



An
Bord
Pleanála

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

Inspector's Report ABP-307067-20

Strategic Housing Development

413 no. Build to Rent apartments and associated site works.

Location

Site formerly known as the IDA Ireland Small Business Centre/Newmarket Industrial Estate bounded by Newmarket, Brabazon Place, St. Luke's Avenue and Newmarket Street, Dublin 8.

Planning Authority

Dublin City Council South

Applicant

Carrey Issuer DAC.

Prescribed Bodies

1. Transport Infrastructure Ireland.
2. Irish Water.
3. Commission for Energy Regulation.

4. Minister for Culture, Heritage and the Gaeltacht (archaeology & conservation)
5. An Taisce- The National Trust for Ireland.
6. The Heritage Council.

Observer John Fingleton & 3 Submissions form Prescribed Bodies.

Date of Site Inspection 15th August 2020.

Inspector Daire McDevitt.

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Appendix 1 Documentation submitted with the Application

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 site is located within the Liberties area, Dublin 8, is bound to the north by St Luke's Avenue, to the west by Brabazon Place/Brabazon Row, to the south by Newmarket Square and to the east by Newmarket Street. A Part VIII project for the upgrade of Newmarket Square has been agreed by Dublin City Council.
- 2.2. The area has a mixed character. The northern side of St. Luke's Avenue, is predominantly residential, a mix of 3 storey terraced houses with a contemporary style 5 storey apartment, unified by their red brick finish. The southern side of St. Luke's Avenue is the subject of extensive dereliction and the former IDA lands (application site) To the west of the site Brabazon Place includes ABP 305324-19 (SHD application for Student Accommodation) Teelings Distillery is located at Newmarket Square which forms the southern boundary of the site and Newmarket Street, a cul-de-sac forms the eastern boundary. Newmarket Street is linked to St. Luke's Avenue via steps. Apartments with angled windows and recessed balconies facing the application site are located here.
- 2.3. The site was previously occupied by red brick industrial units, ranging in height from 1 to 3 storeys. These have been demolished on foot of Reg. Ref 3323/17 (ABP 300431-17).
- 2.4. The application site is referred to as Site B in the documentation submitted. The remainder of the overall site, referred to as Site A, located at the corner of Newmarket and Brabazon Place, is the subject of a separate planning application to Dublin City Council (Reg Ref: 4743/19) for a Hotel development with 2 no. retail/restaurant units.
- 2.5. St. Luke's Avenue is an extension of Cork Street and is one of the main routes through this part of the city with footpaths, bus lanes and cycle paths on both sides of the main carriageway. Newmarket Street is a cul-de-sac which also serves as the

main access to the apartment building located on its eastern side. There is an existing vehicular access to the site off Newmarket Street. Newmarket (also referred to as Newmarket Square) is currently the subject of works with new footpaths and parking meters being installed along the northern side and Teelings Distillery with parking along its southern side. Brabazon Place is a small link road between Newmarket and St.Luke's Avenue. There is a second vehicular access to the former IDA site from Brabazon Place. The proposed vehicular access to the basement carpark is off Newmarket Street.

3.0 Proposed Strategic Housing Development

- 3.1. The proposed development would comprise of 413 Build to Rent (BTR) units, 2 no. retail units, 1 no café/restaurant, artist studio and associated works as detailed below.

Table 1: Key Figures

Site Area	0.66ha
Demolition	All existing buildings on the IDA Ireland Small Business Centre at Newmarket Industrial Estate (works previously approved under ABP 300431-17)
No. of units	413 (c.28,735m ²)
Height	6 (including setback) to Newmarket, stepping to 9-13 storeys towards St. Luke's Avenue (16.9m to 43.1m/43.6m (parapet/max height including lift overrun)
Density	625.7 units per ha
Dual Aspect	33% (Central and Accessible location)
Car parking	50 spaces in the basement (accessed off Newmarket Street)
Cycle Space	550 (540 at lower level/basement accessed off St. Luke's Avenue with 10 provided at surface

	level on St; Luke's Avenue and the semi-private courtyard).
Non-residential	Retail Unit (156m ²) Retail Unit (323m ²) Café/Restaurant (213m ²) Artist Studio (216m ²)
Residential Support Services	838m ²
Residential Services & Amenities	1,291m ²
Communal Open Space	2611m ² : 5 roof garden (1875m ²) and Semi-private residential courtyard (736m ²)
Private Amenity Space	287m ² (13 of 413 units have private amenity)

Fig 2: Unit Mix

Unit Type	No. of Units	Percentage
Studio	203	48.9
One bed	136	33.5
Two bed	72	17.1
Three bed	2	0.5
Total	413	100

Fig 3: Communal Amenity Space (m²)

Lounge Terrace	377
Gym Terrace	361
Spa Terrace	177
Social Terrace	356
Biodiversity Roof Garden	574
Semi-private courtyard (ground level)	736
Total	2611

The buildings are arranged around a semi-private courtyard and a new internal street linking Newmarket and St. Luke's Avenue. 5 no. rooftop terraces are proposed for residents.

A landscaped strip (DCC controlled lands) is included in the proposed development with the consent of DCC and will be maintained by the developer as part of the overall development.

The remainder of the overall site bounded by Newmarket and Brabazon Place is the subject of a separate planning application to DCC (PA Ref. 4743/19) for a Hotel development with retail/restaurant units.

4.0 Planning History

Reg Ref 4743/19. Permission for a hotel, retail and café (6,448m²) and new street to the south west corner of the site (Site B) currently with Dublin City Council and no decision has been made.

Reg Ref 3323/17, ABP 300431-17 Permission granted for the demolition of buildings on site & redevelopment for mixed use purposes (including 58 residential units), including 4 blocks (heights along the west part 7 & part 8 storeys) enclosing a central courtyard above lower ground level & basement with 112 car parking spaces & 195 bicycle spaces.

Part VIII application providing public realm improvements to Newmarket Square. The improvements will include a cultural square, universal square and Newcastle square west providing 37 car parking spaces external to Newmarket Square. The Part VIII application includes works along Brabazon Place to the east and Newmarket to the south of the subject site.

Adjoining site to the west (SHD Application):

ABP-305324-19. Permission granted for demolition of warehouse and construction of 368 no. student accommodation bed spaces.

Other SHD Applications in the vicinity:

ABP30346 - 19: A site bound by Mill Street, Sweeney's Terrace and Clarence Mangan Road, Dublin 8. Permission granted for purpose student built accommodation and residential (build to rent) complex with ground floor retail/commercial units consisting of: 1. 235 No. student accommodation bedspaces comprising 54 No. studio units, 3 No. three bed units, 12 No. four bed units, 2 No. 6 bed units and 14 No. eight bed units. 2. Ancillary facilities including reception/management suite, internal social and recreational spaces. 3. 37 No. residential built to rent units comprising 8 No. studio units, 24 No. one bed units and 5 no. two bed units. 4. A commercial/retail unit (351.5 sq. m) fronting onto Mill Street.

Other relevant planning permissions in the vicinity of the site.

ABP Ref. 300184-17: The Donnelly Centre, Cork Street. Permission granted for the demolition of the existing Donnelly Centre Factory Buildings (c. 7,858 sq. m) and the construction of 399 No. student accommodation units in 90 No. apartments, a retail/café unit (114 sq. m) along Cork Street, a range of indoor and outdoor communal and recreational facilities including a foyer; common room, lounge; games room; study room; group kitchen; laundry; store; gym; yoga room; outdoor garden and roof terrace. The overall building has a maximum height of 24m and is arranged around a central courtyard and is part 6 No. to part 7 No. storeys.

PA Reg. Ref. 3475/14 & 2440/16 – permission was granted for a mixed use development on a site to the south of Newmarket. This included permission for 406 student bed spaces. Reg. Ref. 2182/16 – permission was granted for a mixed use development to the south east of Newmarket. This included permission for 303 student bed spaces.

PA Reg. Ref. 2182/16 – permission was granted for a mixed use development to the south east of Newmarket. This included permission for 303 student bed spaces.

5.0 Section 5 Pre Application Consultation

5.1 A Section 5 pre application consultation (ABP 306203-19) took place at the offices of An Bord Pleanála on the 3rd February 2020. Representatives of the prospective application, the planning authority and An Bord Pleanála were in attendance. Following consideration of the issues raised during the consultation process and having regard to the opinion of the planning authority, An Bord Pleanála was of the opinion that the documentation submitted required further consideration and amendment to constitute a reasonable basis for an application for strategic housing development to An Bord Pleanála. The applicants were advised that further consideration of the documents as they relate to the following issue was required:

Residential Amenity

Further consideration and/or justification of documents as they relate to the compliance with the requirements of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' (2018) and the provision of appropriate residential amenity, having regard to, but not limited to the following;

- SPPR 4 and the provision of dual aspect units within the scheme,
- SPPR 7 & 8 and the submission of a schedule of accommodation which details the shortfall in private amenity and storage facilities proposed and those compensatory residential support facilities and amenity areas.

Furthermore, the prospective applicants were advised that the following **specific information** should be submitted with any application for permission:

1. A detailed phasing plan for the proposed development taking into consideration the remaining site, within the applicant ownership to the south west of the site, and the delivery of the new public street in the centre of the site.
2. Additional CGIs/visualisations/3D modelling and cross section drawings showing the proposed treatment of the new public street through the site and the proposed development relative to existing and proposed developments in the vicinity, including justification for an increase height at this location relative to the surrounding area.
3. Relevant consents to carry out works on lands both within the red line and others which are not included within the red-line boundary.
4. A site specific Management Plan which includes details on management of all communal areas and the public plaza.
5. Details of all materials proposed for buildings, open spaces, paved areas, boundary and landscaped areas and a building life cycle report in accordance with section 6.3 of the Sustainable Urban Housing: Design Standards for New Apartments (2018).
6. Submission of an Archaeological Impact Assessment and Conservation Impact Assessment, having regard to the location of the site within a zoned of archeologically interest and the Newmarket conservation area.
7. The submission of Operational Service Management Plan, Mobility Management Plan and Construction Management Plan.
8. The information referred to in article 299B(1)(b)(ii)(II) and article 299B(1)(c) of the Planning and Development Regulations 2001-2018 should be submitted as a standalone document.

