



An  
Bord  
Pleanála

## **S. 4(1) of Planning and Development (Housing) and Residential Tenancies Act 2016**

### **Inspector's Report ABP-305219-19**

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#### **Strategic Housing Development**

548 no. residential units (464 no. apartments, 84 no. shared accommodation units) and associated site works.

#### **Location**

City Block 2, Spencer Dock, Site bound by Sheriff Street Upper to the north, Mayor Street Upper to the south, New Wapping Street to the east and a development site to the west (also part of Block 2), Dublin 1.

#### **Planning Authority**

Dublin City Council.

#### **Applicant**

Spencer Place Development Company Limited.

#### **Prescribed Bodies**

1. Irish Water

2. Minister for Culture, Heritage, and the Gaeltacht
3. Heritage Council
4. An Taisce – the National trust for Ireland
5. Transport Infrastructure Ireland
6. National Transport Authority
7. Irish Aviation Authority

**Observer(s)**

Tony and Hilda McDonnell.  
North Port Dwellers Association.  
Canon Hall Apartments.

**Date of Site Inspection**

30 October and 14 November 2019.

**Inspector**

Stephen Rhys Thomas.

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## 1.0 Introduction

This is an assessment of a proposed strategic housing development submitted to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016.

## 2.0 Site Location and Description

- 2.1. The development site comprises of 1.26 hectares located at the junction of Mayor Street Upper and New Wapping Street, Spencer Place, Dublin 1. The site is bound by Sheriff Street Upper to the north, Mayor Street Upper to the south, New Wapping Street to the east and by a new north-south street proposed to the west. The development land forms part of the North Lotts Strategic Development Zone. It is noted that there is construction works currently being carried out on site and structures are up to four storeys in height. At present, the site is surrounded by construction hoarding, with main construction access points from New Wapping Street and Sherriff Street Upper. The North Lotts pumping station is located in the centre of the site and it is proposed to be retained in situ.
- 2.2. The site is well served by public transport with the Luas red line running along the southern portion of the site and proposals for the DART underground station at Spencer Dock. Docklands commuter train station is less than 5 mins from the site. Two and three storey houses are located along New Wapping Street and Mayor Street Upper, an apartment and office complex is located north of the site along Sherriff Street Upper. The wider area of the site is characterised by large construction projects either underway or nearing completion.

## 3.0 Proposed Strategic Housing Development

- 3.1. The applicant is proposing to amend a previously permitted scheme and provide an additional 115 residential units increasing the overall total from 349 units to 464 residential units and change the use of a permitted aparthotel to 120 no. shared accommodation bedrooms (200 no. bed spaces or 84 actual units). This will be achieved by additional floors, together with changes to elevations, materials and landscaping. The detail is as follows:

<b>Parameter</b>	<b>Site Proposal</b>
Application Site	1.26 ha
<b>Total Apartment Units</b>	464
Apartment unit breakdown	229 one bed units 235 two bed units
<b>Shared Accommodation</b>	200 bed spaces (84 units)
Unit breakdown	2 single bed space 46 two bed space 36 two-four bed space
Density	368 units per hectare as stated by applicant
Other Uses	Café unit (block1) 114 sqm.
Open Space	Public 1,155 sqm. Private Amenity 1,860 sqm.
Car Parking	78 no. spaces
Bicycle Parking	828 no. spaces
Part V	46 units

- 3.2. The proposed height of the development will range from 3 to 13 storeys. Block 1 will increase in height from the permitted development of 7 storeys (27.5 m) to a height of 13 storeys (47m). Block 2 will increase in height from 7 storeys (27.5m) to 11 storeys (40.5m).
- 3.3. Provision of link bridge at 7th storey (6th Floor) connecting Block 1 and Block 2.
- 3.4. Car parking is provided within a lower ground floor (basement) level. This level also contains bicycle parking, plant rooms, attenuation tanks, bin stores and a furniture store.

## 4.0 Planning History

### Subject site:

File Reference - **DSDZ2241/19** – Permission refused for amendments to previously permitted development DSDZ2896/18 and as amended by DSDZ4279/18 to provide for 471 no. units and an aparthotel development of 127 no. units. Refused for the following reason:

*Having regard to the nature and extent of development permitted on City Block 2 by the North Lotts and Grand Canal Dock SDZ Planning Scheme including Sections 5.4.5 and 5.5.2, it is considered that the proposed additional floors above the permitted maximum heights would not be consistent with the provisions of the Planning Scheme. Furthermore, having regard to the design of the additional floors, the failure to articulate individual elements and to the overall scale, bulk and massing of the structures, it is considered that the proposed development would present an unduly monolithic building façade to the adjoining streets and be seriously injurious to the visual amenities of the area. Hence, the proposed development would be contrary to Sections 5.4.5, 5.4.8 and 5.5.2 of the Planning Scheme. Therefore the proposed development would not be consistent with the provisions of the Planning Scheme and would be contrary to the proper planning and sustainable development of the area.*

File Reference - **DSDZ4279/18** – Permission for amendments to previously permitted development Reg. Ref. DSDZ2896/18 to provide for 349 no residential units and an aparthotel of 100 no units.

File Reference - **DSDZ2896/18** - Permission for provision of 325 no. residential units and an aparthotel of 102 no. units over 2 no. blocks at 6/7 no. storeys.

File Reference - **DSDZ3367/15** - Permission for provision of 165 no. residential units in 7 no. storey block.

### Other relevant Applications in the wider area

File Reference - **ABP-304604-19** - Proposed Amendments to North Lotts & Grand Canal Dock Planning Scheme. Undecided.

File Reference - **ABP-304710-19** – Permission for the demolition of all existing structures and construction of 554 no. apartments, 3-15 storeys in height, commercial/enterprise spaces, 3 no. retail units, food hub/café/exhibition space, residential amenity, crèche and men’s shed. SHD Application at 1-4 East Road, Dublin 3.

File Reference - **DSDZ2088/19** – Permission refused for amendments to permitted development resulting in an overall increase in floor area from 58,670sq.m. to 72,559sq.m. comprising of c. 10,986 sq.m. hotel and associated uses, c. 60,259sq.m. and c. 1,152sq.m. of retail/restaurant/café uses. Three additional storeys are proposed to Building 1b raising the height from 7 to 10 stories and Building 2 from 9 to 11 stories. The rooms in the hotel will increase from 204 to 264. Building 3 and 4 height will rise from 7 to 9 storeys. Refused for the following reason

*Having regard to the nature and extent of development permitted on the site, which accords with the provisions of the North Lotts and Grand Canal Dock SDZ Planning Scheme, including Section 5.4.5 and Section 5.5.7, it is considered that the proposed additional storeys above the permitted maximum heights would not be consistent with the provisions of the planning scheme. Furthermore, it is considered that the proposed additional storeys would be unduly dominant and visually incongruous when viewed in the context of the existing quayscape on North Wall Quay, a conservation area, and the surrounding built environment. The proposal would also adversely impact on the setting of the former London and Northwestern Hotel, a protected structure, and other buildings of historic interest in the vicinity, and would present an unduly monolithic appearance when viewed from the surrounding streets, thus being seriously injurious to the visual amenities of the area. Hence the proposed development would be contrary to Sections 5.4.5, 5.4.6, 5.4.8 and 5.5.7 of the North Lotts and Grand Canal Dock SDZ Planning Scheme. Therefore, the proposed development would not consistent with the provisions of the planning scheme, and would be contrary to the proper planning and sustainable development of the area.*

## 5.0 Section 5 Pre Application Consultation

5.1. A section 5 pre-application consultation took place at the offices of An Bord Pleanála on the 27 May 2019 and a Notice of Pre-Application Consultation Opinion issued within the required period, reference number ABP-304210-19. An Bord Pleanála issued notification that, it was of the opinion, the documents submitted with the request to enter into consultations, required further consideration and amendment to constitute a reasonable basis for an application for strategic housing development. The following is a brief synopsis of the issues noted in the Opinion that needed to be addressed:

### 1. North Lotts Planning Scheme

With regard to the overall objectives of the North Lotts Planning Scheme, consider the potential for the proposed development to give rise to ‘ad hoc’ increases in height which may undermine the planning scheme provisions particularly in relation to permitted maximum heights. Provide a justification for building height in the context of SPUR 3 of the Urban Development and Building Heights, Guidelines for Planning Authorities, 2018.

### 2. Urban Design Response

Consider the urban design response in terms of increase in height, proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/enhance the character and public realm of the area. Consider how the proposed development would be consistent with the objective of the planning scheme which seeks to promote sustainable higher densities and quality innovative designs achieving generous standards of residential amenity for residents.

