDIX A**  
**Common Infrastructure eligible for consideration as QE**

<b>Common Infrastructure (CI) Definition Table</b>			
<b>Item No.</b>	<b>COLUMN A Common Infrastructure eligible for consideration as QE</b>	<b>Item No.</b>	<b>COLUMN B– “Other Physical Infrastructure” not eligible for consideration as QE</b>
<b>A1</b>	<b>Road Construction</b>	<b>B1</b>	<b>Foul Sewer Networks</b>
A1.1	Site Clearance	B1.1	All Foul sewer infrastructure
A1.2	Fencing		
A1.3	Earthworks	<b>B2</b>	<b>Watermain Networks</b>
A1.4	Subbase	B2.1	All Potable water infrastructure
A1.5	Base Course		
A1.6	Asphalt	<b>B3</b>	<b>Gas Networks</b>
A1.7	Seal	B3.	All Gas network works
A1.8	Road Marking		
A1.9	Kerbing	<b>B4</b>	<b>Electrical Infrastructure</b>
A1.10	Footpaths		All Electrical infrastructure works Inc. Ducting (excluding street lighting network)
A1.11	Cycle-lanes	B4.1	
<b>A2</b>	<b>Road Furniture</b>	<b>B5</b>	<b>Communication (Comms) Infrastructure</b>
A2.1	Street Signs	B5.1	All communication infrastructure including ducting (excluding
A2.2	Guardrails		comms work to Traffic Signals and RTPI Signage
A2.3	Handrails		
A2.4	Fencing		
A2.5	Street Lighting - incl. power supply	<b>B6</b>	<b>Parks</b>
A2.6	Traffic Signals - incl. power and comms supply		Buildings within Parks (unless clearly stipulated in the Cherrywood Planning Scheme, listed in Appendix III of the Section 48 Scheme)
A2.7	Bus Shelters		
A2.8	Real Time Passenger Information Signage		
A2.9	Pedestrian Crossings - incl. power and comms supply		
<b>A3</b>	<b>Landscaping</b>		
A3.1	Street Trees	B6.2	Roads to & within Parks (unless clearly stipulated in the Cherrywood Planning Scheme, listed in Appendix III of the Cherrywood Development Contribution Scheme 2017 – 2020, or future replacement schemes
A3.2	Seeding		
A3.3	Turfing		
<b>A4</b>	<b>Storm Water Drainage Systems (for road catchment only)</b>		
A4.1	Storm Water Sewers		
A4.2	Manholes		
A4.3	Gullies		
<b>A5</b>	<b>Surveys:</b>		
A5.1	Topographical Surveys		
A5.2	Geotechnical Investigations		
A5.3	Archaeological Surveys		
A5.4	Compliance Survey (Camera survey of sewers, drains etc.)		
<b>A6</b>	<b>Attenuations Ponds</b>		
	Detention Basins and Ponds shown on Map 4.2 of the Planning		
A6.1	Scheme, listed in Appendix III of the Cherrywood Development Contribution Scheme 2017 – 2020, or future replacement schemes		
<b>A7</b>	<b>Parks</b>		
A7.1	The Class 1 Amenity Open Space, Class 2 Neighbourhood Plaza & Natural Greenspace indicated on Map 5.1 and Table 5.1 of the planning scheme. As per Infrastructure listed in Appendix III of the Cherrywood Development Contribution Scheme 2017 – 2020, or future replacement schemes		
	<i>Continued on the next page</i>		

Common Infrastructure (CI) Definition Table (continued)			
Item No.	COLUMN A Common Infrastructure eligible for consideration as QE	Item No.	COLUMN B– "Other Physical Infrastructure" not eligible for consideration as QE
	C - Notes		
C1	Table A defines the elements of work which are considered "common Infrastructure" and are eligible to be considered as Qualifying Expenditure		
C2	Table B defines some elements of work which are considered "other infrastructure" and are <b>not</b> eligible to be considered as Qualifying Expenditure		
C3	Common Infrastructure in relation to roads is defined as works within the road corridor boundaries only		
C4	Only Common Infrastructure listed in Appendix III of the Cherrywood Development Contribution Scheme 2017 – 2020, or future schemes are considered Common Infrastructure.		
C5	Consultants fees related specifically to the core design team associated with Infrastructure listed in Column A will be eligible (subject to the terms of these protocols) for consideration as QE		
C6	Consultants fees related to the core design team associated with Infrastructure listed in Column B will not be eligible (subject to the terms of these protocols) for consideration as QE		
C7	The contents of this Appendix V are not exhaustive and will be more extensively provided for in a DCRA		