5.2 Applicant's Statement

A statement of response to the Pre-Application Consultation Opinion was submitted with the application, as provided for under section 8(1)(iv) of the Act of 2016. This statement provides a response to the issue raised in the opinion.

Residential Amenity

SPPR4:

It is submitted that Newmarket is a 'central and accessible urban location' and therefore the Guidelines which requires apartment scheme to deliver a minimum of 33% dual aspect units.

It is submitted that proposed development achieves a c.40% dual aspect ratio. And based on a more conservative approach to defining dual aspect, this application puts forward a scheme that has 34% of units that comfortably achieve dual aspect. The criterion use to arrive at this figure was that to qualify as dual aspect units needed to have a second façade with a minimum 3m length. All dual aspect units have a full window on their second façade and these widows are into living rooms rather than bedrooms to make the best use of the dual aspect.

The Design Statement and the Housing Quality Assessment shows that by using the stepping profile of the northern boundary (and acknowledging the stepped profile of the previously permitted building) each unit looks in at least 2 directions. Corner windows are used to maximise the second direction views and light.

No single aspect units are north facing.

Drone images have been overlaid with internal views form models of the apartment development to show actual real life dual aspect conditions that would be experienced in the apartments.

On the basis of the above the applicants are satisfied that the proposed development is consistent with SPPR4 and will provide a high level of amenity for residents.

SPPR 7

The applicant confirms that the development is a specific BTR development and Statutory notices reflect this.

The applicant is willing to accept a condition that permission is subject to a covenant/legal agreement requiring that the development remains owned and operated by an institutional entity for a period of at least 15 years and that no individual units are sold or rented separately for that period. A draft covenant is submitted with the application.

The Newmarket Square SHD provides a wide range of Residential Support Facilities and Residential Services and Amenities

Residential Support Facilities comprise of facilities related to the operation of the development for residents such as laundry facilities, concierge and management facilities, maintenance/repair services, waste management facilities, etc

Residential Services and Amenities comprise of facilities for communal recreational and other activities by residents including sports facilities, shared TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities.

A breakdown of these elements is presented in the Site Specific BTR Apartment Management Plan.

The applicants are satisfied that the development meets the requirements of SPPR 7 in relation to securing its BTR status and by providing extensive facilities and services for residents.

SPPR8:

The dwelling mix has been tailored to suit the anticipated market in this City Centre location and is weighted towards studios and 1 bed units.

Storage is provided for each unit in accordance with the Guidelines.

Private Amenity space is provided for 13 of the 413 units, each of these private amenity spaces are significantly larger than the minimum requirements (14.5 to 50.4m²). The HQA sets out further details.

The development provides the full requirements of Communal Amenity Space in 5 no. roof gardens and the semi-private courtyard.

The Residential Support Facilities and the Residential Services and amenities account for 7% of the total gross floor area.

The only concession to the Guidelines standards sought in this development is to private amenity space. It is considered that the city centre location and the proximity to Weaver Park and St. Patricks Park mitigates this factor. The Newmarket area and the general areas provide a wide range of facilities within a short walking distance.

Within the development it is considered that the alternative compensatory communal support facilities and amenities makes the case for the unit mix proposed, together with the outdoor amenity spaces, supports the flexibility sought in relation to the provision of private amenity space (balconies) for individual apartments.

Further elaboration of responses contained in the Design Statements, The Housing Quality Assessment, Landscape Report and the Site Specific BTR Apartment Management Plan.

5.3 Response to Specified Information No. 1 to 8:

- **Phasing Plan** submitted. It is the applicant's intention to deliver the current proposal on Plot B in tandem with the Hotel development on Plot A of their landholding. In the unlikely event that one development is proceeds and the other does not, the public walkway will be delivered and maintained.

- **CGIs of New Street** and 3D model/visualisations are included in the Design Statement. The justification for the height is set out in the 'Statement of Consistency/Material Contravention Statement'.
- Relevant **letters of consent** submitted.
- **Site Specific Management Plan** submitted. TIC plan submitted.
- **Materials** details submitted in the Design Statement, Landscape Design Report and Building Life Cycle Report.
- **Archaeological Impact Assessment and Conservation Impact Assessment** submitted.
- **Management Plans** The Operations Service Management Plan is addressed in the Site Specific BTR Apartment Management Plan. An Operational Waste Management Plan is also submitted. A Mobility Management Plan is incorporated into the Traffic and Transport Assessment. A Construction Management Plan is also included with the application.
- **EIAR Screening.** Refer to the submitted EIAR Screening/Statement of the Effects on the Environment and European Sites.

6.0 Relevant Planning Policy

6.1 National

National Planning Policy

Project Ireland 2040 - National Planning Framework

The National Planning Framework includes a specific Chapter, No. 6, entitled 'People Homes and Communities'. It includes 12 objectives among which Objective 27 seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity facilities for all ages. Objective 33 seeks to prioritise the provision of new homes at locations

that can support sustainable development and at an appropriate scale of provision relative to location. Objective 35 seeks to increase densities in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

Section 28 Ministerial Guidelines

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

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated 'Urban Design Manual')
- Design Standards for New Apartments – Guidelines for Planning Authorities (2018)
- Design Manual for Urban Roads and Streets (DMURS) and Interim Advice Note-Covid 19 (May 2020).
- Urban Development and Building Heights – Guidelines for Planning Authorities
- Architectural Heritage Guidelines for Planning Authorities, 2004. Development Guidelines for Protected Structures and Areas of Architectural Conservation.
- The Planning System and Flood Risk Management (including the associated Technical Appendices)
- Childcare Facilities – Guidelines for Planning Authorities

6.2 Regional

Regional Spatial & Economic Strategy for the Eastern & Midland Regional Assembly

The RSES including the Dublin Metropolitan Area Strategic Plan (MASP) was adopted on the 3rd of May 2019.

The Liberties is located within the area covered by MASP which seeks to focus development on large scale strategic sites and on the redevelopment of underutilised lands, based on key transport corridors that will deliver significant development in an integrated and sustainable manner.

6.3 Local

Dublin City Development Plan 2016-2022

The site is located on lands zoned objective for **Z10** is *‘to consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses, with residential the predominant use in suburban locations, and office/retail/residential the predominant use in inner city areas’*

- Residential is a permissible uses within the mixed use Z10 zone.

Section 14.8.10 - Inner Suburban and Inner City Sustainable Mixed Use- Zone 10

- Primarily residential, office and retail use.
- The re-development of mono-uses shall not generally be permitted

The southern section of the site is located in the **Newmarket Conservation Area**, therefore the following polices apply.

- **Policy CHC4 & CH5:** Conservation Areas: Development will not harm the features of special interest in the conservation areas or involve harm to loss of traditional fabric.
- **Section 11.1.5.8:** Demolition of Protected Structures and Buildings in Architectural Conservation Areas. The demolition of structures which make a positive contribution to protection structure or conservation area will be restricted. The acceptability of demolition will be considered having regard to the impact on the character of the ACA.
- **Appendix 24:** Protected Structures and Buildings in Conservation Areas.

The site is located in a zone of **Archaeological Interest Dublin City (DU0180-020)**.

- **Policy CHCO10-** Protect and promote those sites of archaeological interest.

Chapter 15 –Strategic Development and Regeneration Areas

The subject site is located within SDRA 16 encompassing the Liberties and Newmarket Area which is identified as a key area for development and regeneration.

Section 15.1.1.19- Strategic Development and Regeneration Area (SDRA) 16, Liberties and Newmarket Square.

The following are provided in order to support the development and regeneration of SDRA 16:

1. To improve the quality of life so that the Liberties area becomes a great place for people to live, work and visit.
2. To provide for appropriate social and community infrastructure to support the existing population, which is growing and becoming increasingly diverse.
3. To provide for a wide diversity and choice of housing that can cater for families and older people by including options for mixed tenure and a range of housing types and unit sizes.
4. To stimulate the local economy and to include a critical mass of appropriate development and investment to provide significant employment opportunities, including in the digital media sector as the Digital Hub has the potential to rejuvenate the economic profile of the Liberties.
5. To recognise the unique role the Liberties plays in Dublin's character and to ensure that regeneration safeguards a strong sense of community identity.
6. To identify and protect the distinctive heritage of the area and encourage sustainable and innovative re-use of historic spaces and structures.
7. To ensure that the individual character of different areas within the Liberties is protected and enhanced by contemporary and high-quality design of new buildings.
8. To promote the principles of good urban design including improving connectivity and enhancing the legibility and permeability of the Liberties in relation to the wider cityscape.
9. To create a high-quality network of public spaces, parks and streets.

10. To promote sustainable modes of transport by making them convenient and attractive, including walking and cycling routes, and by facilitating the provision of public transport infrastructure and optimising its use.
11. To improve and encourage the cultural and tourist offer of the area.
12. To encourage environmental sustainability by improving biodiversity, facilitating recycling, and minimising the use of non-renewable resources, including energy.

Figure 36- The site is located in **Key Development Areas (KDA) C – Newmarket.**

Policy SC1- Consolidate and enhance the inner city by linking the critical mass of existing and emerging clusters and communities such as Newmarket, with each other, and to regeneration areas.

Policy CEE5- Improve linkages between key economic areas of the city by improving permeability, public transport, improving the public domain and tackling vacant sites/ dilapidated buildings.

Section 16.7 – Building Heights

Section 16.7.2 Height Limits and Areas for Low Rise, Mid-Rise and Taller Development.

- Low Rise- Inner City – Up to 24m (residential)
- Assessment criteria for Higher Buildings.

The Liberties Local Area Plan 2009 (extended until May 2020)

Section 5.1.4 Liberties/ the Coombe

- New infill development should relate to the heights of adjacent buildings.

Section 6.5.3 sets out the Height Strategy for the area

Section 7.8 provides general and sites specific development and design guidance for all Key Development Sites. Newmarket is identified as Site C.

The site is within the **Newmarket/ Chamer-Weavers’ character area** of the LAP:

Key objectives for the area are as follows:

- Improve permeability throughout the area through new links across Cork Street to the north and Mill Street to the south.
- Deliver a high quality, multi-functional market square and city-wide well-known destination.
- Encourage day and night time activities around public open spaces, such as cafés, bars, restaurants and local shops.
- Provide active frontages along key walking routes and towards key local activity nodes.
- The public realm should be designed to encourage walking and cycling, providing shared surfaces and easy street crossing. Pedestrian priority should be particularly enhanced on the central market square.
- Open Oscar Square to the community and provide adequate management.

