

Statement of Material Contravention with Dublin City Development Plan 2016-2022

In respect of

**Lands at Docklands Innovation Park,
128-130 East Wall Road, Dublin 3.**

Prepared by

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On behalf of

EWR Innovation Park Ltd.

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1.0 INTRODUCTION

- 1.1. This report has been prepared to set out the justification on building height for the proposed development at Docklands Innovation Park, 128-130 East Wall Road, Dublin 3. The proposed development might not be considered to materially contravene the Dublin City Development Plan 2016-2022 in terms of building height having regard to the provisions of the Urban Development and Building Height Guidelines, and in particular, to SPPR 3(A) and considered in the context of the criteria under section 3.2 of the Guidelines, which were issued by the Minister under Section 28 of the Planning and Development Act 2000, as amended. However, it is considered appropriate that a justification by reference to SPPR 3(A) of what might be regarded by the Board as a material contravention of the development plan should be addressed in any decision of the Board to grant permission for the proposed development, in the event that the Board so decides.
- 1.2. A justification has also been provided in relation to the level of car parking provision will although it is considered that the proposed development is not in material contravention of the development plan in this respect.
- 1.3. The Development Plan sets out a maximum building height of 24m within the subject location. The proposed development ranges in height from 4 no. storeys to 10 no. storeys (c.32.5 m) which is in excess of the development plan height limits.
- 1.4. Section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act 2016 provides as follows:

(3) (a) When making its decision in relation to an application under this section, the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000.

*(b) Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan of a planning authority, **then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.***

(c) In this subsection "specific planning policy requirements" means such policy requirements identified in guidelines issued by the Minister to support the consistent application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development. (emphasis added)

- 1.5. Section 1.14 of the Guidelines clarifies this position further stating:

"Accordingly, where SPPRs are stated in this document, they take precedence over any conflicting policy and objectives of development plans, local area plans and strategic development zone planning schemes".

- 1.6. Section 9(6)(c) of the Planning and Development (Housing) and Residential Tenancies Act 2016 provides:

*(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) **where it considers that, if section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development.** (Emphasis added)*

1.7. Section 37(2)(b) of the Planning and Development Act 2000 provides:

“2) (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan”.

1.8. The Urban Development and Building Height Guidelines were adopted on 7th December 2018 under Section 28 of the Planning and Development Act 2000. The Guidelines set out 4 no. Specific Planning Policy Requirements (SPPR) objectives for the assessment of building height.

1.9. Section 28 (1) of the Planning and Development Act states that:

“The Minister may, at any time, issue guidelines to planning authorities regarding any of their functions under this Act and planning authorities shall have regard to those guidelines in the performance of their functions”.

In this case, the Section 28 Guidelines specifically promote the increase in building heights in appropriate urban locations and as such the policies set out in the Guidelines should be applied to the subject site area in this regard. Therefore, the proposed development at a maximum height of 32.5m is considered to be acceptable building height in accordance with the Urban Development and Building Height Guidelines

1.10. It is requested that An Bord Pleanála have regard to the following justification for what might be considered to be a material contravention of the development plan in terms of height on the basis that the policies and objectives stated in the Section 28 Government Guidelines, particularly *“Urban development and Building Height Guidelines 2018”* and *“National Planning Framework 2040”* enable increased building height and residential densities on sites adjacent to quality public transport routes and within existing urban areas. Furthermore, SPPR 3A facilitates such consideration in the light of the criteria set out under Section 3.2 of the Urban Development and Building Height Guidelines.

2.0 JUSTIFICATION – HEIGHT

- 2.1. The proposed height of the development ranged from 4 no. storeys to 10 no. storeys. The 4 no. perimeter blocks to the north, south and west are 7 no. storeys (23.5m) with an 8th storey pop up fronting East Wall Road. The block to the east provides for 4 no. storeys with a 5 no. storey pop up with the central block providing for 9 no. storeys with a 10th storey pop up.

Block 1	4/5 storeys (16.9m)
Block 2	9/10 storeys (32.6m)
Block 3	7 storeys (22.9m)
Block 4	7 storeys (22.9m)
Block 5	7 / 8storeys (26.3m)
Block 6	4/7 storeys (23.5m)
Existing Unit 11	2 storeys (7.3m)
Existing Unit 15/16	3 storeys (8.9m)