### 3. Shared Living Accommodation

Consider the documents as they relate to the proposed shared living accommodation format in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018. Detail and consider overall management and operation of the scheme in particular the shared accommodation component with greater clarity regarding the level of support and residential services to be provided and access to such services. Detail how the proposal will provide future



occupants with the opportunity to experience a shared community environment among residents of the scheme.

#### 4. Flood Risk and Surface water management

Prepare a site-specific flood risk assessment, incorporation of SUDS measures for the scheme and how the proposed development will cater for tidal locking having particular regard to the comments raised in the Water Services report submitted with the Planning Authority's report.

5.2. The prospective applicant was advised that the following specific information was required with any application for permission:

1. Photomontages and cross sections showing how the scheme will interface with contiguous lands/developments including extant permission not yet constructed.

2. Detail all existing watercourses and utilities that may traverse the site including any proposal to culvert/re-route/underground existing drains/utilities.

3. A site layout plan which clearly identifies the full extent of areas to be taken in charge.

4. A Building Life Cycle report.

5. Details to address concerns raised by the Parks and Landscape Services Department as set out in their report 8th May 2019.

6. Information referred to in article 299B (1)(b)(ii)(II) and article 299B(1)(c) of the Planning and Development Regulations 2001-2018 (if an Environmental Impact Assessment report is not being submitted).

7. Details of any measures required to prevent interference with aviation.

5.3. Finally, a list of authorities that should be notified in the event of the making of an application were advised to the applicant and included:

1. Irish Water

2. Minister for Culture, Heritage, and the Gaeltacht

3. Heritage Council

4. An Taisce – the National trust for Ireland

5. Transport Infrastructure Ireland

6. National Transport Authority

7. Irish Aviation Authority

#### 5.4. Applicant's Statement

5.4.1. Under section 6(7) of the Act of 2016, the Board issued a notice to the prospective applicant of its opinion that the documents enclosed with the request for pre-application consultations required further consideration and amendment in order to constitute a reasonable basis for an application for permission, the applicant has submitted a statement of the proposals included in the application to address the issues set out in the notice, as follows:

##### 1. North Lotts Planning Scheme

The applicant disagrees that the proposed development will give rise to 'ad hoc' proposals in the planning scheme. This point is illustrated by an apartment scheme of 12 storeys already in place at the existing Spencer Dock apartments to the west of the site and 11 storeys at Cannon Hall immediately to the north of the site along Sheriff Street. The planning scheme also proposes buildings of up to 12 storeys fronting Station Square. The proposed development accords with new national guidelines and responds appropriately to adjacent development. The Visual Impact Assessment states that the site is surrounded by buildings that already exceed the preferred minimum threshold of six storeys, indicated in the Urban Development and Building Height Guidelines, but also meets or exceeds the indicative maximum heights set out in the SDZ for the site.

The Planning Scheme seeks a building of 12 storeys in City Block 2 at Station Square, adjacent to the application site. At other locations in the vicinity the Planning Scheme allows for 12 storeys, however, the proposed development does step down to 7 storeys at the interface with New Wapping Street and 3 storeys at the north end of Mayor Street Upper.

With regards to SPPR3 and prematurity pending a Planning Scheme review, the recent court judgement of Simons, J in Spencer Place Development Company Limited, is noted. The applicant states that a review of the SDZ has been placed before the Board utilising the fast track route, case has yet to be decided. This review tackles the issue of height in the context of SPPR 3(B), the review has increased the building height permissible within Block 2 which enables greater

heights on the subject site compared to the current SDZ planning scheme. The proposed amendments seek to provide building heights of up to 12 storeys in the north west and north east corners, with 6/ 7 storeys residential plus one set back, i.e. a building height of 7 to 8 no. storeys residential for the remainder of the subject site. The proposed development on the site provides for a building height of between 7 and 13 storeys, broadly in line with the proposed amendments to the Planning Scheme currently before the Board. The applicant points out that the amendments to the Planning Scheme suggested by the planning authority do not fully reflect the requirements of national guidance documents on building height, density and scale. The amendments put forward by the planning authority are extremely conservative given the locational characteristics of the site. In addition, the proposed amendments to the Planning Scheme allow for a single storey set back enabling heights to rise by a further floor.

The applicant states that the planning authority do not consider their amendments to be material and could pass through the fast track route for amendments to planning schemes. In addition, the planning authority acknowledged that the site is suitable for increased density and height. The proposed development is marginally in excess of that planned for and is acceptable in planning terms.

## 2. Urban Design Response

The proposed development has been modified and now incorporates a variety of building heights, and significantly greater architectural modulation within the elevations to create articulation and variety in the building mass. The development responds better to the surrounding environment. This has been achieved by a series of glazed balconies that separate brick elements, further refined brick detailing at corners highlight architectural quality. The shared accommodation block has been treated differently and on the whole the intention is to create an uncomplicated building form using clean lines, high quality materials and fine detailing.

The omission of the southern element of Block 1 over the pump station, further defines massing and adds to residential amenity. The proposed public realm improvements are better than that already permitted. In terms of density, the proposed development achieves higher densities in tandem with acceptable

residential amenities. Apartment configuration has been improved and shared communal space better provided for.

### 3. Shared Living Accommodation

The layout of the shared accommodation units has been amended and the level of shared amenity space has been increased to above the minimum standards. The 1 bed space rooms in the clusters (2 single bedroom units) comprise a 14.sq.m. bedroom / ensuite with 18 sq.m. attributed to communal / living space. The clusters comprising of 1 double unit and 1 single unit (3 bed spaces in total) consist of 1 double room of 18 sq.m. and one single of 14 sq.m. with a shared common living / kitchen area of 24 sq.m. The two bed clusters comprising 2 double bedroom units, (4 bed spaces in total ) consist of 2 double rooms of 18-20 sq.m. with a shared living / kitchen area of 37 sq.m. The communal amenity space has been provided in each cluster, however, additional communal facilities such as shared living / dining / kitchen spaces are also located on each floor. The development provides for a range of additional communal facilities at ground floor level for the use of the entire shared accommodation scheme including gym, meeting rooms, co-working space, cinema room, and back of house areas. Roof terraces are also available for use.

### 4. Flood Risk and Surface water management

The flood risk assessment and surface water management for the development lands have been designed in accordance with the Local Authority's specific flood risk assessment and the North Lotts and Grand Canal Dock Planning Scheme. The applicant confirms that the proposed volume of storm water to be provided is in accordance with the requirements of the North Lotts and Grand Canal Dock SDZ. The proposed development has provided attenuation for the predicted 1 in 100 year extreme storm event increase by 20% for climate change with an additional 570m<sup>3</sup>/ha provided.

## **5.5. Material Contravention Statement**

- 5.5.1. The applicant has prepared a statement to provide a justification for the material contravention of the Dublin City Council Development Plan 2016 – 2022 in relation to height parameters and restriction set out in the North Lotts and Grand Canal Dock Planning Scheme. The applicant advises the Board that notwithstanding the purpose of this Material Contravention Statement, it should be noted that under Section 170

(1) and (2) of the Planning and Development Act 2000, as amended, An Bord Pleanála are not bound by the same provisions as the Planning Authority under Section 34 for a development within an SDZ area as this is not an application made under Section 34 of the Planning and Development Act 2000, as amended and it is an application made under Section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016 and An Bord Pleanála therefore can grant permission for the proposed development. A legal opinion prepared by Eamon Galligan SC has been submitted as part of the application and confirms this.

5.5.2. The existing Planning Scheme details a maximum residential building height of seven storeys for the site, the proposed development is up to 13 storeys. The applicant has reiterated the rationale explained in relation to their statement at 5.4 above, in terms of increasing density, compliance with national guidance and proposed amendments to the Planning Scheme.

5.5.3. Next, the applicant turns to recent Board decisions where Development Plan height parameters were exceeded and national guidance in relation to apartments and building heights. In both cases, it is argued that the site is ideally located for higher residential densities and there are compelling arguments for tall buildings too. In relation to the building height guidelines, it is argued that the height limits in the City Plan and Planning Scheme go against the advice provided by the guidelines to implement national policy on sustainable development. In addition, the locational qualities of the site encourage taller buildings and better use of urban areas and transport infrastructure. The policies and objectives of the City Plan and Planning Scheme are at odds with national policy on residential density and building height, there is ample justification for the Board to grant permission.

## **6.0 Relevant Planning Policy**

### **6.1. National Policy**

Having considered the nature of the proposal, the receiving environment, the documentation on file, including submission from the planning authority, I am of the opinion, that the directly relevant section 28 Ministerial Guidelines are:

- 'Urban Development and Building Height, Guidelines for Planning Authorities'.  
2018

- ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ 2018
- ‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’ (including the associated ‘Urban Design Manual’)
- ‘Design Manual for Urban Roads and Streets’ (DMURS)
- ‘The Planning System and Flood Risk Management’ (including the associated ‘Technical Appendices’)
- ‘Childcare Facilities – Guidelines for Planning Authorities’
- ‘Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment’, August 2018.