6.4 Applicant's Statement of Consistency

The applicant has submitted a Statement of Consistency as per Section 8(1)(iv) of the Act of 2016, which indicates how the proposal is consistent with the policies and objectives of section 28 Guidelines and the County Development Plan. This has been noted and examined.

6.5 Applicants Material Contravention Statement

The proposed development has been advertised as a material contravention and a Material Contravention Statement submitted. The statement sets out the justification for the proposed residential development, in particular the proposed height, which ranges from 6 to 13 storeys which materially contravenes the Dublin City Development Plan 2016-2022. The is summarised as follows:

Building Height

The proposed development is a material contravention of section 16.7 Building Height **ins** a Sustainable City, 16.7.2 Height Limits and Areas for Low Rise, Mid-Rise and Taller Development.

- The building heights range from 16.9m on Newmarket to a highpoint of 43.1/43.6m (parapet/max. height including lift overrun) on the 13 storey feature building on the corner of St. Luke's Avenue and Brabazon Way. This exceeds the prescribed height in the development plan (24m residential).
- The applicant is of the view that the proposed height of 16.9m at Newmarket is not a material contravention of the Liberties LAP which prescribes a maximum parapet height of 15m as the height proposed is generally consistent with the height requirements for this zone.
- The applicant is of the view that on the basis of the information presented that the Board may granted permission in accordance with section 37(20(b)(ii), (iii), (v) having regard to:
 - The development is a strategic developmental the context of the regeneration of The Liberties/Newmarket Area.
 - SPPR3 of the Urban Development and Building Heights Guidelines for Planning Authorities 2018 promotes building height subject to criteria. The applicant is section 3 of the Statement of Consistency has set out how the development complies with this.
 - Rebuilding Ireland- The Governments Action Plan on Housing and Homelessness which seeks to improve the viability of housing construction and ensure that an average of 25,000 homes are produced every year in the period to 2021.

- The National Planning Framework (NDF) includes objective 35 which encourages increased residential densities through a range of measures, including increased building heights.
- There are a number of other developments completed, granted permission and at planning stage in the general area where the 24m height limit has been exceeded.
- The LVIA submitted with the application also demonstrates that the proposed height will not interfere with the setting of any locally important buildings or the wider city scape.

6.6 Designated Sites

The site is located c. 4.3km to the west of South Dublin Bay and River Tolka Estuary SPA (site code 004024) and South Dublin Bay SAC (site code 000210) And c.7.8km southwest of North Bull Island SPA (site code 004006) and North Dublin Bay SAC (site code 000206).

7.0 Observer Submissions

One Submission was received from John Fingleton and 3 Submissions from Prescribed Bodies which are summarised in section 8 below.

The Submission from Mr. John Fingleton is summarised as follows:

Welcomes the development of the site but wishes the following points to be considered:

Apartment Mix. More 3 bed and some 4 bed units should be introduced to ensure sustainable communities. The apartments should include 20% 3 bed and 10% 4 bed.

Tenure Mix. BTR should be part of the overall mix of tenures. The different models, social, affordable and private should each account for a third of the housing provided.

Part V. Studio apartments should not be purchased by DCC to add to their building stock. DCC should be considering 1 bed units.

Corridors. The length and width of corridors appears particularly ungenerous.

Future. SPPR 7 allows for individual units to be sold in 15 years. Request that that a condition be attached to address how both private amenity space and storage space are provided prior to any disposal.

SHD. A condition should be attached requiring that DCC upload all information submitted to their own DCC Planning Portal. The publication of all observations in a public forum similar to the DCC Planning Portal would be welcomed.

8.0 Planning Authority Submission

8.1. In compliance with section 8(5)(a) of the 2016 Act the planning authority for the area in which the proposed development is located, Dun-Laoghaire Rathdown County Council, submitted a report of its Chief Executive Officer in relation to the proposal. This was received by An Bord Pleanála on 9th July 2020. The report may be summarised as follows:

The submission from the Chief Executive includes details in relation site location and description, proposal, zoning, planning history, interdepartmental reports, summary of submissions/observations, summary of views of elected members, policy context and assessment.

8.2 Summary of Views of Elected Representatives (South Central Area Committee Meeting of the 20th May 2020)

- The Board should ensure that there is adequate provision in the event that the Hotel development does not go ahead to avoid an infrastructure deficit.
- Appropriateness of this type of development in light of the impacts of Covid 19.

- What are the proposal for the DCC lands within the application site.
- Images online show a Premier Hotel but this is not included with the application.
- Level of communal residential amenities is queried.
- Provision of balconies queried. 13 of 413 units have balconies. Terraces at roof level on the southern and eastern elevation of the building.
- Query of the provision of $\frac{3}{4}$ of the units as studio and 1 bed is appropriate.

8.3 Planning Assessment

Comprehensive Redevelopment of the site.

The Planning Authority note that throughout the process it has highlighted concerns regarding the applicant's approach to the redevelopment of Newmarket. This has to date, complicated the planning process in that the delivery of the hotel and residential scheme is dependent on the outcome of two separate planning application processes which, in the event of either being refused, would undermine the comprehensive redevelopment of this Significant Development Site.

The applicant has reiterated that it is their intention to construct the development as one phase. The area of the proposed internal street is included in red lines of both the subject SHD application to the Board and the Hotel application being considered by DCC. It has been indicated that the maintenance of the internal street will be the matter of the management company associated with the residential scheme. However the Planning Authority still has concerns regarding the maintenance of the internal street in the event that the hotel proposal proceeds and the residential element does not.

The Board may wish to consider the inclusion of a condition seeking elevations of the proposed residential scheme in the event that the adjoining hotel development does not proceed.

Public Route between St. Luke's Avenue and Newmarket Square:

The proposal accords with the general principles relevant to this site in terms of providing a pedestrian link through the site from Newmarket to St. Luke's Avenue. However, during the Stage 2 Consultation process, the planning authority raised concerns that the design and layout of this pedestrian link would not provide for the attractive pedestrian pathway envisaged. It is brought to the Boards attention that there is ongoing issue with the adjoining Hotel planning application on Site A.

The public route has been redesigned following the Stage 2 consultation with the Board, these modifications have also been incorporated into the concurrent hotel application. Overall, it is not considered that the amendments to the public route are sufficient to address the Planning Authority's concerns. The proposed uses along the laneway i.e the co-working, residential amenity areas and meeting rooms together with the measures incorporated to ensure privacy for the occupants of these spaces are not considered sufficiently active enough to provide any meaningful engagement, surveillance or lighting.

Furthermore, taking into account the hotel application which continues with a proposal to largely use the public route as a service area, it is not considered that the proposed pedestrian link between St. Luke's Avenue and Newmarket Square would represent an active, safe-street and public place that would encourage the general public to use it, particularly at night.

This issue has been a recurring theme throughout the pre-application stages of both applications and the applicant has continually failed to address the concerns of the Planning Authority.

Zoning

It is considered that the development as proposed is consistent with Z10 zoning objective on the site.

Plot Ratio & Site Coverage

As set out in the City Development Plan, the indicative plot ratio for a site zoned Z10 is between 2.0 and 3.0 with an indicative site coverage of 50%. The proposed plot ratio is stated as 1:4.86 and the scheme provides a plot ratio of 51%.

It is considered that the proposed plot ratio and site coverage are acceptable at this location having regard to the proximity of public transport and to the underutilised nature of the site within an area undergoing significant urban renewal.

Height

Section 16.7.2 of the City Development Plan: Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development addresses the issue of building height in the city. The Plan sets 24m as the maximum height permissible for residential developments in this area. Furthermore, the Liberties LAP prescribes the maximum parapet height of 15m in a particular zone with frontage onto Newmarket.

The proposed building presents the following heights:

- Newmarket Square: Overall 19.2m – (5-storey/16.9m parapet height with an additional 2.3m high 6th storey residential set-back).
- Brabazon Row: Overall height of 42.125m (above ground level).
- St. Luke's Avenue: Varied height which steps from the 39.125 m high/13-storey high block at the western end towards a 9-storey-30.125m high block at the eastern corner with Newmarket Street.

The Material Contravention Statement advises that the proposed parapet height of 16.9 metres does not represent a material contravention. The statement also refers to the 24m height limit being exceeded within a number of other developments completed and granted in the general area.

It is noted that under DCC Reg. Ref. 3323/17 (ABP Ref. 300431-17), permission was granted for a development on the subject site with an overall maximum height of 28m along St Luke's Avenue and a 16m high parapet level with upper level set-backs onto Newmarket Square.

The applicants have submitted justification for the proposal in the context of the Urban Development and Building Height Guidelines for Planning Authorities December 2018.

The proposed development is a substantial brownfield site which is significantly underutilised. It is also readily accessible to public transport including the Cork Street bus corridor, adjacent to the site and the Clanbrassil Street bus corridor. The site is also within walking distance of the LUAS Red Line 15 (Fatima Stop) and the Luas Green Line (St. Stephen's Green stop). Cork Street/St. Luke's Avenue forms part of Bus Connects Route 9 Greenhills to City Centre, which will see bus routes consolidated and frequency increased. The proposed Metro Link at St Stephen's Green is within walking distance. In these terms the subject site is well served by public transport.

The need to densify the City, through the reuse of this Brownfield sites, particularly those well served by public transport is a key principle of the NPF and both the City Plan and the Building Height guidelines. Therefore in principle, a high density residential development in this area is considered acceptable and necessary to achieve national objectives as set out in the National Planning Framework.

In urban design terms, the submitted design appraisal advises that the massing of the scheme around the perimeter reflects the approved scheme and that the landmark corner building has been increased in height from 8 floors to 13 floors in order to provide a contrast in height with buildings in the scheme along St Luke's Avenue and give it a more prominence at the corner signifying the entrance to Newmarket Square. The Planning Authority would have no objection in principle to the proposed height, having regard to Urban Development and Building Height Guidelines for Planning Authorities December 2018, the location of the site on a major corridor into the city and also to the height permitted on adjacent sites.