- 2.2. The location of the subject site within the City Centre and its proximity to high quality public transport services provides for an appropriate location for increased heights and densities in excess of the development plan standards. Dublin City Council Height Strategy sets out a maximum building height of 24m for residential development in the inner city. Blocks 3,4 and 6 are 7 no. storeys with Block 6 stepping down to 4 no. storeys on the Merchants Road boundary. Block 5 is 7 no. storeys with an 8th storey pop up / set back level fronting East Wall Road and Block 2 is 9 no. storeys with a 10 no. storey pop up within the centre of the site. Block 1 is 4 no. storeys with a 5 no. storey pop up fronting Merchants Road.
- 2.3. The proposed height is in excess of the development plan standard in part, however the majority of the Blocks at 7 no. storeys (23.5m) are within the development plan standards and are considered acceptable. In this regard it is considered that the increase in height in part of the site is considered acceptable and an appropriate response to the surrounding developments in the area.
- 2.4. The majority of the buildings on the site at 7 no. storeys, 23.5m in height are considered acceptable under the current development plan height standards for inner city locations at 24m. The proposed building height of 4 no. storeys fronting the boundary with the residential dwellings along Merchants Road are also below the development plan height limits (24m) and are therefore considered to be acceptable. The transition in height from the existing 2 no. storeys along Merchants Road to 4 no. storeys proposed is an appropriate context of the permissible heights in the area and the proposed heights of up to 10 no. storeys within the site. The proposed transition in height provides for an appropriate urban design response to the existing 2 no. storeys dwellings and provides for a similar scale of development along the existing Merchants Road.
- 2.5. The proposed part increase in height to 9 / 10 no. storeys (32.5m) towards the centre of the site has been carefully considered in terms of an appropriate response to the surrounding context and existing building heights in the area. As such it is considered that the heights proposed as part of this application are consistent with the policies and objectives of Building Height Guidelines and, in particular with the relevant criteria under Section 3.2 of the guidelines, which are considered below.

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- 2.6. The Guidelines recognise the importance of increasing building height and compact urban development in existing urban areas and promote increased densities and heights. Section 1.4 of the guidelines state:

“However, in recent years, local authorities, through the statutory development and local area plan process, have begun to set generic maximum height limits across their functional area. Frequently, such limits have resulted from local level concerns, like maintaining the character of an existing built up area, for example. However, such limits, if inflexibly or unreasonably applied can undermine wider national policy objectives to provide for more compact forms of urban development as outlined in the National Planning Framework and instead continue an unsustainable pattern of development whereby many of our cities and towns continue to grow outwards rather than consolidating and strengthening the existing built up area. Such blanket limitations can also hinder innovation in urban design and architecture leading to poor planning outcomes”.

- 2.7. Section 1.20 and 1.21 of the Guidelines also acknowledge the importance of increased height and densities stating:

“A key objective of the NPF is therefore to see that greatly increased levels of residential development in our urban areas and significant increases in the building heights and overall density of development is not only facilitated but actively sought out and brought forward by our planning process and particularly so at local authority and An Bord Pleanála levels.

Increasing prevailing building heights therefore has a critical role to play in addressing the delivery of more compact growth in our urban area, particularly our cities and large towns through enhancing both the scale and density of development and our planning process must actively address how this objective will be secured”.

- 2.8. SPPR 1 of the Urban Development and Building Height Guidelines (which is directed to statutory plans, as distinct from development management functions) states:

“In accordance with Government policy to support increased building height and density in locations with good public transport accessibility, particularly town/ city cores, planning authorities shall explicitly identify, through their statutory plans, areas where increased building height will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building height”.

- 2.9. It is therefore considered that it is the intention of the Guidelines as a whole to promote increased building heights and densities in appropriate urban locations such as the subject site which is a city centre area well served by public transport.

- 2.10. The Guidelines also note that in assessing applications for increased heights the planning authority or the Board shall be a presumption in favour of buildings of increased height in urban locations with good public transport accessibility. Section 3.1 of the Guidelines states:

“In relation to the assessment of individual planning applications and appeals, it is Government policy that building heights must be generally increased in appropriate urban locations. There is therefore a presumption in favour of buildings of increased height in our town / city cores and in other urban locations with good public transport accessibility”.

2.11. As such in applying the content of the guidelines to the subject site is wholly appropriate on the basis of increased height in urban areas well served by quality public transport.

2.12. SPPR 2 states:

“In driving general increases in building heights, planning authorities shall also ensure appropriate mixtures of uses, such as housing and commercial or employment development, are provided for in statutory plan policy. Mechanisms such as block delivery sequencing in statutory plans² could be utilised to link the provision of new office, commercial, appropriate retail provision and residential accommodation, thereby enabling urban redevelopment to proceed in a way that comprehensively meets contemporary economic and social needs, such as for housing, offices, social and community infrastructure, including leisure facilities”.

2.13. The proposed development seeks to provide for a mix of uses on the site including residential and commercial development. The proposal is therefore considered to be consistent with SPPR2.

2.14. The Guidelines set out a number of criteria for the assessment of increased building heights, at the scale of the relevant city / town, at the scale of district / neighbourhood / street and at the scale of site/ building. Subject to meeting with the relevant criteria under Section 3.2, the Guidelines state that the planning authority shall apply SPPR 3(A).

“Where the relevant the relevant planning authority or An Bord Pleanála considered that such criteria are appropriately incorporated into development proposals, the relevant authority shall apply the following Strategic Planning Policy Requirement under Section 28 (1C) of the Planning and Development Act 2000 (as amended)”.

2.15. In addition, Section 1.14 of the Guidelines clarifies this position further stating:

“Accordingly, where SPPRs are stated in this document, they take precedence over any conflicting policy and objectives of development plans, local area plans and strategic development zone planning schemes”.