Other relevant national guidelines include:

- Project Ireland 2040, National Planning Framework.
- Framework and Principles for the Protection of the Archaeological Heritage Department of Arts, Heritage, Gaeltacht and the Islands 1999.

## 6.2. Local Policy

### 6.2.1. Dublin City Development Plan 2016-2022

The site is located on lands subject to zoning objective Z14 - to seek the social, economic and physical development and/or rejuvenation of an area with mixed use of which residential and Z6 would be the predominant uses. The site is also located within an area designated as a Strategic Development and Regeneration Area (SDRA 6 – Spencer Dock, Poolbeg and Grand Canal Dock). The application site is also within the North Lotts and Grand Canal Strategic Development Zone (SDZ), for which a Planning Scheme has been prepared.

Chapter 16 deals with development standards. Section 16.7.2 Height Limits and Areas for Low-Rise, Mid- Rise and Taller Development\* (See Building Height in Dublin).

1. Planning applications will be assessed against the building heights and development principles established in a relevant LAP/SDZ/SDRA. Proposals for high buildings should be in accordance with the provisions of the relevant

LAP/SDZ/SDRA in addition to the assessment criteria for high buildings and development plan standards. Chapter 15 provides guiding principles for the design of potential high buildings in SDRAs, where appropriate.

### **Assessment Criteria for Higher Buildings**

All proposals for mid-rise and taller buildings must have regard to the assessment criteria for high buildings as set out below:

- Relationship to context, including topography, built form, and skyline having regard to the need to protect important views, landmarks, prospects and vistas
- Effect on the historic environment at a city-wide and local level
- Relationship to transport infrastructure, particularly public transport provision
- Architectural excellence of a building which is of slender proportions, whereby a slenderness ratio of 3:1 or more should be aimed for
- Contribution to public spaces and facilities, including the mix of uses
- Effect on the local environment, including micro-climate and general amenity considerations
- Contribution to permeability and legibility of the site and wider area
- Sufficient accompanying material to enable a proper assessment, including urban design study/masterplan, a 360 degree view analysis, shadow impact assessment, wind impact analysis, details of signage, branding and lighting, and relative height studies
- Adoption of best practice guidance related to the sustainable design and construction of tall buildings
- Evaluation of providing a similar level of density in an alternative urban form.

#### **6.2.2. North Lotts & Grand Canal Dock SDZ Planning Scheme - 2014**

The site is located in the Spencer Dock Hub, one of five hubs identified in the Planning Scheme. Chapter 4.10 deals with Urban Structure and Design, Density and Height. The objective for the SDZ Planning Scheme is that all of the hubs achieve their own character through a combination of mixed-use, landmark buildings, significant open space and unique public realm.

Figure 18 indicates that the southern part of the development block is a new potential landmark site. Figure 35 details the development code for city blocks.

Section 4.10.4.1.4 states that the public square in City Block 2 suggests that a range of 10-12 storeys at the upper end for Spencer Dock is appropriate.

Chapter 4 deals with Economic Regeneration and Employment and specific objectives in respect of making quality residential neighbourhoods are provided in section 4.2.

Chapter 5 of the Planning Scheme focuses in on specific City Blocks, the site is located within Spencer Dock, City Block 2B and 2D. Section 5.4.5 deals with height as part of the urban structure. Section 5.5.2 details specific design guidance in relation to unit mix, urban form and height range. Specifically, the Planning Scheme states:

- Block 2C to be 12-storey (maximum) commercial (minimum 10 storey) fronting Station Square, to achieve balance between hub quantum and view lines from Georgian mile. Landscaped plaza south of block.
- Remaining blocks to be range between 5-storey commercial/6- storey residential and 6-storey commercial/7-storey residential, stepping down to 3 residential immediately north and west of the Mayor Street terrace.
- Urban blocks to front Sheriff Street to remake and contain the street.
- The 7-storey residential frontage to New Wapping Street responds to the 2/3-storey terrace opposite, more favourably than the 9-storey scheme previously certified.
- Any temporary pavilion buildings to be up to a maximum of 4 storeys.

6.2.3. The Planning Scheme is currently under review with specific reference to building height parameters, An Bord Pleanála reference number ABP-304604-19 refers.

## **7.0 Third Party Submissions**

7.1. Three detailed submissions were received, in all cases, the observations opposed the development. In broad terms the planning issues can be summarised as follows:



- The proposed development is a material and significant breach of the Planning Scheme in terms of building height. The piecemeal development of the area for high buildings is contrary to proper planning and sustainable development. The review of the Planning Scheme height strategy is underway and allows for additional height at key locations on the site but not at the scale proposed.
- Worries are expressed about the co-living component of the scheme and that future occupants will contribute little in terms of community involvement.
- The scale, height and massing of the proposed development will overshadow existing residences in the area. Not all residential property in the vicinity has been modelled by the applicant for impacts to residential amenity. The character of Mayor Street Upper will change for the worse and impacts to Canon Hall have not been properly assessed.
- Existing residential property will experience a serious loss of privacy, during the construction and operational phase of the development. In addition, residential amenity is already severely affected during construction of other projects in the area as working hour constraints are routinely broken by derogation provided by Dublin City Council.
- The applicant has included lands not in their ownership within the red line boundary of the site. This is marginal land and would lead to a collecting point for antisocial behaviour.

## **8.0 Planning Authority Submission**

- 8.1. The Chief Executive's report, in accordance with the requirements of section 8(5)(a) of the Act of 2016, was received by An Bord Pleanála on the 14 October 2019. The report states the nature of the proposed development, the site location and description, submissions received and details the relevant Development Plan/Planning Scheme policies and objectives. The report also included summary of the views of the elected members of the Central Area Committee Meeting held on the 8 October 2019, and is outlined as follows:

- Concern was raised in relation to the serious impact to the quality of life for existing residents in New Wapping Street/Mayor Street. The construction phase of development is highlighted as an ongoing problem for residents.
- The SDZ is currently under review in relation to height guidelines, the proposed height of buildings should not exceed these. The height proposed will also impact upon overlooking, overbearing and overshadowing.
- Concern is expressed at the model presented for co-living which seems unproven and will lead to a transient population.

8.2. The following is a summary of key planning considerations raised in the assessment section of the planning authority report:

Principle and Use/Mix – The site is located on lands subject to zoning objective Z14 - to seek the social, economic and physical development and/or rejuvenation of an area with mixed use of which residential and Z6 would be the predominant uses. The site is also located within an area designated as a Strategic Development and Regeneration Area (SDRA 6 – Spencer Dock, Poolbeg and Grand Canal Dock). The application site is also within the North Lotts and Grand Canal Strategic Development Zone (SDZ), for which a Planning Scheme has been prepared. Given the land use mix and use of the site the proposal accords with the Planning Scheme.

Density, Site Coverage and Plot Ratio – the proposed plot ratio has increased, site coverage remains the same. The location of the site in an area in need of renewal and close to high quality public transport is noted, however plot ratio, site coverage and density are not standalone objectives of the Planning Scheme.

Building Height – the proposed building heights now fall under the category of mid-rise and should be assessed with regard to Appendix 5 of the Planning Scheme:

- Urban Form and Spatial Criteria;
- Environmental / Sustainable Criteria;
- Social Criteria;
- Economic Criteria;
- Transport and Movement Criteria;
- Cultural Criteria.

The Planning Scheme is currently under review and such criteria will probably apply to the subject site.

Urban Form and Spatial Character – when compared to the permitted scheme for the site, the proposed development is a poor design response that would be bulky and inelegant and represent a monolithic appearance that is contrary to Section 5.4.8 of the adopted planning scheme (Design, Materials and External Finish).

These concerns would also apply if the proposal was assessed against the proposed heights contained in the current review on heights submitted to An Bord Pleanála and currently awaiting a decision. The proposal development also has impacts for the SDZ as a whole as well as being contrary to the design approach for City Block 2.

Environmental/Sustainable Criteria – the planning authority considered impacts regarding daylight, overshadowing and downdraft effect. On the whole these factors are tolerably dealt with, however, there are minor concerns over some ground floor units and public space with regards to daylight. Also, taller buildings mean greater microclimate impacts but this is accepted by the planning authority.

Social, Economic and Cultural Criteria – no major issues are raised by the planning authority and it is considered that the proposed development would not result in a significant change to the vibrancy of the area or the animation of the street at ground floor level, in comparison to the previously consented application.

Transport and Movement Criteria – no opposition raised, however, the form of buildings proposed and addition of a link bridge between blocks may give an impression of enclosure and reduce openness to public spaces.