Photomontages have been submitted showing the impact of the proposed development from a number of areas, including from St. Luke's Avenue, Newmarket and further afield such as Patrick's Street and Meath Street. Having regard to the urban context, it is considered that the visual impact of the proposed development is acceptable. The scale of the development proposed can be accommodated at this location without detriment to the amenities of the area.

External Finishes

Details to be agreed prior to the commencement of development.

Residential Standards

The internal floor areas of the apartments comply with the City Development Plan and Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2018).

In terms of the mix of residential units, the proposed Build to Rent development comprises the following: 203no. Studios (48.9%); 136no. 1 bed (33.5%); 72no. 2 bed (17.1%) and 3no. 3 bed (0.5%).

Although this mix is permissible under the Apartment Guidelines, concerns were raised within the submissions received and at the presentation to the Central Area Committee in relation to the high proportion of studio and 1-bed units within the scheme; together these constitute approximately 82% of the overall development.

These concerns are shared by the Planning Authority and it is recommended that the unit mix should be revised to provide a maximum of 60% studio and one-bed units and a minimum of 40% two and three bed units within the scheme. It is considered that this would promote the optimal supply of apartments for a range of needs and aspiration and contribute to the creation of long term sustainable communities within the Liberties area.

The dual aspect ratio is indicated to be 34% and that there are no north facing single aspect units. The St Luke's Avenue elevation provides the opportunity for apartments to benefit from dual aspect orientation whereby each unit has an outlook in two directions with corner locations providing for a window length of at least 3 metres in order to increase sunlight and improve views. However, it should be noted that many of the secondary views within the dual aspect apartments would be screened using louvered windows in order to prevent overlooking. This may undermine the quality and light and outward views from these units.

The proposed development exceeds the required floor to ceiling heights.

Private Amenity Space

It is indicated that 13 of the apartments would benefit from private amenity space provision, whereas an enhanced level of residential support facilities and resident services would be provided lieu of private amenity space for the remaining 400 units. These private amenity balconies are located along the southern and eastern

elevations at 5th and 7th floor level and range from 14.4 sq m to 50.4 sq m which exceeds the minimum requirements.

It is acknowledged that SPPR 7(ii) provides for flexibility in terms of private amenity space. In this case, the applicant considers that alternative compensatory communal resident support facilities and resident services & amenities together with the outdoor amenity space/roof gardens etc, more than compensates for the lack of private amenity space for individual balconies.

Communal Open Space

There is a minimum requirement for 2,014 sq.m of communal amenity space for the subject development. The subject proposal provides a total of 2,611 sq.m of amenity space for residents.

The applicants have provided amenity spaces which are accessible. The semi-private courtyard would be adequately overlooked.

The Daylight/Sunlight analysis submitted indicates that only 26% of the semi-private courtyard and 6% of the co-working terrace would achieve the required 2 hours of sunlight on 21st March but would comfortably meet with this requirement during the summer period. This is considered acceptable having regard to the ground floor location of these spaces, the scale and redevelopment of a brownfield site the proposal represents. Furthermore, the courtyard area represents just 28% of the total amenity space provision and there are five other amenity areas available, which greatly exceed the numerical targets in terms overshadowing.

The closure of the gates semi-private courtyard in order to limit access to residents only in the evenings is acceptable for the management of the facility. Clarity regarding opening hours should be requested by condition.

Residential Facilities

In accordance with the Guidelines for Build to Rent Schemes, the applicants also proposed to following additional facilities for use of residents (Reception, Cinema/TV Room, Co-working space, Games room, Private lounge and dining room, Yoga studio, Pet room, Breakout areas, Gym, Media Centre, Shared Kitchen, Café/Lounge/Lobby, Community Room. The majority of these uses are located on the lower ground and ground floor areas. The lounge/breakout areas are located on the upper floors.

It is recommended that a condition to limit use of the gym to residents should be imposed.

Impact on Neighbouring Properties

The Daylight and Sunlight Analysis concludes that the impact of the proposal on the existing surrounding buildings is similar that that under the permitted scheme.

Retail/Café

The applicants propose a retail/café units opening on to Newmarket Square. It is considered that this proposed use will benefit both existing and proposed residents in the area. It is recommended that the Board impose a condition that the precise nature of their use, together with opening hours and signage be agreed in writing with the Planning Authority prior to opening of this premises. Signage should accord with shop front guidelines.

Social Audit

The applicant has submitted a Community Audit, outlining the extent of services in the area. No shortfall in such facilities has been identified.

Transportation

Refer to Transportation Planning report. Overall no objection subject to conditions.

Part V

Proposals submitted.

Flood Risk Assessment

Drainage Division have no objection to the proposal subject to conditions.

Appropriate Assessment

The applicant has submitted a Screening Report for Appropriate Assessment. The report concludes that significant effects, individually, or in combination with other plans or projects, are not likely to arise that would result in significant effects to the integrity of the Natura 2000 network.

EIA Screening

The EIAR screening report submitted to An Bord Pleanála with this application is noted. The overall assessment findings as detailed in this EIAR are acceptable to the Planning Authority. It is considered that a sub threshold EIAR is not required for the proposed development as there are no “significant effects” associated with the proposed development, primarily due to its characteristics (being significantly below all of the appropriate thresholds) and location (substantially within the existing built context of a well-established residential area).

8.4 Summary of Interdepartmental Reports

Transportation Planning Division (7th July 2020). The following issues were identified:

- The main cycle access is via a designated cycle ramp off St. Luke's Avenue. The internal cycle access at lower ground floor level is not clear and is obstructed by car parking spaces. This was raised at pre-planning stage. Therefore an improved access internal access route should be conditioned
- Vehicular access is proposed via a two-way ramp accessed off Newmarket Street to serve the car park is intended to serve only the residential development. The entrance/egress is located approximately 6m south of the existing vehicular access and is detailed as gated. The width of the proposed vehicular entrance is 6.9m, which appears excessive and not pedestrian friendly.
- Location of the temporary waste storage area appears to conflict with the landscape proposals.
- Footpath along St. Luke's Avenue. the Bus Connects' Greenhills to City Centre CBC Preferred Route includes for works along Cork Street. The CBC corridor includes all existing public footpath provision along St. Luke's Avenue. Improved pedestrian accessibility is proposed for the crossing of Brabazon Place. Agreement of the final design of the layby/loading bay, public footpath and landscaped area onto St. Luke's Avenue is required in writing with Dublin City Council and should be conditioned as such.
- The applicant notes that the proposed development will have limited impact on the Part VIII proposals along Brabazon Place. It is noted that the line of the proposed façade either matches existing boundary line or with a setback to allow for a 2m wide footpath. A conflict between the Part VIII loading bay proposals and vehicular access to the proposed location of the substation.
- Parking along Newmarket Street to be agreed.

- A ratio of approximately 0.12% plus two car share spaces is proposed. In addition, 2 no. motorcycle spaces are proposed. No letter from a car share operator has been submitted. On review of the proposed and the modal split, it is considered that car share spaces shall be increased to a minimum 4 no. spaces. Electric charging points shall be increased to 10%. No parking provision is proposed for the commercial elements, which is considered acceptable having regard to location and access to on-street parking. A condition should be attached requiring the reservation of the car parking for residential use and a long term car parking management strategy should be put in place to ensure/enforce this.

13 conditions recommended.

Drainage Division (2nd July 2020). No objection subject to conditions.

Housing and Community Services (1st May 2020). Comments noted. No objections raised.

Parks and Landscape Services (9th June 2020).

The site area is located near the newly constructed Weaver Park and the older established Oscar Square Park. Public realm proposals also exist to upgrade the Newmarket Square area on the southside of the application site.

The landscape proposals at ground level consist of a new internal street running north to south connecting Saint Luke's Avenue to Newmarket Square, public realm at the Saint Luke's Avenue entrance and an internal square between proposed development blocks. Roof gardens and green roofs are also provided at elevated floors. In general, the landscape proposals are well developed and will help lift the public realm of this rejuvenating quarter of the city.

No objection subject to conditions.

Archaeology (22nd June 2020). No objection subject to conditions.

Biodiversity Officer (6th July 2020). No objection subject to condition relating to the type of hives to be provided in the Biodiversity Terrace.

Waste Regulations (14th May 2020). No objection subject to conditions relating to compliance with Waste Regulations.

8.5 Conclusion

The proposed development is acceptable in principle in the context of the Z10 zoning objectives of the City Development Plan and the objectives for redeveloping this Significant Redevelopment Site.

The Planning Authority's ongoing concern relates to the poor design, layout arrangement of uses along the proposed pedestrian route between Newmarket Square and St Luke's Avenue.

The Board should note this also remains an outstanding issue with the on-going hotel application on the adjoining Site A (DCC Reg Ref: 4743/19).

The Planning Authority also considers that the proposed residential mix is excessively weighted towards studio and one bed units. A greater proportion of two and three bed apartments would promote an optimal supply of homes for a range of needs and contribute to the creation of long term sustainable communities within the Liberties area.

8.6 Planning Conditions

In the event of An Bord Pleanála decide to grant permission, the Planning Authority requests that 42 conditions be attached. Conditions are generally standard in nature. Of note are the following:

Condition No.1: Requests that Development Contributions be attached.

Condition No. 6 sets out that no portion of the site to be used for 'short term rentals'

Condition No. 8. Gym to be used by residents only.

Condition No. 9. A suitable equipped Children's Play area to be provided in lieu of the gym terrace.

Condition No. 14 relates to uses, signage and control of fumes/odours from the café and retail units.

Condition No. 16 relates to managing of access through the semi private courtyard.

Condition No. 17 related to works and footpaths along St. Luke's Avenue, Brabazon Place and Newmarket Street.

Condition No. 28. The developer shall comply with the Code of Practice.

9.0 Prescribed Bodies

9.1 The applicant was required to notify the following prescribed bodies prior to making the application:

- Transport Infrastructure Ireland.
- Irish Water.
- Commission for Energy Regulation.
- Minister for Culture, Heritage and the Gaeltacht (archaeology & conservation)
- An Taisce- The National Trust for Ireland.
- The Heritage Council.

9.2 Three bodies have responded and the following is a brief summary of the points raised.

9.2.1 Development Applications Unit (Department of Culture, Heritage and the Gaeltacht) (not dated)

The Department has examined the archaeological report submitted with the application. On the basis of the information in the report and the proposed archaeological mitigation, it is the Department's recommendation that a planning condition pertaining to Archaeological Excavation, further Archaeological Testing and Monitoring be included in any grant of permission.