**APPENDIX B**  
**Cherrywood SDZ - PM Protocols**  
**Non-exhaustive list of Documents required for AQEA**

<b>Cherrywood SDZ - PM Protocols</b>		
<b>Appendix B - Qualifying Expenditure - Supporting Documentation Schedule</b>		
<b>Series</b>	<b>ID</b>	<b>Document Type</b>
<b>100 - Programme, Risk, Value Eng., Reporting</b>		
	110	Risk Register
	120	Value Engineering Register
	130	Value Engineering Report
	140	Planning Compliance Report
	150	Master Development Programme
	160	Construction Programme
	170	Project Management Reports
	180	Contractors Reports
	190	Organisation Chart
<b>200 - Cost Management</b>		
	210	Consultants Fees (LOA's, Scope, Fee, Insurance, Rates, Approved Variations, Invoices, PO's etc.)
	220	Construction Cost Plan (Initial OMC, Initial Cost Plan, Detailed Cost Plan, Pre Tender Estimate, Contract BOQ)
	230	Cost Reports
	240	Construction Variation details
	250	Commercial Meeting Minutes
	260	Valuations and payment certificates - Consultants
	270	Valuations and payment certificates - Works Contractor
	280	Final Account
<b>300 - Design Information</b>		
	310	Drawings (Outline, Planning, Contract, Construction, As-Constructed, Drawing Register)
	320	Specifications (Civil, Structural, Architectural, Landscape, Other, Specification Register)
	330	Surveys ( Topographical, Geotechnical, Archaeological, Environmental, Other)
	340	Statutory Approval - Planning Submission and Grant
<b>400 - Procurement</b>		
	410	Procurement Strategy Report (Consultants and Contractors)
	420	Tender Documents (Tender Issue, Tender Addendums, Tender Returns, Tender Report)
<b>500 - Construction Contract</b>		
	510	Proposed/Draft
	520	Engrossed
<b>600 - Close out/Handover</b>		
	610	Practical Completion Certificates
	620	Lessons learned report/register
	630	Deferred Works (Marked up drawings, Marked up BOQ indicating Value, completion programme).
<b>700 - Section 48 Application</b>		
	710	Landowner S48 Qualifying Expenditure Application
	720	Verification Certificates

**Notes:**

**1 - The documentation listed in the schedule above should be provided by Landowners/Developers to the Local Authority in support of their AQEA.**

**PM PROTOCOLS**  
**APPENDIX C**

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

This Agreement is dated     day of                     20\_\_ (the "**Effective Date**")

**BETWEEN**

- (1) **INSERT LANDOWNER/DEVELOPER NAME HERE** (the "**Disclosing Party**"); and
- (2) [     ] having its registered offices at [     ] (the "**Receiving Party**");
- (each a "**Party**" and together "**Parties**").

**BACKGROUND**

- A. The Disclosing Party has agreed to share certain Confidential Information to Receiving Party for the Purpose strictly on and subject to the terms of this Agreement.
- B. The Confidential Information is of a confidential, commercially valuable and highly sensitive nature. The unauthorised disclosure of the Confidential Information will or might materially prejudice, amongst other matters, the business, goodwill and reputation of the Disclosing Party.
- C. Any Confidential Information which has been disclosed or which will be disclosed by the Disclosing Party to the Receiving Party is disclosed strictly on the basis of the terms and conditions hereinafterset out.
- D. The Receiving Party is strictly prohibited from releasing any of the Confidential Information to any other party save as may be permitted in accordance with the provisions of this Agreement.

THE PARTIES AGREE as follows:

**1 DEFINITIONS**

1.1 In this Agreement, unless otherwise stated:

**"Agreement"** means this Non-Disclosure and Confidentiality Agreement.

**"Confidential Information"** means this Agreement and all information of any nature whatsoever relating specifically to professional fees or rates charged by Service or Works Providers or examples of experience or expertise outlined in any fee proposal document issued by Service or Works Providers only.