2.16. As referred to above, Section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act 2016 provides

(b) Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.

2.17. SPPR3 (A) provides:

“It is a specific planning policy requirement that where:

(A). An applicant for planning permission sets out how a development proposal complies with the criteria above; and

2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;

Then the planning authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise”.

- 2.18. In accordance with Part A of SPPR3, where a development complies with the relevant criteria and the planning authority agrees, then permission can be granted for the development notwithstanding conflicting development plan and local area plan policies.

Consideration of Criteria under Section 3.2 of the Building Height Guidelines

- 2.19. In response to SPPR3(A) it is considered that the proposed height of the development ranging from 4 no. storeys (13.4m) to 10 no. storeys (32.5m) on the subject site with the majority of the blocks being 7 no. storeys (23.5m) in height is considered acceptable having regard to the criteria as set out below.
- 2.20. The guidelines set out the criteria for developments at the scale of the relevant city / town (underlined below) as follows:

The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.

- 2.21. The subject site is located within the Dublin Docklands area well served by public transport. The site is within walking distance to the Point Luas stop c. 1km (10 minute walk) and to Clontarf Dart Station c. 1.4km (15 minute walk) and is situated along a Dublin Bus corridor. The subject site is therefore highly accessible to quality public transport. The site is also in close proximity to the Port Tunnel with direct access to the M50 and Airport.

Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/ enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.

- 2.22. The proposed development site does not adjoin any architecturally sensitive areas. A number of two storey residential units are located to the east of the site, with buildings of greater height to the south and west of the development. The subject site is therefore located in an existing urban area set within a range of different character areas. The proposed design and building height have addressed the surrounding developments in this regard.
- 2.23. A number of photomontages have been prepared by 3DDB from various viewpoints throughout the surrounding area. These viewpoints demonstrate the impact of the development within the setting and character of the area. The images clearly demonstrate that the proposed height, scale and massing of the development is in keeping with the emerging trends in the area and is considered appropriate in this regard.
- 2.24. The Development Plan 2016-2022 sets out a height strategy for the city. The permissible height limits are designated into 3 no. categories, inner city, outer city and rail hubs. Heights of up to 28m for commercial and 24m for residential development are permissible under the city plan in inner city area, heights up to 16m are permissible in the outer city area and height of up to 24m are permissible in rail hubs (which are

defined as being within 500m of an existing and proposed Luas, Mainline, Dart, Dart underground and Metro stations).

Building Height in Dublin:

Category	Area	Height (m)
Low-rise (relates to the prevailing local height and context)	Inner City	Up to 28 (commercial) <hr/> Up to 24m (residential)
	Rail hubs (See 3)	Up to 24m (commercial and residential)
	Outer City	Up to 16 m (commercial and residential)
Mid-rise	Digital Hub	Up to 50 m
	St Teresa's Gardens	
	North Fringe	
	Clonshaugh Industrial Estate	
	Ballymun	
	Pelletstown	
	Park West/Cherry Orchard	
	Naas Road	
	Oscar Traynor Road	
	National Concert Hall Quarter	
	High-rise	
Connolly		
Heuston		
George's Quay		

Figure 1: Extract from Dublin City Council Development Plan Height Strategy

2.25. Map K of the City Plan sets out the inner city boundary line. The subject site is located within the Inner City zone. Height of up to 24m are therefore permissible having regard to the City Development Plan.