9.2.2 Irish Water (29th June 2020)

A Confirmation of Feasibility for 453 residential units was issued to the application confirming new connection to the existing wastewater network is feasible without upgrade.

In respect of water, Irish water noted previously to the Board at Pre Consultation that in order to accommodate the proposed connection at the premises, upgrade works is required to the existing Irish Water network as follows:

The current distribution network is currently operating beyond its capacity. Any demand increase would result in very low, or no pressure, at several locations across the district during peak demand. In order to facilitate this proposed connection network upgrade is required to be funded by the developer. The upgrades include approx. 775m of existing 4" CI watermain along Newmarket, Ward's Hill and Blackpitts Road has to be replaced with 200mm ID watermain. Should the applicant wish to progress with the connection, the upgrade works fee will be calculated and be part of the Irish Water connection offer for the development and delivered by Irish Water.

The applicant has engaged with Irish Water in respect of design proposal for which they have been issued a Statement of Design Acceptance for the development.

9.2.3 Transport Infrastructure Ireland (10th June 2020)

The proposed development falls within the area for an adopted Section 49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephens

Green to Broombridge Line) under section 49 Planning and Development Act 2000, as amended.

A condition should be attached to include for the Section 49 Supplementary Contribution.

10.0 Comment on Chief Executive Report

I draw the Board attention to section 8 (5)(b) of the Planning and Development (Housing) and Residential tenancies Act 2016 which sets out:

(b) In the report referred to in paragraph (a) the planning authority shall-

- (i) set out the planning authority's opinion as to whether the proposed strategic housing development would be consistent with the relevant objectives of the development plan or local area plan, as the case may be.*
- (ii) include a statement as to whether the authority recommends to the Board that permission should be granted or refused, together with the reason for its recommendation, and*
- (iii) specify in the report –*
 - (I) Where the authority recommends that permission be granted, the planning conditions (if any), and the reasons and grounds for them, that it would recommend in the event that the Board decides to grant permission, or*
 - (II) If appropriate in the circumstances, where the planning authority recommends that permission be refused, the planning conditions, and the reasons and grounds for them, that it would recommend in the event that the Board decides to grant permission.*

The Chief Executive Report received on the 17th July 2020 contains a Conclusion but no Recommendation as required under section 8(5)(b)(ii). The wording of the Conclusion is as follows:

“The proposed development is acceptable in principle in the context of the Z10 zoning objectives of the City Development Plan and the objectives for redeveloping this Significant Redevelopment Site.

The Planning Authority’s ongoing concern relates to the poor design, layout arrangement of uses along the proposed pedestrian route between Newmarket Square and St Luke’s Avenue.

The Board should note this also remains an outstanding issue with the on-going hotel application on the 20 adjoining Site A, DCC Reg Ref: 4743/19 refers.

The Planning Authority also considers that the proposed residential mix is excessively weighted towards studio and one bed units. A greater proportion of two and three bed apartments would promote an optimal supply of homes for a range of needs and contribute to the creation of long term sustainable communities within the Liberties area”.

Again I wish to highlight to the Board the absence of a recommendation. The Planning Authority, while raising a number of concerns, have not recommended refusal of permission on these grounds. Nor have they recommended a grant of permission.

A list of 42 conditions are included that the Planning Authority consider should be attached in the event the Board grants permission. These mainly relate to standard conditions. Conditions of note include:

Condition No.1: Requests that Development Contributions be attached. I note that the PA has not specified the nature of these development contributions.

I also draw the Board attention that the proposed development falls within the area for an adopted Section 49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephens Green to Broombridge Line) under section 49 Planning and Development Act 2000, as amended.

Condition No. 6 Refers to no portion of the site to be used for 'short term rentals'. I consider this a reasonable condition that should be included if permission is granted.

Condition No. 8. Gym to be used by residents only. I consider this a reasonable condition that should be included if permission is granted.

Condition No. 9. A suitable equipped Children's Play area to be provided in lieu of the gym terrace. There is no evidence based reason for this condition. Given the proximity to Weavers Park and St. Patricks Park I do not consider this a necessary condition.

Condition No. 14 relates to uses, signage and control of fumes/odours from the café and retail units. I consider this a reasonable condition that should be included if permission is granted.

Condition No. 16 relates to managing access through the semi private courtyard. I consider this a reasonable condition that should be included if permission is granted.

Condition No. 17 relates to works and footpaths along St. Luke's Avenue, Brabazon Place and Newmarket Street. I consider this a reasonable condition that should be included if permission is granted.

Condition No. 28. The developer shall comply with the Code of Practice. The Planning Authority has not elaborated on what Code of Practice they refer to, therefore, I do not consider this an appropriate condition.

11.0 Environmental Impact Assessment Screening

The development is within the class of development described at 10(b) of Part 2 of Schedule 5 of the planning regulations. An environmental impact assessment would be mandatory if the development exceeded the specified threshold of 500 dwelling units or 10 hectares, or 2ha if the site is regarded as being within a business district. The site is zoned Z10. The predominant use in the area is residential. It is therefore reasonable to conclude that the site is not within a business district. The proposed development is for 413 BTR apartments, 2 retail units, café/restaurant and artist studio, internal site works on a site within an overall area of c.0.66 hectares.

The criteria set out in schedule 7 of the regulations are relevant to the question as to whether the proposed sub-threshold development would be likely to have significant effects on the environment that could and should be the subject of environmental impact assessment. The application includes a statement on the effects on the Environment or on a European Site in the Planning Report. With regard to characteristics, the size of the proposed development is well below the applicable thresholds. The residential uses proposed would be similar to predominant land uses in the general area. A FRA is submitted with the application. The proposal will not increase the risk of flooding within the site or downstream. The development would not give rise to significant use of natural resources, production of waste, pollution, nuisance, or a risk of accidents. The development is served by municipal drainage and water supply. The site is not subject to a nature conservation designation and does not contain habitats or species of conservation significance. The AA Screening, set out in section 12 of this report, concludes that the potential for adverse impacts on Natura 2000 site can be excluded at the screening stage.

I consider that the location of the proposed development and the environmental sensitivity of the geographical area would not justify a conclusion that it would be likely to have significant effects on the environment. The proposed development does not have the potential to have effects the impact of which would be rendered significant by its extent, magnitude, complexity, probability, duration, frequency or

reversibility. In these circumstances, the application of the criteria in Schedule 7 to the proposed sub-threshold development demonstrates that it would not be likely to have significant effects on the environment and that an environmental impact assessment is not required before a grant of permission is considered. This conclusion is consistent with the EIA screening assessment report submitted with the application.

12.0 Appropriate Assessment Screening

A Stage 1 Appropriate Assessment Screening Report was submitted with the application. The site was inspected on the 8th March 2019. This stated that at this time the entire site is composed of building and artificial surfaces. I noted at the time of my inspection (15th August 2020) that all the buildings had been demolished.

The AA Screening Report describes the development and identifies that the site is not located within or directly adjacent to any Natura 2000 sites. It addresses a number of sites within a 15km catchment. I have reviewed the NPWS web site and consider that there are no other sites that would be within the zone of influence of the subject site or that have a potential hydrological link to the site. The Screening Report considers whether the proposed development would have any potential impact on the qualifying interests and conservation objectives of these sites.

The AA Screening Report concluded that given the nature of the project and its potential relationship with European sites and their conservation objectives, as well as considered other plans and projects, and applying the precautionary principle, it is the professional opinion of the author of the report that no potential for likely significant effects on any European sites and does not require a Stage 2 Appropriate Assessment or preparation of a Natura Impact Statement (NIS).

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. The following European sites are located within 15km of the site:

- Baldoyle Bay SAC (000199)

- Howth Head cSAC (000202)
- Rockabill to Dalkey Island SAC (003000)
- Malahide Estuary SAC (000205)
- Malahide Estuary SPA (004025)
- Wicklow Mountains SAC (002122)
- Wicklow Mountains SPA (004040)
- North Dublin Bay SAC (000206)
- North Bull Island SPA (004006)
- South Dublin Bay and River Tolka Estuary SPA (004024)
- South Dublin Bay SAC (000210)
- Baldoyle Bay SPA (004016)
- Glenasmole Valley SAC (001209)
- Rye Water Valley/Cartron SAC (001398)

The AA Screening report submitted noted that given the nature of the project an initial radius of 2km is examined and found no Natura 2000 sites within this radius. Surface water and wastewater pathways ultimately lead to Dublin Bay which includes North Dublin Bay SAC (000206), South Dublin Bay SAC (000210), South Dublin Bay and River Tolka Esturay SPA (004024) and North Bull Island SPA (004006). The Screening Report also noted that Poulaphouca Reservoir SPA (004063) is the source of the drinking water supply and is also considered within the Zone of Influence.

I note the Zone of Influence identified in the AA Screening Report submitted with the application. I do not however propose to include Poulaphouca Reservoir SPA (004063) which is c.36km form the application site notwithstanding its function as the source of drink water supply for the region. I note that the Report concluded that there is no evidence that abstraction is resulting in negative ecological effects on the

Poulphouca Reservoir SPA. Based on the available information there is no evidence that the proposed development that would impact on the Poulphouca SPA

Given the potential for indirect linkages I am including the following is site in my screening exercise:

Site Name and Code	Distance to site	Qualifying interest
North Dublin Bay SAC (000206)	c.7.8km	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p> <p>Embryonic shifting dunes [2110]</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Humid dune slacks [2190]</p> <p><i>Petalophyllum ralfsii</i> (Petalwort) [1395]</p>
South Dublin Bay SAC (000210)	c.4.3km	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p>

		Embryonic shifting dunes [2110]
South Dublin Bay and River Tolka Esturay SPA (004024)	c.4.3km	<p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Sanderling (<i>Calidris alba</i>) [A144]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Roseate Tern (<i>Sterna dougallii</i>) [A192]</p> <p>Common Tern (<i>Sterna hirundo</i>) [A193]</p> <p>Arctic Tern (<i>Sterna paradisaea</i>) [A194]</p> <p>Wetland and Waterbirds [A999]</p>
North Bull Island SPA(004006)	c.7.8km	<p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p>

		Pintail (<i>Anas acuta</i>) [A054] Shoveler (<i>Anas clypeata</i>) [A056] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Knot (<i>Calidris canutus</i>) [A143] Sanderling (<i>Calidris alba</i>) [A144] Dunlin (<i>Calidris alpina</i>) [A149] Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Curlew (<i>Numenius arquata</i>) [A160] Redshank (<i>Tringa totanus</i>) [A162] Turnstone (<i>Arenaria interpres</i>) [A169] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Wetland and Waterbirds [A999]
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Direct, Indirect or Secondary Impacts:

The application site does not overlap with the boundary of any European site, therefore there are no European sites at risk of direct habitat loss impacts.