SDZ Team Report – a Joint City Block Roll-Out Agreement (JCBRA) was agreed for portions of City Blocks 2 and 7 under the ownership of the applicant, as part of the parent permission (DSDZ2896/18). The proposed development will not undermine the JCBRA in terms of mix and use. Landscaping and public realm amendments are not seen as significant and building block lines align with figure 35 of the Planning Scheme. The proposed building height is at variance with those set out in the Planning Scheme and the site is not identified as a location for a taller building.

The Planning Scheme is currently under review with regard to buildings heights as required to do so by Building Height Guidelines. Whilst the design solution is worth investigating under the planning scheme review, it is not consistent with approved planning scheme.

The addition of a link-bridge between blocks may interfere with the public open space below and no guidance in relation to same is provided in the Planning Scheme.

Residential and Neighbourhood Quality – all aspects to do with residential amenity standards as set out in section 28 guidelines have been met or exceeded. The lack of a childcare facility is noted and accepted.

Shared Accommodation – the shared accommodation format proposed by the applicant differs from national guidance in relation to this form of living. Specifically, the design proposed provides ‘clusters’ of one and two bed units with own living and cooking areas. Communal cooking and leisure areas are also provided thought the overall scheme. The planning authority contend that these self-contained living units would limit the degree of social interaction and engagement with the shared community living environment.

Flood Risk Assessment – no issues raised.

8.3. The planning authority conclude that the proposed development is acceptable in principle, there are significant concerns about the design and height of the proposal. The proposed development fails to meet a number of policy requirements and objectives of the SDZ Planning Scheme, principally height and urban form, refusal of permission is recommended for two reasons as follows:

1. Having regard to the nature and extent of development permitted on City Block 2 by the North Lotts and Grand Canal Dock SDZ Planning Scheme including Sections 5.4.5 and 5.5.2, it is considered that the proposed additional floors above the permitted maximum heights would not be consistent with the provisions of the Planning Scheme. Furthermore, having regard to the design of the additional floors, the failure to articulate individual elements and to the overall scale, bulk and massing of the structures, it is considered that the proposed development would present an unduly monolithic building façade to the adjoining streets and be seriously injurious to

the visual amenities of the area. Hence, the proposed development would be contrary to Sections 5.4.5, 5.4.8 and 5.5.2 of the Planning Scheme. Therefore the proposed development would not be consistent with the provisions of the Planning Scheme and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the overall layout of the proposed development, it is considered that the proposed shared accommodation units would provide a poor standard of residential accommodation by virtue of their design and layout and result in an insular form of occupancy that would fail to provide future occupants with the opportunity to experience a shared community environment. The proposed development would therefore be contrary to Section 5 of the Guidelines on Sustainable Urban Housing: Design Standards for New Apartments (2018), the provisions of Chapter 16 of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.

#### 8.4. Interdepartmental Reports

The reports of the Drainage Division: Housing Division: SDZ Implementation Team: City Archaeologist: Transportation Planning Division Parks and Landscape Services were received and include conditions in the event of a grant of permission.

### 9.0 Prescribed Bodies

- 9.1. The list of prescribed bodies, which the applicant is required to notify prior to making the SHD application to ABP, issued with the section 6(7) Opinion and included the following:

1. Irish Water
2. Minister for Culture, Heritage, and the Gaeltacht
3. Heritage Council
4. An Taisce – the National trust for Ireland
5. Transport Infrastructure Ireland
6. National Transport Authority
7. Irish Aviation Authority

9.2. The applicant notified the relevant prescribed bodies listed in the Board's section 6(7) opinion. The letters were sent on the 12 August 2019. A summary of those prescribed bodies that made a submission are included as follows:

- **Irish Water (IW)** confirm that subject to a valid connection agreement between IW and the developer, the proposed connections to the IW network can be facilitated.
- **Transport Infrastructure Ireland** – the conditions applied to the previous grant of permission shall be applied. The site lies within the area for the Section 49 Supplementary Development Contribution Scheme – Luas Red Line Docklands Extension (Luas C1), if permitted and not exempt, apply the levy as a condition. The site is located close to a Luas line, operation and safety of the line should be ensured by following the relevant code of engineering practice for works.

## 10.0 Environmental Impact Assessment

10.1.1. This application was submitted to the Board on 28 August 2019 which was after 16<sup>th</sup> May 2017, the date for transposition of Directive 2014/52/EU amending the 2011 EIA Directive. The Directive had not been transposed into Irish legislation by that date. In accordance with the advice on administrative provisions in advance of transposition contained in Circular Letter PL1/2017, it is proposed to apply the requirements of Directive 2014/52/EU. The application was accompanied by an Environmental Impact Assessment Report (EIAR), which is not mandatory for the development in accordance with the provisions of Part X of the Planning and Development Act 2000 (as amended) and Schedule 5 of the Planning and Development Regulations 2001-2015. Item 10 of Part 2 of Schedule 5 provides that an EIA is required for infrastructure projects comprising of:

*(b) (i) Construction of more than 500 dwelling units*

.....

*(iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.*

- 10.1.2. The development would provide 464 dwelling units and a 120 bedroom shared accommodation facility on a site of 1.45 ha within a business district. Given the nature and extent of development proposed, the applicant has elected to prepare an EIAR, as they anticipate it may have significant effects on the environment due to height in particular.
- 10.1.3. The EIAR comprises a non-technical summary and a main volume. Chapter 15 of the main volume provides a summary of the mitigation and monitoring measures described throughout the report. Chapter 1 and specifically table 1.4 as well as the introduction of each chapter describes the expertise of those involved in the preparation of the report. I am satisfied that the information contained in the EIAR has been prepared by competent experts and complies with article 94 of the Planning and Development Regulations 2000, as amended, as it stood when the application was made and as it now stands. The EIAR would also comply with the provisions of Article 5 of the EIA Directive 2014. I have carried out an examination of the information presented by the applicant, including the EIAR, and the submissions made during the course of the application. A summary of the results of the submissions made by the planning authority and prescribed bodies has been set out at Sections 8 and 9 of this report. This EIA has had regard to the application documentation, including the EIAR, and any submissions received.

## 10.2. Alternatives

- 10.2.1. Article 5(1)(d) of the 2014 EIA Directive requires:

*(d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment,*

Annex (IV) (Information for the EIAR) provides more detail on ‘reasonable alternatives’:

*2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.*

10.2.2. Chapter 2 of the EIAR sets out the project description and alternatives considered. It is stated that the location of the site within an SDZ and previous permissions for similar development on the site set the context for the consideration of alternatives by the developer. Therefore, it was not considered necessary to consider alternate sites for the proposed housing, instead alternative designs and processes were assessed. It is set out that the design process for the proposed development considered several iterations of the layout and design over a 12 month period. The design process has been informed by environmental factors such as biodiversity, human health, water, landscape and visual impact. In this context four alternatives were examined, based upon the factors outlined above. The final iteration, or proposed development, was selected as the best response to a variety of factors. Most notable is the imperative to increase residential densities, make the best use of zoned and serviced land that incorporates increased internal amenity space, more sustainable modes of transport, all included in the proposal. The description of the consideration of alternatives in the EIAR is reasonable and coherent, and the requirements of the directive in this regard have been properly addressed.

### 10.3. **Likely Significant Direct and Indirect Effects**

10.3.1. The likely significant indirect effects of the development are considered under the headings below which follow the order of the factors set out in Article 3 of the EIA Directive 2014/52/EU:

- population and human health;
- biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;
- land, soil, water, air and climate;
- material assets, cultural heritage and the landscape; and
- the interaction between those factors

### 10.4. **Population and human health**

10.4.1. Population and Human Health is addressed in Chapter 3 of the EIAR. The methodology for assessment is described as well as the receiving environment. Recent economic and demographic trends are examined, and it is noted that the economic recovery in recent years has influenced the marked growth of the North



Docks area. The principle findings are that human population and job opportunities will increase as a result of the proposal. In terms of human health, the most likely impact will be the construction phase of the development.

10.4.2. Chapter 12 of the EIAR refers to noise and vibration. The occupation of the development would not give rise to noise or vibration that would be likely to have a significant effect on human health or the population, as it would be a residential scheme that formed part of the built-up area of the city. The impact of additional traffic on the noise levels and character of the surrounding road network would be insignificant having regard to the existing traffic levels on roads in the vicinity and the marginal increase that would occur as a result of the proposed development. Minimum façade specification measures are recommended.

10.4.3. The use of heavy vehicles and machinery during a prolonged construction period would have the potential to give rise to effects due to noise and vibration. However given the phased duration of the works and the control of activity on site by the developer at that time, these can be avoided through the use of management measures as set out in the EIAR and in the draft construction management plan submitted with the application, and the imposition of limits by conditions on any grant of permission. Subject to these measures, it is concluded that the proposed development would not be likely to have significant adverse effects on human health.