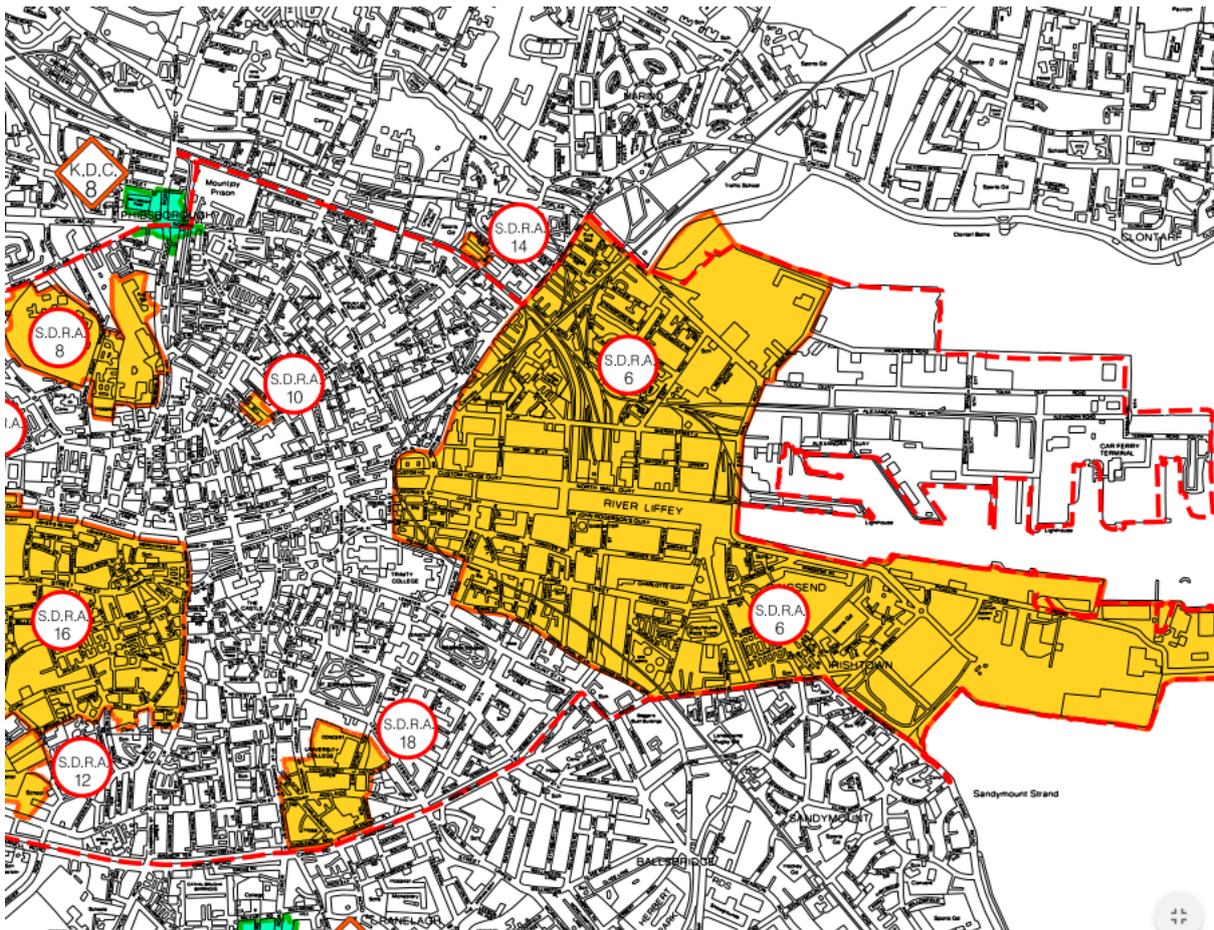


Figure 2: Extract from Dublin City Council Map K

- 2.26. The proposed height of the development reaches its highest point in the centre of the site as to avoid any undue impact on the surrounding properties. The proposed maximum height of 10 no. storeys is also concealed by the perimeter 4-7 no. storey blocks when viewed from the surrounding streets. The majority of the buildings on the site reach a maximum height of 7 no. storeys (23.5m) which is in accordance with the current development plan standards (24m) for inner city locations as identified in Map K of the Dublin City Development Plan 2016-2022. The 10 no. storey element relates only to a single block at penthouse located in the centre of the site. It is therefore considered that the average building height at 7 no. storeys is acceptable.
- 2.27. The design of the development and the variety in height proposed along each boundary has addressed the context of the existing development adjoining the site. It is considered that the proposed transition in height along each boundary is in keeping with the surrounding context of development in the area.
- 2.28. A Landscape and Visual Impact Assessment has been prepared by Mitchells and Associates and is submitted as part of this application. The LVIA states:

“It is clear that the insertion of any proposed development into this existing open expanse will alter the landscape context of the site and the areas around it. However, given the subject site’s current near-derelict conditions and the well -considered design of the proposed development, the proposal represents a significant positive impact on the existing local environment. The proposed community facilities within the scheme, it’s open spaces, play areas and the public permeability designed into it offer significant benefits for the broader area as well as for the proposed new development itself”.

On larger urban redevelopment sites, proposed developments should make a positive contribution to place-making, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.

- 2.29. The subject site is c. 1.45 hectares which would be considered a larger site within the city centre. In this regard, the proposed development will provide for a high quality architectural development that will incorporate into the existing, and established streetscape of the area. The proposed development will provide for a new civic space within the development that will provide for passive recreation such as sitting / dining area, landscaped spaces, and a children's play space. This civic space will provide for a destination point within the scheme providing for the entrance to the apartment building concierge, and fronts onto the commercial uses such as proposed office, café and retail spaces. The quality of this public space therefore provides for a new amenity area within the existing community.
- 2.30. The proposed development will also provide a number of linkages and new routes through the site that will increase the permeability and accessibility of the development. It is proposed to provide 2 no. access points from East Wall Road and 2 no. from Merchants Road. There is also the opportunity to connect to the site to the south if re-developed in the future.
- 2.31. In terms of "using massing and height to achieve the required densities", the proposed development has provided for a series of 6 no. blocks on the site which vary in scale, height and massing in response to the immediate context surrounding the site. The massing and height of the development is considered in response to the existing properties immediately adjoining the site, and therefore has created a series of different scales and densities within the development in keeping with the existing character of the area. In this regard, considering the proposed response to the existing residential dwellings on Merchants Road, the proposed development at a height of 4 no. storeys achieves a lower density than the general height of 7 no. storeys throughout the site. The proposed 10 no. storey element proposed therefore allows greater densities to be achieved on the site, while at the same time protecting the residential amenity of the surrounding area.
- 2.32. The guidelines set out the relevant criteria for district/ neighbourhood / street context, as defined below, as follows:

The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.