There are no direct natural hydrological connection from the site to Dublin Bay.

There is an indirect pathway through stormwater and foul sewers, which include significant dilution enroute to the stormwater outfall at the River Poddle and Ringsend WWTP respectively.

Sewage from the proposed development will be directed to the existing Brabazon Row sewer which eventually runs to the Ringsend WWTP. The proposed development is likely to result in a marginal increase in the discharge of wastewater to the Irish Sea. The development will incorporate SuDS and drain to the municipal system. It is considered that there is no risk that pollutants could reach the SAC in sufficient concentrations to have any likely significant effects on its qualifying interests.

The AA Screening Report submitted with the application concluded that SuDS measures will protect the local drainage network from negative impacts to surface water drainage. I do not consider that these are mitigation measures for the purposes of appropriate assessment. In my view the word has been used incorrectly. They constitute the standards established approach to surface water drainage for construction works on green field site, Their implementation would be necessary for a housing development on any greenfield site regardless of the proximity or connections to any Natura 2000 site or any intention to protect a Natura 2000 site. It would be expected that any competent developer would deploy them for works on a greenfield site whether or not they were explicitly required by the terms or conditions of a planning permission. Their efficacy in preventing the risk of a deterioration in the quality of water downstream of construction works has been demonstrated by long usage. Therefore, the proposed development would be not likely to have a significant effect the quality of the waters in the Natura 2000 sites downstream of the application site. Any potential impact would only arise if the proposed development were carried out in an incompetent manner or with reckless disregard to environmental obligations that arise in any suburban area whether or not it is connected to a Natura 2000 site.

There is no potential source-pathway-receptor connections with any other European sites.

As the proposal would not result in the disturbance/displacement of the qualifying/special conservation interest species of any European site, there is not potential for any in combination effects to occur in that regard.

In Combination or Cumulative Effects

The potential for in combination impacts can also be excluded.

Subject to appropriate drainage and wastewater treatment requirements being implemented for these developments then there will be no significant adverse effects due to the proposed project as a result of any in combination effects with these individual planning applications.

Implementation of the WFD will ensure that improvements to water quality in Dublin Bay and the River Liffey can be maintained.

The proposed development would not be likely to have any significant effects on any Natura 2000 site, either directly or indirectly or in combination with other plans and projects.

Conclusion

The proposed development site lies outside the boundaries of the Natura 2000 sites identified above and therefore there will be no reduction in habitat. The project is not directly connected to the management of any Natura 2000 site. It is concluded with the Appropriate Assessment Screening that the proposed development will have no significant impact upon any Natura 2000 sites. Having regard to 'source-pathway-receptor' model, the proposal either individually or in-combination with other plans or projects could not be considered to have likely significant effects in view of the sites conservation objectives. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

I have had due regard to the screening report and data used by the applicant to carry out screening assessment and the details available on the NPWS website in respect of the Natura 2000 sites identified, including the nature of the receiving environment and proximity to the nearest European site. I consider it is reasonable to conclude that on the basis of the information on the file which includes *inter alia*, the AA screening report submitted by the applicant and all the planning documentation, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European site, in view of the said sites conservation objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

13.0 Assessment

I have had regard to all the documentation before me, including, *inter alia*, the Chief Executives Report from the Planning Authority; the submissions received; the provisions of the Dublin City Development Plan 2016; relevant section 28 Ministerial guidelines; provisions of the Planning Acts, as amended and associated Regulations. I have visited the site and its environs. The following are the principal issues to be considered in this case:

- Principle and Quantum of Development
- Design Strategy
- Quality of Residential Development
- Traffic and Parking
- Site Services & Flooding
- Architectural Heritage and Archaeology
- Part V

- Other Matters
- Material Contravention

13.1 Principle and Quantum of Development

13.1.1 Having regard to the nature and scale of development proposed, namely an application for 413 BTR residential units , together with other mixed uses including retail/café//non-residential uses (c.835m² of a total of 29,570m²), all located on lands on which such development is permissible under the zoning objective, I am of the opinion that the proposed development falls within the definition of Strategic Housing Development, as set out in section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016.

13.1.2 Dublin City Development Plan 2016-2022

The site is located on lands Zoned Z10 which seeks *to consolidate and facilitate the development of inner city and inner suburban sites for mixed uses, with residential the predominant use in suburban locations, and office/retail/residential the predominant uses in inner city areas.* Section 14.8.10 of the development plan provides appropriate guidance for Z10 zoned lands, an appropriate mix of uses is proposed, given the location of the site.

The proposal accords with national policy/guidance which seeks to secure compact growth in urban areas and deliver higher densities at appropriate locations. This is considered to be one such appropriate location, proximate to Dublin city centre at a key sustainable location. The proposal will facilitate the redevelopment of an existing brownfield, underutilised site. I note the site is located within Strategic Development and Regeneration Area 16 Liberties and Newmarket Square. as set out in the current City Development Plan. Guiding principles for this SDRA have been outlined in section 15.1.1.19 of the Plan and the proposal generally accords with these guiding principles, further assessment will be undertaken below.

13.1.3 Liberties LAP

In the interest of completeness, I am referencing the LAP as it was in place at the time the application was lodged in April 2020 and the DCC Chief Executive Report has included it the Planning Assessment. The LAP expired on the 10th of May 2020 (extended by 5 years in 2014) and I can find no evidence on the DCC website that this was extended beyond this date.

The site is located in the Newmarket/ Chamer- Weaves character area in the Liberties LAP. The site is also a Key Development Site (Site C). Objectives for development relate to the regeneration and redevelopment of the site and surrounding area with an opportunity for major redevelopment, provision for increased permeability and mixed use development. The plan also seeks to deliver a high quality, multi-functional market square and city-wide well-known destination. A Part VIII scheme for public realm works on the Newmarket Square (Reg Ref 2283/17), along the southern boundary has been integrated into the proposed development. I consider the overall scheme is in compliance with the objectives for the redevelopment of the site as detailed in the LAP.

13.1.4 Build-to-Rent

The attention of the Board is drawn to the fact that this is a Build to Rent Scheme. Section 5 of the Sustainable Urban Housing: Design Standards for New Apartments, 2018 provides guidance on Build-to-Rent (BRT) and Shared Accommodation sectors. The guidelines define BTR as “purpose built residential accommodation and associated amenities built specifically for long-term rental that is managed and serviced in an institutional manner by an institutional landlord”. These schemes have specific distinct characteristics which are of relevance to the planning assessment. The ownership and management of such a scheme is usually carried out by a single entity. A Site Specific BTR Apartment Management Plan and a draft covenant have been submitted with the application. Having regard to the location of the site close to the city centre, beside excellent public transport facilities, I am satisfied that a Built to Rent scheme is suitable and justifiable at this location. The proposal will provide a viable housing solution to households where home-ownership may not be a priority. The residential type and tenure provides a greater choice for people in the rental sector, one of the pillars of Rebuilding Ireland.

A Report entitled 'Demographic Growth, Housing Needs and the Role of Quality BTR' is submitted with the application. This sets out a Justification to support a BTR development at this location. It details the demographic profile of the area and the demand for high quality and sophisticated rental units in the city centre. There is little to cater for this market in terms of current stock and few build to rent schemes. It notes that there is a particular shortage of suitable accommodation to address the needs of young professionals, the over 65s and would further assist in graduate retention.

Mr Fingleton in his submission requested that a mix of tenure be required to the provided. The application is for a Build to Rent (BTR) Scheme and has been advertised as such. It includes Part V proposals in line with the applicant statutory requirements and obligations. I consider that this is an appropriate mix of tenure for the nature of the development.

13.1.5 Density

Density at c. 625.7 units/ha is considered appropriate for this urban location and in compliance with relevant section 28 ministerial guidelines. The site is at a location suitable for higher densities in accordance with the 'Guidelines on Sustainable Residential Development in Urban Areas' and Section 4.5.3 of the Dublin City Development Plan which promotes intensive mixed-use development on well-located urban sites and higher densities within SDRAs and in the catchment of high capacity public transport. The provision of high-density residential development on the site is supported by the planning authority and is considered to be in accordance with the zoning objectives pertaining to the site.

I am of the opinion that given its zoning, the delivery of residential and commercial development on this prime, underutilised site, in a compact form comprising well-designed, higher density units would be consistent with policies and intended outcomes of current Government policy. The site is considered to be located in a central and accessible location, proximate to excellent public transport. The proposal serves to widen the housing mix within the general area and would improve the extent to which it meets the various needs of the community. I therefore consider the proposal to be acceptable in principle.

13.1.6 Conclusion

I am satisfied that the proposal will contribute positively to addressing the acute shortage of apartment development in the wider Dublin City area and will provide much needed high quality apartments to cater for local demand. The development of residential accommodation will also bring vitality to the area, enhance the land use mix and complement commercial development that has been constructed in the vicinity. The development would in my view be entirely consistent with the overarching objectives of the National Planning Framework in promoting compact urban growth on a key strategic site in Dublin City Centre. I conclude that the principle of development is acceptable, is in accordance with the zoning objective, policies and strategic goals of the Dublin City Plan and in line with national policy ensuring the delivery of residential development on a prime, underutilised site in a highly accessible location, in a high quality, well designed scheme.

13.2 Design Strategy

13.2.1 Design & Layout

The applicant has set out in the documentation submitted an overall planning strategy for Site A and B. The application site is referred to as site B (c.0.66ha) and Site A refers to a current application with DCC for a Hotel (PA Ref. 4743/19). While the two sites are the subject to two separate applications, the intention is that the development is carried out as a single development and therefore, where appropriate, the current application provides details of both schemes to facilitate assessment of the scheme and its wider context.