#### 10.5. **Biodiversity with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC**

10.5.1. As advised in section 11 of this report, the proposed development would not be likely to have any significant effect on any site designated under Directive 92/43/EEC or Directive 2009/147/EC. The site comprises brownfield urban land currently entirely under construction and not of any ecological value. There are no plants recorded from the site that are listed as rare or of conservation value. There are no habitats that are examples of those listed on Annex I of the Habitats Directive. There are no alien invasive plant species as listed on Schedule 3 of SI No. 477 of 2011. The site contains no suitable roost locations for Bats and surrounding urban habitats provide few resources for feeding.

10.5.2. Section 5.7 of the EIAR describes measures to minimise the impact of the development on biodiversity, such as it is. These are standard measures that would represent good construction practice. Subject to their implementation, it can be concluded that the proposed development would not be likely to have significant adverse effects on biodiversity. The proposed development would introduce areas of new planting, and the landscaping and planting proposals submitted with the proposed application are satisfactory in that context.

## 10.6. Land and soil

10.6.1. The proposed development would change the use of the site from brownfield former industrial land to residential and amenity. Planning policy recognizes a scarcity of residential accommodation in the region and consequently the land is zoned for residential purposes. There is no equivalent scarcity of brownfield land. The change in the use of the land would not, therefore, have adverse environmental effects. It is anticipated that the proposed works are not deep enough to impact the underlying bedrock. The made ground of the site is generally underlain by alternating gravel and silt layers with occasional clay layers to a maximum investigated depth of 10.0m bgl, bedrock was not encountered in any of the borehole samples. The greatest impact will result from the widescale stripping and removal of soils and sub- soils to accommodate basement levels.

10.6.2. Some minor levels of contamination to soils were recorded on the site to 3 bgl. The excavation of the made ground will likely have a positive, permanent impact on the shallow groundwater aquifer at the site as this will remove any potential source of groundwater contamination. Measures are described at section 7.8 of the EIAR which represent proper practice in the handling of soil during construction. Subject to their implementation, it can be concluded that the proposed development would not have significant adverse effects with regard to land or soil.

## 10.7. Water

### *Flood Risk Assessment and Surface Water*

10.7.1. The application was accompanied by a flood risk assessment that concluded that as the site was located in flood zone A. The site was reviewed for pluvial/fluvial/groundwater and infrastructure flooding sources and any risk associated risk is deemed to be within acceptable limits. In addition to the fact that

the proposed development will have a finished floor level set at 4.0mAOD, as per the requirements of North Lotts & Grand Canal Planning Scheme, deems the potential tidal flood risk to be within acceptable limits.

- 10.7.2. There are no surface water sewers on the site, instead, there is a 1000mm -brick culvert combined sewer to the West and a 940mm brick culvert combined sewer to the East, flowing North on New Wapping Street.
- 10.7.3. A potential for an effect to arise during the construction of the proposed development from the emission of sediments or hydrocarbons to surface water is described in section 8.5.1 of the EIAR. The potential for such effects arises in projects that involve building on brownfield sites. It is therefore commonplace. There are standard measures that are used to avoid such effects which are described in section 8.8 of the EIAR. The efficacy of such measures is established in practice. Subject to the implementation of those measures, the construction of the proposed development would be unlikely to have significant effects on the quality of water.
- 10.7.4. The water supply for the proposed development would be from a new connection from the public network which Irish Water advises is feasible.

#### *Foul drainage*

- 10.7.5. It is proposed to drain foul effluent from the proposed development to the public foul sewer, this is outlined in section 8.4.2 of the EIAR. The foul water produced by the development will be stored in tanks initially, then pumped to stand-off manholes where it will fall by gravity to the existing brick culvert combined sewer running south to north along New Wapping Street. The proposed effluent generated by the scheme combined with the separation and attenuation of storm flows is predicted to have a minimal impact on the receiving drainage infrastructure.
- 10.7.6. It can therefore be concluded that, subject to the implementation of the measures described in the EIAR, the proposed development would not be likely to have a significant effect on water.

#### **10.8. Air and climate**

- 10.8.1. The occupation of the proposed development would not be likely to have a significant effect on air quality or the environment. The construction of the development could affect air quality through the emission of dust. However, any such

effects can be properly limited through the measures set out at Appendix 9.2 of the EIAR.

#### **10.9. Material assets**

10.9.1. Material assets have been divided into; utilities, traffic and transport and waste. The proposed development would have a significant positive effect on the material assets available in the area through the provision of additional housing in the city, the provision of public open space and public realm improvements. Occupiers of the development would place additional demands on public transport and road infrastructure. But this should lead to increased investment in improvement and further provision. Waste will be generated by the development, but on site measures to sort and stream waste for reuse or municipal incineration are considered. The scheme will separate foul and surface water before entry into the existing public system, reducing unnecessary additional treatment requirements.

#### **10.10. Archaeology and Cultural heritage**

10.10.1. The site does not contain any recorded monuments or protected structures and there is no cultural significance attached to the site. The results of recent excavations in the wider area have revealed evidence of Late Mesolithic and Middle Neolithic fish traps, there is the possibility that similar finds might be present on the site. It is stated that construction works commenced in December 2018. All of the groundworks have been monitored by an archaeologist under licence. To date, no features of archaeological significance have been encountered, archaeological monitoring will continue until the completion of the groundworks. It is therefore concluded that the proposed development would not have significant effects on cultural heritage.

#### **10.11. The landscape**

10.11.1. The entire site will be taken up with new buildings and open spaces in an area that has existing tall buildings and that is currently experiencing ongoing construction activity. The building of apartments on these lands will not have a significant adverse effect on the landscape, therefore. The overall effect on the landscape arising from the proposed development would therefore be positive.

## **10.12. The interaction between the above factors**

10.12.1. The potential impact of the development on land, soil, water and biodiversity interact, due to the need to avoid the emissions of sediments to the existing combined public sewer system in order to protect water quality and the aquatic habitats there. The potential impact on land and soil interacts with that on air due to the need to control dust emissions during ground works and construction. The potential impact of the development on material assets interacts with that on the population due to the provision of a substantial amount of housing for the population. The various interactions were properly described in the EIAR, table 14 provides a summary of interactions, and have been considered in the course of this EIA.

## **10.13. Reasoned Conclusion on the Significant Effects**

Having regard to the examination of environmental information set out above, to the EIAR and other information provided by the developer, and to the submissions from the planning authority, prescribed bodies and observers in the course of the application, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- Significant direct positive effects with regard to population and material assets due to the increase in the housing stock that it would make available in the city.
- A significant direct effect on land by the change in the use and appearance of a relatively large brownfield site to residential. Given the location of the site within the built up area of the city and the public need for housing in the region, this effect would not have a significant negative impact on the environment.
- Potential significant effects on soil during construction due to the excavation and filling required to carry out the development, which will be mitigated by the re-use of excavated material on the site and the implementation of measures to control emissions of sediment to water and dust to air during construction.
- Potential effects arising from noise and vibration during construction which will be mitigated by appropriate management measures.
- Potential effects on air during construction which will be mitigated by a dust management plan including a monitoring programme.

- Potential indirect effects on water which will be mitigated during the occupation of the development by the proposed system for surface water management and attenuation with respect to stormwater runoff and the drainage of foul effluent to the public foul sewerage system, and which will be mitigated during construction by appropriate management measures to control the emissions of sediment to water.
- A positive effect on the cityscape because the proposed development would improve the amenity of the land through the provision of dedicated public open spaces and improved public realm.

The proposed development is not likely to have significant adverse effects on human health, biodiversity or cultural heritage.

The likely significant environmental effects arising as a consequence of the proposed development have therefore been satisfactorily identified, described and assessed. They would not require or justify refusing permission for the proposed development or the making of substantial alterations to it.

## 11.0 **Appropriate Assessment**

- 11.1.1. The site is not located within any European site. It does not contain any habitats listed under Annex I of the Habitats Directive. The site is not immediately connected to any habitats within European sites and there are no known indirect connections to European Sites. Potential impacts on Natura 2000 sites from the development are restricted to the discharge of surface and foul water from the site.
- 11.1.2. An Appropriate Assessment, Stage 1 Screening Report was submitted with the application. It states that the site is urban in nature and all previous habitats have been removed. There are no watercourses on, or connected to, the site and the nearest such features are the main channel of the River Liffey (c.200m to the south), the River Tolka Estuary (c.1km to the north) and the Royal Canal (c.250m to the west). There are 17 European Sites within a 15km radius of the site, with the nearest being approximately 1.2km to the north (South Dublin Bay and River Tolka Estuary SPA, Side Code: 004024). The attention of the Bord is drawn to Table 1 of the submitted AA Screening Assessment for a list of the relevant sites and their Qualifying Interests/Conservation Objectives are shown in Table 2.