- 2.33. The proposed development has been considered in the context of the surrounding building and the overall vision for the Docklands Area. The proposed development is of a high architectural quality and sits comfortably within the existing streetscape and urban design context.
- 2.34. The variation in the height and the architectural quality of the development proposed makes a contribution to the overall built environment in the area and creates an interesting urban streetscape at this key urban location. The proposed development in its local context has had regard to the immediate context of the buildings surrounding the site in terms of setting an appropriate scale and mass of the building. In the context of the surrounding properties the proposed development provides for an appropriate transition in height and scale relative to the adjacent buildings.

The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered;

- 2.35. The proposed development provides for a variety of building heights and forms within the scheme. The proposed use of materials and façade modulation provides for variety and visual interest to the scheme. The proposed development is divided into a number of separate buildings which also creates an interesting site layout and ground floor spaces within the development. It is therefore considered that the proposed development is not monolithic and avoids long interrupted walls of buildings.

The proposal positively contributes to the mix of uses and / or building / dwelling typologies in the neighbourhood:

- 2.36. The proposed development provides for a mix of uses within the site including commercial, light industrial units, retail, and café spaces. The non residential uses amount to 12.1% of the overall floor area and provide for a range of different services and facilities to the area. The mix of uses provide both employment opportunities and services to the wider community in the retail and café spaces. The proposed mix is therefore considered acceptable for the subject development.
- 2.37. The guidelines also set out the following criteria (underlined below) for developments at the scale of the site / building:

The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.

- 2.38. A daylight/ sunlight assessment has been prepared by IES and is submitted with this application. The report concludes that the proposed development will not result in any significant impact on the surrounding properties or within the civic / communal spaces within the development in line with the BRE Guidelines.
- 2.39. The proposed development has been modulated having regard to the impact on the surrounding properties. In this regard, the height of the development increased towards the centre of the site, with the blocks to the south, east and west, reducing in height as to avoid any overbearing impact on the existing properties. The proposed development has also been adequately set back from the boundaries of the site to enable increased separation between the existing and proposed building, reducing the potential for any overbearing impacts.
- 2.40. The proposed design of the apartment units have considered the ventilation of the rooms and spaces. The proposed development provides for 58% dual aspect units which promotes the movement of air flow through the units. In addition, each unit contains a private balcony or terrace which provides ventilation to the apartment units. The apartment have also been designed to provide for large areas of glazing and window openings which provide for increased ventilation within the apartment units.

Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlines in guides like the Building Research Establishment's "Site Layout Planning for Daylight and Sunlight" (2nd edition) or BS 8206-2;2008 – "Lighting for Buildings – Part 2; Code of Practice for Daylighting".

- 2.41. As mentioned above, a daylight / sunlight analysis has been prepared and is submitted with this application. The design, form and layout have been informed by the objective

to achieve the appropriate results for daylight/ sunlight within the development and to minimise the impact on the surrounding properties. The report concludes that:

“All points tested on the National Scheme in East Wall have a Vertical Sky Component (VSC) greater than 27% or not less than 0.8 times their former value (that of the Existing Situation) in line with BRE Guidelines”.

“43% (10 out of 23) of the points tested on the Merchants Road Dwellings have a Vertical Sky Component (VSC) greater than 27% or not less than 0.8 times their former value (that of the existing situation) in line with BRE guidelines”.

“The analysis images show that on 21st March for the proposed scheme amenity area, over half of the proposed amenity spaces (70%) would receive at least 2 hours of sunlight in line with the BRE recommendations”

“93% of the tested rooms of the proposed scheme exceed the Average Daylight Factors (ADF) from the BRE Guidelines. This overall rate within the propose scheme would be greater than 95% if all of the upper floor rooms were included in the results”.

- 2.42. Having regard to the conclusions set out above it is considered that the proposed development is in line with the BRE Guidelines.

Where a proposal may not be able to fully meet all the requirements of the daylight provisions above this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and to an effective urban design and streetscape solution.

- 2.43. In some instances, at ground floor level, certain rooms within the development do not fully meet the recommendations. These units however are due to the ground floor location access to light and ADF is expected to increase at the upper floors. The Daylight / Sunlight report states *“it should be noted that the ‘worst’ case locations have been tested on the lower floors i.e. rooms of the upper floors will generally have unobstructed views and should meet the BRE recommendation”*. This is clearly evident in the results where rooms have not met the BRE Guidelines at the lower floors have achieved the recommended standards at the upper floors.

- 2.44. The reduction in ADF in ground floor units is typically expected on urban site that provide for high density. In addition, due to the site constraints, particularly the right of way and surrounding properties, the layout of the development is restricted to the current arrangement. In this regard a balance must be struck between the overall regeneration of the site and the significant improvements to the overall quality of the area, and the minor reduction in VSC of some of the proposed units at ground floor level.