**"Council"** means Dun Laoghaire Rathdown County Council.

**"Development"** means the development of the site currently owned by the Disclosing Party in Cherrywood, Dublin 18.

**"Receiving Party"** means the Party receiving Confidential Information.

**"Purpose"** means the review by the Receiving Party of the Confidential Information for the purpose of:

- (a) assessing the eligibility of common infrastructure design fees against Council defined qualifying expenditure criteria;
- (b) analysing the fees, original budget, invoiced to date, paid to date, balance of budget etc. against current scope of work;
- (c) reviewing the consultants scope of works against the fee spent for that scope;
- (d) reviewing hourly/daily rates charged by the consultants;
- (e) inputting the confidential information into the Receiving Parties' database / register and manipulating / interrogating the data;
- (f) reviewing the total fee expenditure against the available budget;
- (g) assessing all fees spent from a value for money perspective;
- (h) discussing all aspects of the review of the confidential information with Council officers;
- (i) preparing reports to the Council relating to the Development including the results of the Receiving parties review of the confidential information;
- (j) copying and storing the confidential information securely onto the Receiving Parties IT network.

**"Service or Works Providers"** means all parties who have supplied works or services relating to the Development, as listed in Schedule 1.

## **2 NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

- 2.1 In consideration of the provision of the Confidential Information, the Receiving Party hereby agrees, acknowledges, covenants and undertakes to the Disclosing Party:
- 2.1.1 to use the Confidential Information strictly and solely for the Purpose and for no other reason, matter or purpose of any nature whatsoever;
  - 2.1.2 to treat and safeguard as private and confidential all Confidential Information received;
  - 2.1.3 not at any time to disclose, or otherwise disseminate the Confidential Information (including copies of the appointments, fee proposals and invoices for any Service or Works Providers) to any person except to the Receiving Party's officers and employees for the Purpose and to Council officers who may require disclosure of the Confidential Information for the purpose of reviewing and considering the report prepared by the Receiving Party in accordance with the Purpose. The Receiving Party shall procure that all such persons who have access to any Confidential Information and copies of the appointments, fee proposals and invoices for any Service or Works Providers shall be made aware of this Agreement.
  - 2.1.4 to keep the Confidential Information secure and in strict confidence with the same care as the Receiving Party uses or would use to protect its own confidential information and in any event with all due care;
  - 2.1.5 not to disclose details of the parties or any commercially sensitive information relating to the Service or Works Providers' commercial arrangements for the Development, including the following:
    - reference to rates or specific costs proposed or charged by the Service or

Works Providers for any works or services provided relating to the Development although it is permitted to be included in any report or written advice to the Council subject to this detail being linked to the discipline only and the information is not included in a manner which identifies any particular Service or Works Providers; or

- examples of experience or expertise outlined in any fee proposal document issued by Service or Works Providers;

2.1.6 prior to issuing any report or written advice to the Council relating to the Purpose, to invite the Disclosing Party to the Receiving Parties offices to review the section of the report which contains the Confidential Information, to satisfy the Disclosing Party that the terms of this Agreement will not be breached. The Receiving Party shall take any reasonable representations made by the Disclosing Party into consideration before issuing the report to the Council.

2.2 Any disclosures of Confidential Information by the Receiving Party to the Council and/or their professional advisors prior to the date of this Agreement shall not be deemed to a breach of the Receiving Party's obligations under this Agreement.

2.3 If it is discovered that any unauthorised disclosure of the Confidential Information has been made by the Receiving Party, the Receiving Party will immediately advise the Disclosing Party in writing of the full extent and nature of such unauthorised disclosure and when and to whom same was made and will take any and all such steps as the Disclosing Party may require to remedy the situation.

2.4 The Receiving Party shall request a letter from the Council addressed to the Disclosing Party which confirms that in the event of becoming legally compelled by any act of Government or other competent or regulatory authority or law to disclose any of the Confidential Information, the Council shall, to the extent legally permitted, give notice of such fact to the Disclosing Party prior to any decision being made in relation to any disclosure so that the Disclosing Party may make submissions or seek an appropriate remedy to prevent such disclosure. In any event, the Council and its authorised persons shall provide only the minimum Confidential Information required to satisfy any such disclosure obligation.

### **3 TERM AND TERMINATION**

3.1 This Agreement is effective as and from the Effective Date and will remain in force from the Effective Date unless and to the extent that it is superseded by the provisions of a further written agreement concluded between the Parties in relation to the Confidential Information the subject matter of this Agreement or is terminated by the Disclosing Party by notice in writing with immediate effect to the Receiving Party.