11.1.3. The report concludes that significant effects are not likely to arise either alone or in combination with other projects that would result in significant effects to any SPA or SAC. I note the urban location of the site, the lack of direct connections with regard to the source-pathway-receptor model and the nature of the development. It is reasonable to conclude on the basis of the information available on the file, which I consider adequate in order to issue a screening determination, that the development, individually or in combination with other plans or projects would not be likely to have a significant effect on the above listed European sites, or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 12.0 Assessment

12.1. The Board has received a planning application for a housing scheme under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016. My assessment focuses on the relevant section 28 guidelines. I examine the proposed development in the context of the statutory development plan and the local plan. In addition, the assessment considers and addresses issues raised by the observations on file, under relevant headings. The assessment is therefore arranged as follows:

- Principle of Development
- Design and Layout
- Residential Amenity
- Infrastructure
- Other Matters

### 12.2. Principle of Development

12.2.1. The subject site is located within the North Lotts and Grand Canal Strategic Development Zone (SDZ), zoned Z14 in the City Development Plan and is located within a Strategic Development and Regeneration Area (SDRA 6 – Spencer Dock, Poolbeg and Grand Canal Dock). It is an objective of Z14 to seek the social, economic and physical development and/or rejuvenation of an area with mixed use of which residential and Z6 would be the predominant uses. The planning authority raise no issues with the principle of the proposed development and the land use mix. In terms of density, site coverage and plot ratio, the planning authority notes that the proposed development will push the boundaries in all these areas but raise no substantive objection given that the locational factors in play and the flexibility that the Planning Scheme offers in certain circumstances.

12.2.2. The planning authority state that Section 168 (2) of the Planning and Development Act 2000 (As Amended) sets out the information required to be included as part of a Strategic Development Zone planning scheme, which includes details of the overall design of the proposed development, including maximum heights. Figure 35 of the Planning Scheme sets out indicative heights, accordingly the subject site is restricted



to between 5 and 7 storeys for commercial/residential development. The planning authority acknowledge that the parent permission currently in force broadly complies with the parameters for height as further refined in Appendix 5 of the Planning Scheme. The issue of height is further examined by the report of the Council's SDZ Implementation Team and like the planning authority the principle of the proposed development is accepted bar the issue of height. In this context, the relationship between height and placemaking is explained and the subject site does not align with any of the Scheme objectives regarding increased height. I am satisfied that the proposed development as comprised of mostly residential uses and its increased density on a similar footprint as previously permitted is acceptable and in accordance with the aims and objectives of the Council for the area. However, as it has been pointed out by the planning authority and defended by the applicant, the principle issue is building height.

- 12.2.3. In terms of the principle of height, the Urban Development and Building Height guidelines, provide design advice and specific planning policy requirements (SPPRs), these must be complied with, section 28 (1C) of the PDA 2000 Act refers. Specifically, SPPR 3(B) of the relevant guidelines states:

*In the case of an adopted planning scheme the Development Agency in conjunction with the relevant planning authority ( where different) shall, upon the coming into force of these guidelines, undertake a review of the planning scheme, utilising the relevant mechanisms as set out in the Planning and Development Act 2000 (as amended) to ensure that the criteria above are fully reflected in the planning scheme. In particular the Government policy that building heights be generally increased in appropriate urban locations shall be articulated in any amendment(s) to the planning scheme*

In this context I note that the planning authority/development agency is in the process of amending the Planning Scheme with reference to height, An Bord Pleanála reference ABP-304604-19 refers. The interim decision of the Board, under section 170A(4)(b) of the Planning and Development Act 2000, as amended, was that the proposed amendments to the Planning Scheme constitute a material change but which falls within the criteria set out in subsection 3(b) and therefore the planning authority must return to the Board after a public consultation phase of 8 weeks. This process is currently in train and the planning authority have made draft amendments

to the Planning Scheme as necessitated by SPPR 3(B). The applicant also notes this fact and states that the proposed building heights, whilst in excess of the current scheme are only marginally over the planning authority's proposed amendments, which they consider to be conservative in any case. Additionally, the Board may wish to note a recent SHD permission north of the subject site but outside the Planning Scheme boundaries for apartment buildings 3-15 storeys in height at 1-4 East Road, Dublin 3, An Bord Pleanála reference number ABP-304710-19 refers.

- 12.2.4. For clarity, the subject proposal is for 3 to 13 storeys in two blocks connected by a high level pedestrian bridge. The current Planning Scheme seeks between 5 and 7 storeys for commercial/residential development on this city block. The draft amendments to City Block 2 show between 6 and 10 storey residential building heights with local 12 storey landmark pop-ups shown along Sherriff Street Upper at Block 2B. Greater height is focused along the northern frontage to Spencer Bock Luas Stop at Block 2C, not the subject site.
- 12.2.5. To summarise, I find a proposal before me that is broadly in compliance with the aims and objectives of the current Planning Scheme, with the exception of building height. The planning authority are against the increase in height amongst other things and the statutory process of changing height parameters is underway; a process the applicant can engage with and influence. The applicant leans heavily on the locational qualities of the site in terms of public transport connectivity and the imperative of national policy and guidelines that allow a planning authority to grant permission even if doing so would contravene local policies and objectives.
- 12.2.6. Incidentally, the applicant has provided a legal opinion on what the Board can and cannot do with regards to material contraventions, SHD applications and Planning Schemes. In addition, the planning authority note a recent High Court judgment of relevance to support their claim that SPPR 3(A) cannot be invoked, Dublin City Council V Spencer Dock Development Co. Limited (JR239/2019) refers. Both the judgement and the advices provided to the applicant lead to the conclusion that only SPPR 3(B) applies to the matter in hand, I agree. The applicant goes on to state that sections 3.1 and 3.2 of the Height Guidelines that advise informed increases in height also hold fast and should be applied, I disagree. There is a clear difference between 'having regard to' section 28 guidance, that is accepted, and mandatory compliance with Strategic Planning Policy Requirements (SPPRs). It is my opinion

that the SPPR 3(B) formal amendment requirement adds a layer of protection to a Planning Scheme and the Board are a party to this statutory decision-making process. In this instance, SPPR 3(B) is in play, the planning authority are in the process of amending the Planning Scheme. To apply the height criteria outlined in the guidelines, however well meaning, would go against the principle of a stated SPPR and the added protection applied to SDZ Planning Schemes mandatorily required by SPPR 3(B).

12.2.7. As an aside, I note that recommendation 6 of the recently published 'Conclusions of the Minister for Housing, Planning and Local Government on the Review of the Strategic Housing Development process' seeks to channel large scale housing proposals through the SDZ planning process only. This is for a variety of reasons but also to ensure that all development consent applications within an SDZ accord with the applicable SDZ Planning Scheme. It is my view that the subject matter of SHD applications within SDZs in general and the current review of the North Lotts SDZ Planning Scheme in particular, suggests a positive outcome for the subject application extremely unlikely in the short term or at least until the conclusion of the review process in early 2020.

12.2.8. The applicant has referenced the precedent of a recent decision of the Board to grant permission for an SHD application that did not align with the height parameters of the Cherrywood SDZ Planning Scheme, ABP-303429-19 refers. The Inspector's report on that application is instructive but not directly comparable to the case in hand. A similar set of circumstances do however, pertain; the Cherrywood Planning Scheme restricts height and was under review in accordance with SPPR 3(B), at the time of the decision. In the case of the Cherrywood Planning Scheme, the subject proposal was very much site specific and the overtopping of the height parameters of the existing Planning Scheme were considered not to be material so as to contravene the scheme. In essence, the detailed design response submitted by the Cherrywood applicant brought into focus the peculiarities of the site in question and the interpretation of the design parameters contained in the Planning Scheme were further refined and reworked to suit the site. Particularly with reference to which street the limit of three storeys would extend from, Tully Park or Bishop Street. The question of a material contravention of the Planning Scheme was therefore not brought forward by the Board in making their decision to grant permission.

12.2.9. It is clear that the current Planning Scheme limits building height at this location for a number of placemaking and urban design reasons, and the proposal to hand is vastly in excess of that planned for. I also see that recent section 28 guidelines on urban development favour increasing heights at appropriate locations subject to good design and contextual appreciation. The site may well be the right location for increased building height for a variety of good planning reasons. The problem for the applicant is that the site lies within the remit of an adopted Planning Scheme currently under review, and in my opinion this leaves no flexibility for the Board to approve such development, even where specific objectives of the operative plan are contrary to national guidance. The planning authority are in the process of amending the Planning Scheme and have initiated a statutory process with An Bord Pleanála, as is required by SPPR 3(B). I see no value in second guessing what the outcome of this process might be, and it would be imprudent to advise the Board to make a positive decision on this planning application in advance of deciding the outcome of the Planning Scheme amendment process. In short, I find the proposed development premature pending the outcome of this formal amendment process. Permission should be refused for this reason alone, however, to assess the proposed development in the round, the following sections examine the merits or otherwise of the overall proposal.