- 2.45. Specific assessment as set out in the Guidelines also include the following:

Specific Impact assessment of the microclimatic effects such as down draft. Such assessments shall include measures to avoid/ mitigate such microclimatic effects and where appropriate shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.

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- 2.46. The proposed development is not considered a tall building (i.e. in excess of 50m+ high rise category as indicated in the Development Plan height strategy) so as to fall under the category that may give rise to any significant concerns in terms of microclimatic effects. The proposed development also varies in height with only one building reaching 9 – 10 no. storeys. As the proposed is not for a tall building an assessment of microclimatic effects is therefore not considered necessary in this instance.
- 2.47. However, a wind and microclimate report has been carried out to assess the proposed level of comfort within the development in that context. The results indicated that the proposed public real areas are suitable for frequent / occasional sitting. Please see In2 Report submitted with this application for more details.

In development locations in proximity to sensitive bird and / or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight line and / or collision.

- 2.48. An AA screening statement has been carried out and is submitted as part of this location. The AA Screening states that *“The development is not likely to affect amenity use at Natura 2000 sites due to the nature and location of the development relative to the location of the nearest Natura 2000 sites”*.
- 2.49. The AA screening statement concluded that the possibility of any significant impacts on any European Sites, whether arising from the project itself or in combination with other plans and projects, can be excluded beyond a reasonable scientific doubt on the basis of the best scientific knowledge available.
- 2.50. It is not considered that the subject site is located in an area that will impact upon sensitive bird and / or bat locations. There are no ecological corridors or flight pathways for bats or bird on or in the immediate vicinity of the site.
- 2.51. An ecological assessment has been carried out by Brian Keeley. The report identifies that there is no evidence of bats on the site following a site survey. The report concludes the following:

“There is no known usage of the site by bats”

An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.

- 2.52. The proposed development as previously mentioned is not considered a sufficiently tall building so as to impact on the telecommunication channels in the area. An assessment of the potential impact of the development has been carried out by ISM and is submitted with this application. The report concludes that *“ISM has not identified any telecommunication channels currently in use that will be effected by the height and scale of the Docklands Innovation Park development”*.

An assessment that the proposed maintains safe air navigation;

- 2.53. The development plan states that the Irish Aviation Authority should be notified in respect of buildings in excess of 45 m. The proposed development at 32.5m does not exceed this threshold and therefore is not considered to be a requirement.

An urban design statement including, as appropriate, impact on the historic built environment;

- 2.54. An urban design statement has been prepared by MCORM which sets out the proposed development in urban design terms. A series of verified views have also been prepared by 3DDB which indicate the impact of the proposed development on the surrounding built environment and urban landscape. An LVIA has also been prepared by Mitchells Associates, landscape Architects to assess the impact of the development on the wider area. Mitchells Associates concluded that the proposed development in general would have a positive contribution to the landscape and visual impact of the area.

Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment as appropriate.

- 2.55. An AA screening report has been prepared by Openfield, and is submitted with this application. The report provides information to enable the Board to consider whether an AA is required. The report concludes as follows:

“In carrying out this AA screening, mitigation measures have not been taken into account. Standard best practice construction measures which could have the effect of mitigating any effects on any European Sites have similarly not been taken into account.

On the basis of the screening exercise carried out above, it can be concluded that the possibility of any significant impacts on any European Sites, whether arising from the project itself or in combination with other plans and projects, can be excluded beyond a reasonable scientific doubt on the basis of the best scientific knowledge available”.

- 2.56. The proposed development is below any relevant threshold for EIA. An Environmental Report has been submitted as part of the application which provides the necessary information to enable the Board to carry out a screening assessment for the purposes of determining whether an EIA is required. The authors of the Environmental Report (JSA), taking into account all expert reports submitted with the application, conclude that, in their opinion, an EIAR is not required.
- 2.57. The proposed development is not a tall building and it is considered that the proposed development is not likely to give rise to any additional environmental impacts of significance in the context of environmental impact regulations.
- 2.58. Having regard to the assessment of the proposed development under the criteria under Section 3.2 in accordance with SPPR 3(A), a set out above, it is considered that the proposed development is compliant with the relevant criteria and the proposed height of 9- 10 no. storeys is appropriate. . In the circumstances, it is our opinion, taking into account legal opinion in relation to the operation of Section 9(3) of the 2016 Act, as amended, that the provisions of SPPR 3(A) and the criteria referred to therein “*apply instead of the provisions of the development plan*” to the extent that there is a conflict with the provisions of the development plan. In the alternative, if the Board were of the view that notwithstanding the Section (9(3) of the 2016 Act, as amended, that the proposed development was in breach of the building height provisions under the Development Plan, any such material contravention is justified by reference to the Building Height Guidelines and, in particular, SPPR 3(A) thereof, having regard to the provisions of Section 37(2)(b)(iii) in circumstances where:

iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or... (Emphasis added)

2.59. In the event that the Board were to decide to grant permission for the proposed development it is considered that a justification by reference to SPPR 3A of what might otherwise be regarded as a material contravention of the development plan should be addressed in the Board's decision.