### **4 NO REPRESENTATIONS OR WARRANTIES**

4.1 No representation or warranty whatever is made or given as to the Confidential Information including, without limitation, any representation or warranty as to the accuracy, reliability or the completeness of the Confidential Information or as to the reasonableness of any assumptions on which the same is based and the Receiving Party agrees that the Disclosing Party and its officers, employees, management, consultants, representatives, contractors, sub-contractors, advisers and agents shall have no direct or indirect liability whatever to the Receiving Party resulting from the use or possession of the Confidential



Information.

## **5 INDEMNITY**

- 5.1 The Receiving Party hereby agrees to fully indemnify and keep fully indemnified the Disclosing Party against any reasonable loss or any damages, actions, proceedings, costs, claims, expenses or demands incurred by the Disclosing Party arising out of any actual breach by the Receiving Party or any of its officers or employees of any of the terms and/or provisions of this Agreement.

## **6 CHOICE OF LAW AND JURISDICTION**

- 6.1 All disputes between the Parties arising out of or in any way relating to this Agreement or any other disputes between the Parties in any way connected with the subject matter of this Agreement shall be governed by and construed in accordance with the laws of Ireland.
- 6.2 Each of the Parties hereby submits to the exclusive jurisdiction of the Irish courts for the purpose of any proceedings arising out of or in any way relating to this Agreement or any other proceedings in any way connected with the subject matter of this Agreement.

## **7 ENTIRE AGREEMENT**

- 7.1 This Agreement represents the entire of the understanding of the Parties concerning the subject matter hereof and, save as provided herein, overrides and supersedes all prior promises, representations, understandings, arrangements, agreements, concerning the same which are hereby revoked by mutual consent of the Parties. The Receiving Party acknowledges and agrees that in entering into this Agreement, it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not). Nothing in this Clause 7. shall restrict or limit and liability for fraud or fraudulent misrepresentation.

## **8 MISCELLANEOUS**

- 8.1 The Disclosing Party may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and/or obligations under this Agreement.
- 8.2 The Receiving Party may not at any time assign, transfer, or deal in any other manner with any
- or all of its rights and/or obligations under this Agreement without the prior written consent of the Disclosing Party (which shall not be unreasonably withheld). Upon receipt of the written consent to such an assignment by the Disclosing Party, the Receiving Party shall procure that the assignee agrees to observe and be bound by all the obligations and duties under this Disclosure Agreement.
- 8.3 This Agreement shall benefit Parties, their successors and assigns and is binding upon the successors and assigns of the Parties.
- 8.4 The Receiving Party acknowledges that:

- (i) the Service or Works Providers have agreed that the Disclosing Party will enter into this Agreement and for the Confidential Information to be disclosed to the Receiving Party pursuant to this Agreement and subject to the restrictions contained in this Agreement.
- (ii) In agreeing that the Disclosing Party may disclose the Confidential Information to the Receiving Party, the Service or Works Providers have relied on the terms herein and the restrictions which the Receiving Party has agreed to herein; and
- (iii) in the event that the Receiving Party is found to have actually breached the terms of this Agreement, the Service or Works Providers shall be entitled to rely on the terms of this Agreement in any respects as if the Service or Works Providers were a party to this Agreement and that all obligations hereunder are owed by the Receiving Party directly to any and each of the Service or Works Providers.

IN WITNESS of which the Parties have executed this Agreement on the date shown at the beginning of this Agreement.

**EXECUTED and DELIVERED as a DEED** for and on behalf of

[Insert Landowner/Developer Name here]:

**acting solely in respect of ...**

**Director**

**in the presence of:**

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

\_\_\_\_\_

Witness Occupation: \_\_\_\_\_

GIVEN under the common seal of the  
**Receiving Party** and delivered as a deed

---

Witness signature  
Print name

Print address

Witness occupation

---

Signature of Director  
Print name

---

Witness signature  
Print name

Print address

Witness occupation

---

Signature of Director/Secretary  
Print name

**Schedule 1 (to NDA)**

**List of Service or Works Providers**

**PM Protocols**  
**Appendix D**  
**Cherrywood Procurement Strategy – Full Tender**

Task	DLRCC Milestone	Activity	DLRCC Turnaround Timeline
A		Landowner/Developer identifies list of main contractors & prepare pre-qual package.	
B	1	Contractor list and pre-qual pack issued to DLRCC Cost Manager.	For Info only
C		Landowner/Developer issues pre-qual package to selected contractors.	
D		Landowner/Developer reviews pre-qual response and prepare summary report.	
E	2	Summary report issued to DLRCC Cost Manager.	For Info only
F		Landowners/Developers finalises list of contractors for tendering works	
G	3	Final contractor tender list issued to DLRCC Cost Manager.	For Info only
H		Tender pack finalised and issued to main contractors for pricing.	
I		Landowner/Developer finalises pre-tender estimate and identifies the anticipated qualifying costs.	
J	4	Pre-tender estimate issued to DLRCC Cost Manager.	For Info only
K		Landowner/Developer reviews returned tenders ( <u>Option for DLRCC representative from Cost Management team to be in attendance at tender review</u> ).	
L		Landowner/Developer prepares summary report with preferred contractor recommendation and update on anticipated qualifying costs.	
M	5	Tender summary report issued to DLRCC Cost Manager with a breakdown of anticipated qualifying costs. DLRCC Cost Manager to prepare their report of qualifying costs. <b><u>(This review is not a pre-requisite for appointment of a contractor)</u></b>	4 weeks Provisional Assessment will be based on all necessary information presented.
N		Landowner/Developer appoints main	

		contractor	
O		Landowner/Developer appoints independent engineer to monitor works on site on behalf of DLRCC.	
P	6	DLRCC / Landowner/Developer review of costs, variations and claims on anticipated qualifying costs.	As provided for in the PM Protocols, at Sectional Completion Stages and Final Account Stage.
Q		Landowner/Developer completes final account negotiations and close out.	
R	7	DLRCC Cost Manager report on QE.	6 weeks

**Appendix E**  
**Cherrywood – Procurement Strategy – Negotiated Tender**

Task	DLRCC Milestone	Activity	DLRCC Turnaround Timeline
A		Landowner/Developer identifies preferred main contractor for tender negotiation.	
B	1	Pre-qual pack issued to DLRCC Cost Manager via DLR Portal which will include an overview on the Landowner's/Developer's reason for proceeding with the negotiation process.	For Info only
C		Landowner/Developer issues pre-qual package to selected contractors.	
D		Landowner reviews pre-qual response and prepare summary report.	
E	2	Summary report issued to DLRCC Cost Manager.	For Info only
F		Tender pack finalised and issued to main contractor for pricing.	
G		Landowner/Developer finalises pre-tender estimate and identifies the anticipated qualifying costs.	
H	3	Pre-tender estimate issued to DLRCC Cost Manager.	For Info only
I		Landowner/Developer reviews returned tender <b><u>Option for DLRCC representative from Cost Management Team to be in attendance at tender review.</u></b>	
J		Landowner/Developer prepares summary report and update on anticipated qualifying costs.	
K	4	Tender summary report issued to DLRCC Cost Manager with a breakdown of anticipated qualifying costs. DLRCC Cost Manager to prepare their report of qualifying costs. <b><u>(This review is not a pre-requisite for appointment of a contractor)</u></b>	4 weeks Provisional Assessment will be based on all necessary information presented.
L		Landowner/Developer appoints main contractor	

M		Landowner/Developer appoints independent engineer to monitor works on site on behalf of DLRCC.	
N	5	DLRCC / Landowner/Developer review of costs, variations and claims on anticipated qualifying costs.	As provided for in the PM Protocols at Sectional Completion Stages and Final Account Stage.
O		Landowner completes final account negotiations and close out.	
P	6	DLRCC Cost Manager report on QE.	6 weeks