### 12.3. **Design and Layout**

12.3.1. The applicant states that the revised proposal submitted to the Board follows a similar footprint to that already permitted. This is important for two reasons; firstly, construction is underway and secondly the planning authority were satisfied that a development of the format proposed in the past was acceptable in design and layout terms. Leaving building height aside, there are few notable departures from the previously permitted development with which the planning authority have difficulties. All the problems of scale, massing and bulk stem from what the planning authority consider to be a less than robust design rationale for increased height. Issues are raised in relation to poor block articulation and building finishes that contribute to the unacceptably monolithic character of the proposal. The connecting bridge at the sixth floor is also highlighted as poorly conceived and without much design input. Observers reiterate their concerns in relation to the amplified impacts of overshadowing, loss of light and privacy that will result from the proposed

amendments. The construction phase is also feared by local residents in terms of loss of residential amenity and the habit of the Council to issue derogations in relation to construction hours and activity.

- 12.3.2. The applicant has prepared a variety of documentation to illustrate and rationalise their design proposal. The requirements of the Board's Opinion were tackled by the applicant and they responded in detail to item 2 Urban Design Response in the context of the Planning Scheme. My own view is that given that the proposal now before the Board is similar in layout or at least the footprint of the previously permitted development, from an urban design perspective I have little to add. The subject site forms half of a city block and provides some opportunity for pedestrian connectivity and permeability. The central and occasional open spaces are well designed and provided with high quality materials. However, the retention of Irish Water infrastructure at the centre of the development, has the potential to disrupt the open space provision and the provision of circa 3.5m railings further erode the usability and relief the space is supposed to provide to future occupants. The interface of the scheme with public realm at street level is moderately acceptable, I note the concerns of the planning authority in this regard.
- 12.3.3. Undoubtedly, the scale of the buildings in terms of height plays a massive factor in how these blocks relate to the buildings around, existing and planned. I note that the planning authority are not satisfied that the finished design has been well executed. In this respect the planning authority state that the applicant has sought to articulate and refine the massing of the proposed development, but the proposed alterations are minor and the end result is bulky and inelegant, representing a monolithic appearance. The design of any building, large or small is a matter of opinion. In this instance, I find that the designer has attempted to introduce a number of vertical forms in order to break up the massing of the building. This is achieved by a variety of means; a change in material, a breakfront or step back. The interface between existing buildings has also been addressed and this involves stepping down in height to three storeys and introducing raised brick sections to show depth and avoid expanses of blank elevations.
- 12.3.4. This area of Dublin's Docklands is changing rapidly and there is no single architectural style or idiom to mark out one site from the other. In my view it is the quality of materials that sets one building apart from another and specifically the

experience of the pedestrian at ground level, either on the street or in the open spaces within. Of course; scale, massing and bulk play their part, but in the context of this application I am satisfied that the methods used by the designer to break up the form of what is a large mass of structures is broadly acceptable. Although, I do find that the erratic articulation of height along New Wapping Street to be visually confusing, but not necessarily beyond addressing by subtle redesign. However, I am not convinced by the interface between the buildings at ground floor level and public footpaths along Sherriff Street Upper and to a lesser extent along New Wapping Street. The imposition of a noticeable level change and the introduction of blank walls for long stretches of the elevations together with service doors and venting is poor and could result in a barren and featureless street at eye level. I do acknowledge that permission has been previously permitted for a similar interface along these streets and no criticism was raised at that time to the proposal. It is in my view an opportunity lost to invest in an improved public realm experience and create truly impressive street environments.

12.3.5. I note the comments made by the SDZ Team of the Council on the proposed additional heights, and that this current application provides an urban design rationale that presents additional heights on building blocks 2B and 2D. The SDZ Team go on to state that whilst this design solution is worth investigating under the planning scheme review, it is not consistent with approved planning scheme. As I have already indicated, this site may well be the appropriate location for additional height but in the absence of a broader urban design led plan for the area that takes into account increased building heights, the subject proposal cannot be viewed as anything other than premature pending the outcome of the amendment process currently underway.

12.3.6. Lastly, I am critical of the unavoidable retention of Irish Water pumping station at the centre of the development. I note the strategic importance of the pumping station for the wider area, but the compound has the potential to disrupt the open space provision and the erection of high railings is particularly unattractive. No rationale or long term plan for its future removal is explored in the documentation submitted and I find this disappointing. However, the landscape design masterplan makes the most of the levels created on site and it is only the above ground building and other

infrastructure that impacts. The overall design and layout of the proposed development is therefore acceptable.

#### 12.4. Residential Amenity

##### Residential Amenity for future occupants

12.4.1. The proposed development comprises 464 apartments and 120 shared accommodation bedrooms (84 units) and as such the Sustainable Urban Housing: Design Standards for New Apartments 2018 has a bearing on design and minimum floor areas associated with the apartments and special requirements for shared accommodation developments. In this context, the guidelines set out Specific Planning Policy Requirements (SPPRs) that must be complied with. The apartments and shared accommodation facility are arranged in two blocks, between 3 and 13 storeys in height. The apartments are provided with either terrace or balcony spaces, all to an acceptable standard. Apartment units are uniformly distributed throughout the site and are provided with adequately sized public or semi-private open space and play areas.

12.4.1. Section 3.0 of the applicant's Housing Quality Assessment and the Statement of Consistency deals with apartment design and compliance with the relevant standards. Apartment units are a combination of dual aspect (44%) and single aspect (56%). Single aspect apartments, generally have favourable orientations (east or west), with none receiving north light alone. The proposed development provides 49% one bedroom units, which is less than the upward amount of 50% allowed for in the guidelines. All ground floor, floor to ceiling heights are at least 2.55 metres (upper floors are generally 2.4 metres or more) in height and between 6 and 10 units are served per core. Specific Planning Policy Requirements (SPPRs) 1, 4, 5 and 6 are therefore met.

12.4.2. Under the Guidelines, the minimum GFA for a 1 bedroom apartment is 45 sq.m, the standard for 2 bedroom apartment (3-person) is 63 sq.m and the standard for a 2 bedroom (four-person) apartment is 73 sq.m. The applicant states that this has been achieved in all cases and has been demonstrated in the Housing Quality Assessments for apartments submitted with the application. Apartments larger than the minimum standards by 10% amount to 253 units or over 50%. The proposed apartments are all in excess of the minimum floor area standards (SPPR 3), with

some close to the minimum requirements but most in excess of the minimum requirements. Given, that all apartments comprise floor areas in excess of the minimum, I am satisfied that the necessary standards have been achieved and exceeded. In broad terms, I am satisfied that the location and layout of the apartments are satisfactory from a residential amenity perspective.

- 12.4.3. I note that Apartment Guidelines, require the preparation of a building lifecycle report regarding the long-term management and maintenance of apartments. Such a report has been supplied with the planning application. In addition, the guidelines remind developers of their obligations under the Multi-Unit Developments Act 2011, with reference to the ongoing costs that concern maintenance and management of apartments. A condition requiring the constitution of an owners' management company should be attached to any grant of permission.
- 12.4.4. The apartment buildings have a combination of selected brick finishes (buff, grey and textured buff), standing seam metal panels and glazed balconies. The majority of the finishes proposed are durable, attractive and suitable for the area in terms of visual amenity. It is also proposed to provide a variety of communal facilities such as gym, AV room, residents lounge, bookable space as well as a large reception area (total internal space 1,230 sqm). In addition to external amenity space comprising roof terraces and ground floor courtyard areas (1,860 sqm), a central public open space of 1,155 sqm has been provided. In light of all these supporting facilities, included under this application, I am satisfied that a comprehensive suite of facilities and services will accompany the conventional residential apartment component of the proposed development and enhance this docklands site.
- 12.4.5. Given the foregoing, the reports and drawings prepared by the applicant and the views and observations expressed by the planning authority, I am satisfied that the proposed development will provide an acceptable level of residential amenity for future occupants.

#### Shared Accommodation

- 12.4.6. A component of the proposed development comprises shared living accommodation, in the format of 84 units or 200 bed spaces broken down as follows: 2 single bed space, 46 two bed space and 36 two-four bed space units. The Design Standards for New Apartment guidelines describes shared accommodation as professionally



managed rental accommodation, where individual rooms are rented within an overall development that includes access to shared or communal facilities and amenities. The guidelines liken shared accommodation to student accommodation and give the example of a residential unit comprising of 2-6 bedrooms, of single and/or double occupancy with a common shared area within the residential unit for living and kitchen facilities. Precise minimum floor areas are provided for bedrooms and communal living and kitchen facilities. Additional facilities should also be provided, such that residents should enjoy access to these dedicated sports and recreation facilities and have the opportunity to experience a shared community environment among other residents. The need for the specific form of residential shared accommodation must to be demonstrated. SPPR 9 of the guidelines govern implementation of shared accommodation proposals and usually they are not subject to Part V requirements. Car parking is not provided for the use of residents. The guidelines do not discount other formats of shared accommodation, subject to the adequate demonstration of their need close to specific employment types. This is a new format of living and the Board have granted permission under SHD legislation in the past.