3.0 FURTHER JUSTIFICATION BY REFERENCE TO NATIONAL POLICY AND MINISTERIAL GUIDELINES

3.1. The subject lands are located adjacent to 'Public Transport Corridors' in the context of the densities required under the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009). These areas are defined as being located within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station.

3.2. The subject site is located within 900m walking distance of the Point Luas Station and 1.1km from the Dart Station at Clontarf. The proposed development is also located adjacent to a number of bus routes within 500m of the site.

3.3. Restricting the height of the development at such a well-served location under the Dublin City Development Plan 2016-2022 is a direct contravention of National policy which promotes increased densities at well served urban sites, and discourages universal height standards in certain urban areas, such as the subject site. The proposed height should therefore be considered acceptable having regard to the national planning policy guidelines.

3.4. The National Planning Framework 2040 seeks to increase densities and building heights in appropriate urban locations to consolidate urban sprawl and increase the sustainability of public transport networks. The NPF states that:

"In particular, general restriction on building height or universal standards for car parking or garden size may not be applicable in all circumstances in urban areas and should be replaced by performance based criteria appropriate to general locations e.g. city/ town centre, public transport hub, inner suburban, public transport corridor, outer suburban, town, village etc".

3.5. The proposed development is located within the inner city area in close proximity to major employment hubs in the Docklands area and within walking distance to the main retail district of the city centre. The subject site is also well served by public transport with a range of services available within 10-15 minutes walk. It is therefore considered that the subject site is an appropriate location for increased building heights and increased densities to support the objectives of the NPF.

3.6. The NPF targets a significant proportion of future urban development on infill/ brownfield development sites within the built footprint of existing urban areas. Objective 11 of the NPF states:

"In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity

within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth”.

- 3.7. The proposed development provides for a mix of uses including residential, office, retail, café/ restaurant and retaining existing commercial uses on the site. The proposed uses will generate more jobs and activity within the existing area to meet appropriate planning standards and achieving targeted growth.
- 3.8. Objective 13 of the National Planning Framework also states that:
- 3.9. *“In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria enabling alternative solutions that seek to achieve well-designed high quality and safe outcomes in order to achieved targeted growth and that protect the environment”.*
- 3.10. The NPF also states that that *“to avoid urban sprawl and the pressure that it puts on both the environment and infrastructure demands, increased residential densities are required in our urban areas”.* Objective 35 states that it is an objective to *“increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site based regeneration and increased building heights”.*
- 3.11. It is clear that there is a strong emphasis towards increased building heights in appropriate locations within existing urban centres and along public transport corridors. As such it is respectfully submitted that the proposed building height from 4 no. storeys to 10 no. storeys is in line with government guidance and emerging trends for sustainable residential developments.
- 3.12. The role of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas is to ensure the sustainable delivery of new development throughout the country.
- 3.13. The Guidelines provide guidance on the core principles of urban design when creating places of high quality and distinct identity. The Guidelines recommend that planning authorities should promote high quality design in their policy documents and in their development management process. In this regard, the Guidelines are accompanied by a Design Manual discussed below which demonstrates how design principles can be applied in the design and layout of new residential developments, at a variety of scales of development and in various settings.
- 3.14. These Guidelines support a plan-led approach to development as provided for in the Planning and Development Act 2000. Section 2.1 of the Guidelines note that *“the scale, location and nature of major new residential development will be determined by the development plan, including both the settlement strategy and the housing strategy”.*
- 3.15. The Guidelines reinforce the need to adopt a sequential approach to the development of land and note in Section 2.3 and *“the sequential approach as set out in the Departments Development Plan Guidelines (DoEHLG, 2007) specifies that zoning shall extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, encouraging infill opportunities...”.*
- 3.16. Having regard to the above, the subject brownfield site zoned Z14 for strategic development and regeneration of the area within the Dublin City Development Plan

2016-2022. The Development Plan adopted a sequential approach when zoning the land for development therefore the location of the site and the zoning pertaining to the development is appropriate for the subject proposal relating to this pre application consultation request.

- 3.17. Sustainable neighbourhoods require a range of community facilities, and each district/neighbourhood will need to be considered within its own wider locality, as some facilities may be available in the wider area while others will need to be provided locally. The proposed development provides retail / café / restaurant, creche and office accommodation at ground floor level. The proposed development will also retain the existing light industrial / commercial uses on the site in units 11, 15 and 16, providing for a mix of uses and activities in the area.
- 3.18. Section 5.8 of the Guidelines recommends that *'in general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes'*. The proposed density of the site is c.125 no. units per hectare.
- 3.19. The proposed density is in excess of the recommended minimum of 50 units per hectare. The subject site is located on a high quality public transport route and is located within an existing district centre therefore has the capacity to achieve higher densities to complement the surrounding services. The proposed density is therefore considered appropriate due to the location adjacent to high quality public transport provision, the existing urban environment and context of the site.
- 3.20. The guidelines clearly state that increased densities should be provided on site within 500m of a bus stop and within 1km of a proposed light rail stop. The subject development fits within this criterion, therefore is considered appropriate for higher densities.
- 3.21. It is clear that it is national policy to promote increased densities in excess of 50 no. units per hectare on zoned lands adjacent to public transport corridors. To achieve this increased density in a sustainable manner requires increased building heights to make the most of the zoned residential lands. As such, in order to sustainably deliver increased densities for residential development within existing urban areas, within increasing urban sprawl then increased heights must be considered in appropriate locations.
- 3.22. In response to the national policy initiatives, the proposed development provides for an appropriate density at c. 265 no. units per hectare which can only be achieved through the provision of increased building heights up to 10 no. storeys, c. 32.5m.