# PM PROTOCOLS

## APPENDIX F – Sample Charge Order Request

<b>1</b>	<b>CHANGE REQUEST</b>				
To be completed by the Initiator of the change with original issued to Architect / Design Team / Client	<u>Description:</u>				
	<u>Reason for Change:</u>				
	<u>Area(s) Affected:</u>				
	<u>Reference Documentation:</u>				
	<u>Issued By (name &amp; organisation):</u>		<u>Issue Date</u>		<u>Response Date</u>
<u>Distribution</u>					
Client	PQS	Architect	<input type="checkbox"/>	Structural Eng.	Services Eng.
PSDP	Landscape Arch	Int. Architect		Civil Eng.	Fire Consultant
Project Manager		Contracto		Other ( )	Façade Consultant BCAR Consultant
<b>IMPACT</b>					
<b>2</b>	<b>DESIGN IMPACT</b>				
To be completed by Initiator with original issued to PQS and copies to Design Team	<u>Description:</u>				
	<u>Attached Documentation:</u>				
	<u>Issued By (name &amp; organisation):</u>		<u>Issue Date</u>		<u>Documentation Availability Date (If Known)</u>
<b>3</b>	<b>COST IMPLICATIONS</b>				
To be completed by PQS with original issued to PM and copies to Design Team	<u>Commentary on Cost Implications</u>				
	<u>Construction Costs</u>		<u>Non-Construction Costs</u>		<u>Cost Implication</u>
	€ (Estimated)	€ (Actual)	€ Total	€ (Estimated)	€ (Actual)
			0.00		
	Overall Total Cost €				
0.00					
<u>Attached Documentation:</u>					
<u>Issued By (name &amp; organisation):</u>		<u>Issue Date</u>		<u>Expiry Date of Cost Implication</u>	
<b>4</b>	<b>PROGRAMME IMPLICATIONS</b>				
To be completed by PM with original issued to Client and copies to Design Team	<u>Commentary on Programme Implications</u>				
	<u>Design Programme Impact</u>		<u>Contract Programme</u>		<u>Programme Impact</u>
	Weeks (Estimated)	Weeks (Actual)	Total Weeks	€ (Estimated)	€ (Actual)
			0		
	Overall Programme Impact (Weeks)				
0					
<u>Issued By (name &amp; organisation):</u>		<u>Issue Date</u>		<u>Expiry Date of Programme Implication</u>	
<b>5</b>	<b>CLIENT DECISION</b>				
To be completed by Client with original returned to PM for Design Team distribution	We would hereby confirm on behalf of---, that:				
	<p>The above Design, Cost and Programme Proposal is <b>Acceptable</b> and the Design Team is to proceed with this change to the scheme design</p> <p>or</p> <p>The Client does not wish to proceed with the proposed change order request and no further action is required.</p>				
	<u>Issued By (name &amp; organisation):</u>		<u>Authorised Signature</u>		<u>Issue Date</u>
<u>Distribution</u>					
Project Manager	<input type="checkbox"/>	-[For Design Team Distribution]			

**APPENDIX G – Opinion Of Compliance Pro Forma**

**OPINION ON COMPLIANCE WITH PLANNING PERMISSION & BUILDING REGULATIONS**

I, .....CERTIFY and OPINE  
as follows:-

1. I am a ..... having qualified as such at .....  
in the year ..... and I am a member of the.....
2. I am a partner in (or a member of) the above named firm of .....  
in independent private practice.
3. I am the ...../my said firm are the.....  
retained by.....  
("the Landowner") to design and make periodic inspections during the course of construction  
of the common infrastructure described in the Planning Permission referenced in paragraph  
5 below situate at Cherrywood, Loughlinstown, Dublin 18 in the County of Dublin such  
common infrastructure being hereinafter referred  
to as "the CI Works".
4. The plans and other particulars on foot of which there was granted or issued the Permission  
referenced in paragraph 5 below were prepared by me/by my said firm.
5. The Grant of Permission – Decision Order No.....  
dated the .....day of ....., 20.....  
Planning Reference No.....("the Planning Permission")  
authorised the development/construction of the CI Works.
6. I made periodic inspections of the CI Works during the construction thereof and in my opinion  
the construction of the same complies with the conditions of the Planning Permission and  
relevant building regulations.
7. The Planning Permission is the only planning permission relating to the CI Works.
9. In the event that the CI Works have not been built and/or laid out exactly in accordance with  
the Planning Permission, any disparity is unlikely to affect the planning and development of  
the area as envisaged by the Planning Authority and expressed through such permission.
10. TAKE NOTE that this Certificate is issued solely with a view to providing evidence for title  
purposes of the compliance of the Relevant CI Works with the requirements of planning

legislation AND Building regulations. Except insofar as it relates to compliance with the said requirements it is not a report or survey on the physical condition or on the structure of the Relevant CI Works NOR does it warrant, represent or take into account any of the following matters:-

- (a) the accuracy of dimensions in general save where arising out of the conditions of the Permission aforesaid;
- (b) the following conditions, compliance with which cannot be established:

Planning Reference No:..... Conditions.....

Planning Reference No:.....Conditions.....;

- (c) matters in respect of private rights or obligations;
- (d) development of any CI Works which may take place after the date of this Certificate.

Dated the ..... day of ..... , 20 .....

Signed\_\_\_\_\_

[The original of this certificate should be furnished on the certifier's headed notepaper]