12.4.7. The format advanced by the applicant is broadly based upon these principles and is explained in detail by the Architectural Design Statement submitted with the application. The accommodation is aimed at recent graduates and young professionals used to well managed student accommodation and who place importance on shared facilities. Letting terms are envisaged to be short term, 6-12 months and there up to 5,000 employment opportunities in the immediate vicinity. The applicant cites examples of shared living from city centre contexts, 'The Collective' London, 'Welive' New York and 'Node Living' Dublin. Based upon the examples cited, the applicant states that the format departs from the guidelines in two areas; provision of bedrooms in excess of the minimum standards with their own dedicated cooking areas while also providing communal cooking facilities for the studio units.

12.4.8. In detail, all room or cluster types from single bed space to four bed space include a living kitchenette space from 12 sqm to 37 sqm respectively. The bedroom sizes exceed the minimum standards in every instance and benefit from dedicated living space. Every floor includes a common living/multimedia room and kitchen dining facility in addition to those provided in each unit. The shared accommodation facility is housed at the southern end of block 2 and extends across nine floors including a mezzanine floor.

Other amenities are provided mainly at ground floor level with double height spaces and include AV multimedia room, bookable room, gym/multipurpose room, co-working space, café over two floors and a roof terrace off the ninth floor. A total of 802 sqm of communal amenity space is provided. Common living and kitchen facilities in each cluster amounts to 1,630 sqm. Resident support facilities, that include storage and staff/management space equals 153 sqm. The applicant specifies that the total amount of minimum common living and kitchen facilities amounts to 2,585 sqm. From a quantitative point of view and if I were to apply the requirement of 12 sqm (8 sqm plus an additional 4 sqm) of such space this would total 2,400 sqm, the shared accommodation proposition is acceptable from an amenity quantum perspective.

12.4.9. From a qualitative point of view, the distribution of communal amenity space, concentrated at ground floor level but also dispersed through all floors, is well designed and therefore acceptable. The advantage of providing common living and kitchen space within each cluster is a beneficial departure from the guideline model that assumes individual cell type rooms reliant on a kitchen facility for up to eight persons. I note that the planning authority are concerned that the model advanced by the applicant would limit social interaction and undermine the formation of a cohesive community experience. This is as much a commentary on any management model rather than the physical layout of space and accommodation. On the whole, I am satisfied that the arrangement of communal amenity space and kitchen/living areas provides an outlet for social interaction, in addition to the comfortable solitude that might be sought by the individual when required in their own space. The success or failure of the development as proposed relies on an active and engaging management regime that provides constant contact with the occupant in order to foster a sense of community hung on the facilities and amenities provided. In this respect a Shared Accommodation Operational Management Plan has been developed by the applicant and its contents and management measures should be implemented. However, I would expect that a more detailed 'living experience regime' would be refined before the facility is operational, this responsibility would probably lie with the operator.

12.4.10. I am satisfied that the physical arrangement and format of the shared accommodation facility proposed is acceptable and in accordance with guidelines and specifically SPPR 9.

Residential Amenity existing residents

12.4.11. There are existing two storey period houses constructed on a portion of the southern boundary of the site along Mayor Street Upper. Two and three storey period houses also occupy ground on the eastern side of New Wapping Street, across from the subject site. These groupings of houses represent the historic fabric of the area and are the sole remaining vestiges of an historic urban form. To the north of the subject site across Sherriff Street Upper is located Canon Hall a relatively recent apartment and office complex of between 3 and 11 storeys. All of these properties will be affected in some shape or form by the proposed development and observers have set out their concerns with regard to loss of privacy, overshadowing and overbearing appearance.

12.4.12. The planning authority are silent on the impact of the development on neighbours. It is my opinion that the permitted development on the site will impact upon the residential amenities of neighbours but that such impacts have been thoroughly assessed and accepted by the previous application on the site. However, I note that an increase in height may amplify impacts to residents. The applicant has stated that the interface between the properties at the junction of Mayor Street Upper and New Wapping Street has been improved by a step up from existing houses to a proposed three storey element. I agree that this moderate step up to three storeys is a reasonable interface to the most sensitive properties. The houses along New Wapping Street lie across a public road at a distance of 20 metres or more from the proposed building line and this is an acceptable separation distance in an urban context. The apartments at Canon Hall, similarly lie across a public road but will inevitably experience some loss of current levels of residential amenity due to their orientation north of the site. However, on balance, I find that given the changing urban context of the site, the documentation submitted by the applicant; the proposed amendments to the permitted scheme will not adversely impact on the residents amenities of neighbouring property.

## 12.5. Infrastructure

12.5.1. The site is located in a city centre location close to existing water services, road and public transport infrastructure. The planning authority note that impacts to the road network will be negligible. I am satisfied that the site is well served by sustainable modes of transport in particular and will deliver an acceptable density of

development to avail of and support existing and planned public transport infrastructure.

12.5.2. The planning authority raise no issues in relation to either surface water drainage or flood risk. I note that internal reports of the Council recommend conditions of a technical nature in the event of a grant of permission. I am satisfied that the documentation submitted with the application that includes an Engineering Services Report and Flood Risk Assessment is appropriately detailed and I see no infrastructural constraints other than the Irish Water Pump Station it is proposed to retain. A matter that formed part of the previous permission on the site and one that I intend not to critically assess here.

## 12.6. Other Matters

12.6.1. I am satisfied that there are no other aspects to the proposed development that present any conflicts or issues to be clarified, the documentation submitted by the applicant is sufficiently detailed and generally accords with the specific information required by the Board's opinion ABP-304210-18. The site can be facilitated by water services infrastructure and the planning authority and Irish Water have confirmed this. The site is located close to tram services, bus services and a rail station and there are no extraordinary traffic or transportation issues that cannot be dealt with by condition as necessary. The planning authority have recommended a refusal of permission for two reasons, height and the deficient residential amenity associated with the shared accommodation units. Internal Council reports from various departments have recommended relevant conditions. For the most part, I agree with these conditions should the Board be minded to grant permission. However, as I have already outlined throughout my report, I broadly agree with the Council's reservations concerning the height and massing of the proposed development in the context of the ongoing review of the Planning Scheme, and I note aspects of their primary recommendation to refuse permission.

## 13.0 Recommendation

13.1. Section 9(4) of the Act provides that the Board may decide to:

- (a) grant permission for the proposed development.

- (b) grant permission for the proposed development subject to such modifications to the proposed development as it specifies in its decision,
  - (c) grant permission, in part only, for the proposed development, with or without any other modifications as it may specify in its decision, or
  - (d) refuse to grant permission for the proposed development,
- and may attach to a permission under paragraph (a), (b) or (c) such conditions it considers appropriate.

13.2. Having regard to the above assessment, I recommend that section 9(4)(a) of the Act of 2016 be applied and that permission is REFUSED for the development, for the reasons and considerations set out below.

#### **14.0 Reasons and Considerations**

1. The proposed development would not be consistent with a Planning Scheme in force in respect of a strategic development zone, namely the North Lotts and Grand Canal Dock SDZ Planning Scheme, with specific reference to the building height parameters contained therein. As the site forms part of an area in respect of which amendments to a Planning Scheme have not yet been determined. It is considered that the proposed development would, therefore, be premature pending the determination of this process.

The amendment process has been initiated by the planning authority concerned, An Bord Pleanála reference number ABP-304604-19 refers. The proposed amendments do incorporate reasoned increases in building height parameters, however, the process has yet to be concluded. It is in this respect that further consideration of the proposed development would run counter to Ministerial guidelines issued to planning authorities under section 28 of the Planning and Development Act 2000 (as amended), namely the 'Urban Development and Building Heights Guidelines for Planning Authorities' published by the Department of Housing, Planning and Local Government, December 2018. Specifically, Strategic Planning Policy Requirement 3B (SPPR 3B) that directs the Development Agency in conjunction with the relevant planning authority to undertake a review of the planning scheme, to ensure that the

criteria set out in section 3.2 of the guidelines are fully reflected in the planning scheme. In particular, the Government policy that building heights be generally increased in appropriate urban locations shall be articulated in any amendment(s) to the planning scheme. This process is underway but not yet concluded.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

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Stephen Rhys Thomas  
Senior Planning Inspector

18 November 2019