4.0 JUSTIFICATION - CAR PARKING

- 4.1. The Development Plan sets out a car parking standard for residential and commercial development. It is considered that the proposed level of car parking is not a material contravention of the development plan as there are no minimum standards set out in the development plan. However, a justification for the proposed car parking is in any event set out below. The subject site is located within Zone 2. Maximum car parking standards within the zone state the following:

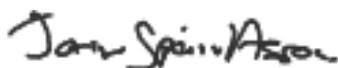
Land Use	Maximum Standard	Proposed
Enterprise and Employment / Offices / General Industry (inc warehousing)	1 per 200 sq.m. GFA	2 no. car parking spaces proposed to serve the existing commercial unit.
Other Retail and Main street, financial offices	1 per 275 sq.m. GFA	No car parking proposed to serve new retail units
Residential	1 per dwelling	195 no. residential car parking spaces proposed
Restaurants, Cafes and Take away	1 per 150 sq.m.	No car parking spaces proposed to serve the café unit

- 4.2. The proposed development provides for 197 no. car parking spaces in total, 195 no. allocated to the residential development which equates to equates to 0.58 car parking spaces per unit, and 2 no. allocated to the existing commercial on the site. There are no car parking spaces proposed to serve the new commercial, or retail on the site.
- 4.3. The apartment guidelines state that *“the quantum of car parking or the requirement for any such provision for apartment developments will vary having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria”*.
- 4.4. The guidelines identify three types of locations in cities and towns having regard to the following broad descriptions of proximity and accessibility considerations:
- Central and / or Accessible Urban Location
 - Intermediate Urban Locations
 - Peripheral and / or Less Accessible Urban Location
- 4.5. It is considered that the subject site is located in a central and / or accessible urban location which is considered to be generally suitable for small to large scale and higher density development, that may wholly comprise of apartments. These sites are identified as being:
- Within walking distance (i.e. up to 15 minutes or 1,000-1,500m) of principle city centres, or significant employment locations, that may include hospitals
- 4.6. The subject site is located 1,500 m. from major employment area such as the Docklands and IFSC which are located within the principle city centre.
- Site within reasonable walking distance (i.e. up to 10 minutes or 800 – 1000m) to / from high capacity urban public transport stops (such as Dart or Luas).
- 4.7. The subject site is located c. 850 m from the Luas stop at the point village and 1,000m from the Docklands rail station.
- Site within easy walking distance (i.e up to 5 minutes or 400-500m) to/ from high frequency (i.e. min 10 minute peak hour frequency) urban bus services.
- 4.8. The subject site is located 350m from a Dublin Bus stop of East Road with a high frequency bus service to the city (route No. 151).

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- 4.9. The apartment guidelines state that for central and accessible urban locations, that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances.
- 4.10. Having regard to the above the subject site is located in an area that is considered central and highly accessible as to merit reduced car parking provision within the development. The availability of high frequency public transport routes in close proximity to the site provide for a high level of accessibility to the city and the surrounding area, thus reducing the need for the use of private vehicles at this location.
- 4.11. As such it is considered that notwithstanding the development plan standards, having regard to the Section 28 Guidelines, for Sustainable Urban Housing; Design standards for New Apartments, the proposed level of car parking at 0.58 per residential unit is considered acceptable in this regard.

5.0 CONCLUSION

- 5.1. It is respectfully submitted that the justification set out within this statement clearly demonstrates that the proposed development should be considered for increased building heights due to the location of the subject site adjacent to quality public transport corridors and the policies and objectives set out within the Section 28 Guidelines in particular the Urban Development and Building Height Guidelines, and the National Planning Framework. In particular, SPPR 3(A) provides a justification for a material contravention of the Development Plan in relation to building height having regard to the compliance of the proposed development with the criteria under Section 3.2 of the Guidelines.
- 5.2. In addition, the proposed level of car parking proposed is consistent with the policies and objectives set out within the Section 28 Guidelines, in particular the Sustainable Urban Housing: Design standards for New Apartments 2018.
- 5.3. As such it is respectfully requested that An Bord Pleanála have regard to the justification set out within this statement and permit the proposed height contravention of the Dublin City Development Plan 2016-2022.



John Spain Associates