Both applications have also been designed in a manner that will facilitate one progressing without the other, in the event that one application is not successful. The proposed internal/public street linking Newmarket and St. Luke's Avenue is proposed in both applications along with maintenance and management proposals.

I note that Mr Fingleton in his submission did not raise any issue with the design or height of the proposed development.

I draw the Boards attention to the extant permission on site (PA Ref. 3323/17, ABP Ref. 300431-17) for a mixed use development comprising a hotel, residential accommodation and office use and a gfa of c. 24,784m² arranged in 4 no. block over 4 to 8 storeys with double level basement. Demolition works under this permission have been carried out and the site cleared.

The current proposal is for a development that consists of a 13 storey building that occupies the north western section of the site and forms the corner with Brabazon Place and St. Luke's Avenue. This is linked to the main block of the development by a pedestrian bridge on the 6th floor over the new internal street. The main building varies in height from 6 to 9 storeys and is arranged around a semi-private courtyard that is accessed externally off Newmarket Square. Retail and café/restaurant units are located at ground floor level fronting onto Newmarket Square with Teelings Distillery on the opposite side. The eastern elevation addresses Newmarket street and the existing 5 storey residential development.

An Architectural Design Statement, Computer Generated Images (CGIs) and Landscape and Visual Appraisal accompanied the application, which detail and illustrate the proposed development in the context of the existing and proposed built environment.

The Design Statement submitted with the application clearly sets out a detailed rationale the architectural and urban design approach. The designers were looking to establish a grain across the development using brick columns and punched window systems. The massing is broken down using various brick types as well as major and minor brick columns. Set backs help reduce the impact at street levels. Recess and material are used to accentuate the link/route through the site. Window positions and sizes vary to create a subtle variation with the northern façade to St Luke' Avenue using large bay windows to widen the aspect of north facing units and soften the façade edge.

CGIs and 3D modelling submitted show the development in the context of adjoining built environment, CGIs are also included of the proposed new street/link between Newmarket and St. Luke's Avenue.

I am of the view that the proposed BTR development, with or without the adjoining proposed hotel development, will deliver on the urban design objectives of the Development Plan/LAP in relation to active street frontages as the integration of the development into the receiving urban fabric.

The current application provides a built edge to Newmarket with active ground floor uses (retail and café), the applicant envisages this being developed in conjunction with the hotel site which would further strengthen the built edge at this location. The frontage along St. Luke's Avenue is set back from the streetline and provides a buffer between the edge of the building and the public footpath/road. This presentation to St. Luke's Avenue reference the criteria set out in the LAP and the Building Height Guidelines. A parapet height of 16.9m (with 6th floor setback) is proposed along Newmarket with the building increasing in height to a maximum of 43.1/43.6m at the corner of St' Luke's Avenue and Brabazon Place, which exceed the limits of 24m set out in the Dublin City Development Plan. The Material Contravention is addressed in section 13.9 of this report. Section 13.2.2 below assesses the suitability of the site to accommodate a building of this height.

The site is located in The Liberties area of Dublin city centre which is undergoing significant regeneration with a number of sites in the vicinity being developed for residential, student accommodation and commercial purposes. The introduction of a BTR scheme at this location will contribute to the tenure and demographic mix in the area. Opposite the site along Newmarket is Teelings Distiller along with hotels in the vicinity are assisting in promoting the area for tourism. The area also accommodates student accommodation and residential schemes, The proposed development will significantly enhance the quality of the streetscape and animation at street level with ground floor uses opening onto Newmarket Square and the internal street (artist studio).

The proposed development provides for significant works to the public realm and DCC lands along St. Luke's Avenue are incorporated into the application site boundaries. There is a Part VIII for public realm improvements at Newmarket. There is a strong interface between the proposed development and the public realm which the provision of a route linking Newmarket and St. Luke' Avenue will further enhance. I note the Planning Authority's concerns relation to this route and that it will not provide for the attractive pedestrian pathway it had envisaged. The planning authority did not recommend that permission be refused on this basis, rather noted that this matter requires further consideration. I have examined the proposal before me and I note that the applicant has addressed the concerns raised by the Planning Authority at pre-application stage. I am satisfied that the proposed link will assist in not only providing connectivity and permeability though the site but will also further assist animation at street level. In terms of surveillance, shared working and other uses are located along the ground floor and will provide a level of passive surveillance even with measures to protect the privacy of its users from pedestrian using the new link.

13.2.2 Height

There is an extant permission on site (ABP 300431-17) for a development arranged in 4 no. blocks ranging in height from 4 to 8 storeys. Permission was granted in 2019 under ABP 305324-19 on the adjoining Brewrey Block to the west for Student Accommodation (368 bedspaces) part 2 part 8 storeys in height (max. 27.26m).

The Planning Authority noted that the proposed height material contravene the Dublin City Development Plan. However, have no objection in principle to the proposed height, having regard to Urban Development and Building Height Guidelines for Planning Authorities December 2018, the location of the site on a major corridor into the city and also to the height permitted on adjacent sites.

Section 16.7.2 of the current City Development Plan provides guidance regarding permissible building heights in the city. For an inner city location the maximum height permitted would be 24m for a residential development. The highest point of the building is 13 storeys, 43.1/43.6m (parapet/ max. height that includes lift overrun).

The Liberties LAP referenced a height of 15m for those buildings facing onto Newmarket Square, proposed height in this section is 16.9m (parapet with 6th floor setback) in height . The applicants argues that the development does not contravene the LAP as the height is 16.9m and the permitted development on site a minor increase in the prescribed height. The LAP has expired and I am guided by the City Development Plan on this matter. The application is advertised as a material contravention of the Development Plan and a Material Contravention Statement submitted.

Newmarket has been identified in the plan as a significant redevelopment site. A series of objectives are set out for the area, including the appropriate redevelopment. The extent permission onsite has a c. 27m high building fronting onto St Luke's Avenue. I consider the precedent for buildings over 24m has been established and while I acknowledge that the current proposal includes an element with a height exceeding 43m, having regard to my assessment above in relation to the design I consider the proposed height would meet the development management criteria for higher buildings set out in section 3.2 of the guidelines, and would therefore comply with SPPR3.

Therefore, the terms of the 2018 guidelines on building height and the extant permission on site (ABP 300431-17) would justify a grant of permission for the proposed development despite its height exceeding the prescribed 24m in the development plan in accordance with section 37(2) (b)(iii) of the planning act. This matter is addressed in more detail in section 13.9.

The 'Urban Development and Building Heights Guidelines for Planning Authorities' (the Building Height Guidelines) provides clear criteria to be applied when assessing applications for increased height. The guidelines describe the need to move away from blanket height restrictions and that within appropriate locations, increased height will be acceptable even where established heights in the area are lower in comparison. In this regard, SPPRs and the Development Management Criteria under section 3.2 of these section 28 guidelines have informed my assessment of the application. This is alongside consideration of other relevant national and local planning policy standards. Including national policy in Project Ireland 2040 National Planning Framework, and particularly objective 13 concerning performance criteria

for building height, and objective 35 concerning increased residential density in settlements.

SPPR 3 states that where a planning authority is satisfied that a development complies with the criteria under section 3.2 then a development may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise. In this case, the development plan indicates a maximum height of 24m, while the proposed development has a height of 43.1/43.6m (13 storeys). The development was previously approved above the 24m datum in consideration of the criteria under section 3.2 and SPPR 3. I have addressed the material contravention of the development plan in section 13.9 below and I will provide further assessment against the criteria in section 3.2 here.

(i) At the scale of the relevant city/town:

This relates to the accessibility of the site by public transport. The site is located in a highly accessible location directly onto St. Luke's Avenue (extension of Cork Street) and is readily accessible to public transport including the Cork Street bus corridor, adjacent to the site and the Clanbrassil Street bus corridor. The site is also within walking distance of the LUAS Red Line 15 (Fatima Stop) and the Luas Green Line (St. Stephen's Green stop). Cork Street/St. Luke's Avenue forms part of Bus Connects Route 9 Greenhills to City Centre, which will see bus routes consolidated and frequency increased. The proposed Metro Link at St Stephen's Green is within walking distance. In the immediate locality, the Teeling Distillery, Hotels, Weaver Park, St. Patricks Park provide a range of employment opportunities, amenities and facilities for residents of the area.

(ii) At the scale of district/neighbourhood/street:

This relates to the character of the area in which the development is located. The site while located in the Newmarket Conservation Area, it is not an architectural conservation area or contain or immediately adjoin any protected structures. The proposed increase in height is focused onto St. Luke's Avenue with the lower element (16.9m parapet) at Newmarket. St. Luke's Avenue is a busy and robust environment, characterised by a range of architectural styles and periods. No harm would result to the character of the road with the proposed limited increase in height

on the application site. Newmarket, Brabazon and surrounds are characterised by a mixture of heights and scale and is an area undergoing significant redevelopment and transition and while the proposed development represents a change in scale, height across the site is stepped to have regard to existing and permitted heights. The use of material and finishes to the elevations contributes to breaking down the overall mass of the proposed development. CGIs and 3D imagery of the proposed development, alongside a landscape and visual impact assessment, have also been submitted with the application and have assisted in my assessment of the proposal. Overall, I consider the design and massing of the development appropriate for the location.

(iii) At the scale of the site/building:

The proposed development will improve the street frontage along both Newmarket, Brabazon and St. Luke's Avenue consolidating the urban fabric for this development block. There are no monolithic facades included, with all elevations featuring fenestration in a sympathetic arrangement to avoid overlooking. The proposal includes new public realm, active frontages and fenestration that will passively survey surrounding streets. It will contribute to the legibility of the area, by establishing a positive addition to the streetscape and the addition of BTR apartment units will also contribute to the dwelling mix of the location. Sunlight and daylight consideration are addressed in section 13.3 of this report. The proposed increase in height does not alter the performance of the development in relation to daylight and sunlight to any significant degree from the development in 2018 on the site. Flood Risk Assessment has been carried out and this is addressed further in section 13.5.4.

I therefore find that the proposed development satisfies the criteria described in section 3.2 and therefore SPPR 3 of the Building Height Guidelines.

Having regard to the considerations above, I consider that the proposal in principle for 6 to 13 storey building at this location is acceptable. This is in consideration of overarching national policy, and subject to the assessment set out in the remainder of this report, particularly relating to residential amenity.

13.2.3 Conclusion

The scheme while contemporary in approach pays homage to the industrial architectural of the area. I am satisfied that there is a clear rationale for the overall design and urban design approach and massing proposed. While the applicant has put forward a strategy for the development of sites A and B in unison I am satisfied that ample consideration has been given to the design of the proposed scheme that could facilitate its development without the adjoining Hotel development. While I acknowledge that while the proposed developments for sites A and B are complementary that are not dependent on each other and lend themselves to proceeding independently of each other,.

I consider the massing, height and proposed finishes and materials acceptable. The massing is well considered with appropriate setbacks. Notwithstanding the issue of Material Contravention which is addressed in section 13.9 the height of the building while higher than that previous granted (max. of 8 storeys) is proportionate to the scale of the site and the area. High quality materials and finishes are proposed throughout the development and the development will significantly enhance the public realm. Internally the proposed development offers a variety of communal facilities and amenities which are addressed in detail in section 13.3.5.

On balance I consider in terms of design, height, scale and massing that that the proposed development will assimilate well with the emerging pattern of development in this area in transition and is an appropriate location for a building of this height. I am also satisfied with the information before me with regards to the issue of treatment of public realm and landscaping and I note a high quality scheme is proposed in this regard.

I have examined all the documentation before me and I acknowledge that the proposal will result in a change in outlook as the site changes from low rise, brownfield, underutilised lands to a site accommodating development of the nature and scale proposed.

I am cognisant of the Urban Development and Building Heights, Guidelines for Planning Authorities (2018) which sets out the requirements for considering increased building height in various locations but principally, inter alia, in urban and city centre locations. It recognises the need for our cities and towns to grow upwards, not just outwards. I have had particular regard to the development management criteria, as set out in section 3.2 of these Guidelines, in assessing this proposal. I also note the extent of permission granted and for further proposals for tall buildings in the vicinity of the site as detailed in the applicant's Material Contravention Statement.

13.3 Quality of Residential Development

13.3.1 I refer the Board to the provisions of Specific Planning Policy Requirement 7 which provides that:

BTR development must be:

(a) Described in the public notices associated with a planning application specifically as a 'Build-to-Rent' housing development that unambiguously categorises the project (or part thereof) as a long-term rental housing scheme, to be accompanied by a proposed covenant or legal agreement further to which appropriate planning conditions may be attached to any grant of permission to ensure that the development remains as such. Such conditions include a requirement that the development remains owned and operated by an institutional entity and that this status will continue to apply for a minimum period of not less than 15 years and that similarly no individual residential units are sold or rented separately for that period:

(b) Accompanied by detailed proposals for supporting communal and recreational amenities to be provided as part of the BTR development. These facilities to be categorised as:

(i) Residential support facilities – comprising of facilities related to the operation of the development for residents such as laundry facilities, concierge and management facilities, maintenance/repair services, waste management facilities, etc.

(ii) Residential Services and Amenities – comprising of facilities for communal recreational and other activities by residents including sports facilities, shared

TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities, etc.

The public notices refer to the scheme as 'Build-to-Rent' and a draft deed of covenant indicates that the applicant is willing to accept a condition requiring that the residential units remain in use as BTR accommodation, that no individual residential unit within the development be disposed of to any third party for a period of 15 years only from the date of grant of permission. I consider that the matter of the covenant be dealt with by means of condition.

13.3.2 Unit Mix and Size

It is noted that Mr Fingleton in his submission raised concerns in relation to the proposed unit mix and lack of family friendly units.

SPPR 8 sets out proposals that qualify as specific BTR development in accordance with SPPR 7. In this regard, no restrictions on dwelling mix apply and therefore the units mix is considered acceptable, notwithstanding the number of three-bed units and lack of four bed.

While, as noted by the Planning Authority, a greater proportion of 3 beds may have been desirable, within this city centre location and having regard to the Housing Needs Assessment and market demands for smaller rental units, the proposal is not unacceptable. However, the proposal is considered acceptable and would cater to a certain cohort of the population in an urban location where the quantum of dwellings is noted in the wider area.

Section 16.10.1 of the Dublin City Council Development Plan 2016 – 2022, which sets out the requirements in relation to the mix of dwellings provided as part of new apartment developments, provides for a maximum of 25-30% one-bedroom units and a minimum of 15% three or more bedroom units. The current proposal has 48.9% studio, 33.5% one bed and 0.5% three bed. Notwithstanding that the applicant has not included this in the Material Contravention Statement submitted with the application I propose to address this further in section 13.9 of this report

Apartment Sizes:

Studio: Range from 37 to 38.7m²

1 Bed: Range from 45 to 57.4m²

2 bed: Range from 74.6 to 82.9m²

3 bed: 91.8m²

Unit size is acceptable and compliant with the Apartment Guidelines.

In terms of storage. All of the units meet the required amount of storage. To supplement the shortfall in storage space with individual apartments, additional communal storage is provided for bulky items with an area of c.54m². This is considered acceptable.

13.3.3 Dual Aspect

SPPR 4 states in relation to the minimum number of dual aspect apartments that may be provided in any single apartment scheme in a central and accessible urban area is 33%. The applicant states they have provided 34%. I have examined the apartment layouts and concur with this analysis. I note the arrangement presented in Figure 25, page 12 of the Housing Quality Assessment would not be acceptable, however I also note that this does not correlate with the floor plans submitted which are acceptable. Many of the secondary views within the dual aspect apartments would be screened using louvered windows in order to prevent overlooking. I have no objection to the use of vertical louvres which are commonly used in urban areas to address potential overlooking. I am satisfied that this arrangement still presents adequate quality of light and outward views from these units. Having reviewed the plans, I consider overall it generally complies with SPPR 4.

13.3.4 Private Amenity Space

Flexibility, under SPPR 8, applies in relation to the provision of private amenity spaces associated with individual units and in relation to the provision of all of the communal amenity space (as set out in Appendix 1 of aforementioned Apartment Guidelines), on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development. The proposal in this instance seeks relaxations in terms of private amenity/open space provision.

All units are generally consistent with the requirements of the Apartment Guidelines, with the exception of private open space provision. Private amenity is proposed for 13 the 413 apartments (reference to 431 in the Planning report submitted with the application would appear to be a typographical error as the application before the Board is for 413 units) are provided with private amenity space in the form of balconies/terraces at roof level to the southern and westerns sides of the building and range in size from 14.5 to 50.4m².

SPPR8 allows for flexibility in relation to the provision of private amenity space and while I acknowledge that the current proposal pushes the limits in terms of this flexibility. I consider, given the location of the site in a prime city centre brownfield site suitable for redevelopment as a BTR scheme, the quality of the proposed communal amenity areas (internal and external) and the proximity of Weaver Park and St. Patricks Park in this instance the level of private amenity provided is acceptable but should not be viewed as a norm as it is site specific to this location and development. Furthermore, I note that the proposed development has a particular design aesthetic and the provision of projecting balconies may undermine the overall architectural approach to the scheme.

The Newmarket area is an area identified for regeneration and is in transition and provides a wide range of facilities within a short walking distance of the current proposal. I consider the overall planning gain of development this site which would contribute to the regeneration of the area in a positive manner by enhancing the area through a high quality scheme in accordance with the vision set out by Dublin City Council for the SDRA which seeks to attract a vibrant and diverse population to the area.

I also draw the Boards attention to the Conservation Impact Assessment submitted with the application and that the development proposed *'accords with the recurring themes of brick facings and vertical windows visible in other redevelopment sites. The current proposal goes further than this, though with the facade broken up into vertical sections through variations in facing materials, to recreate the original urban grain that arose as a result of the unified horizontal streetscape of the seventeenth century being comprised of repetitions of narrower vertical elements, represented by individual houses. Accordingly, the proposed development respects the present character of Newmarket, while reflecting the original character and grain of the street in the detailing of the proposed façade.'* In my view, the provision of protruding balconies would undermine the architectural aesthetic of the building at this location.

13.3.5 Communal Facilities & Amenities

Communal facilities and amenities are provided in the form of Resident Support Facilities (including refuse stores, bike stores, bike repair area, maintenance workshop, package room, management suite, toilets, leasing suite, concierge/ cafe, residents storage totalling 838m²) and Resident Services And Amenities (including Cinema/ TV Room, games room, café/lounge/ lobby, community room, gym, yoga studio, changing room, co-working space, meeting room, kitchenette, pet room, private dining room, private lounge/ breakout areas totalling 1,291m²). A breakdown of the individual areas is provided in the Housing Quality Assessment and the Planning Report submitted with the application. This is acceptable.

The applicant has set out in their Statement of Consistency that the requirement for Communal Amenity Space based on Annex 1 standards is 2014m² based on:

- 203 no. Studio at 4m² per unit (812m²)
- 136 no. 1 bed at 5m² per unit (680m²)
- 72 no. 2 bed at 7m² per unit (504m²)
- 2 no. 3 bed at 9m² per unit (18m²)

Communal Outdoor Amenity space is provided for residents in 5 no. rooftop terraces including a lounge terrace (c.377m²), gym terrace(c.391m²), social terrace (c.356m²), spa terrace (c.177m²) and biodiversity terrace (c. 574m²) totalling 1,925sqm and a semi-public courtyard at ground level (736m²). Resulting in c.2611m² external communal amenity space proposed within the scheme. I consider this acceptable.

The Planning Authority raised no issue with the level of private amenity and compensatory communal facilities proposed.

Building Life Cycle Report and a Site Specific BTR Apartment Management Plan has been submitted and examined. These are acceptable.

Mr Fingleton in his submission raised concerns that the length and width of corridors appears particularly ungenerous. I note the concerns raised but am satisfied that they comply with the relevant standards.

13.3.6 Residential Amenity within the development:

A Housing Quality Assessment and Daylight and Sunlight Report have been submitted with the application. 90.5% of the rooms assessed exceed the BRE (ADF) targets. Overall sunlight results are excellent for a development of this scale and density with 99% of windows assessed being either exempt or fully satisfying criteria. All roof terrace meet the required sunlight availability tests. Ground floor outdoor spaces fall short for the spring equinox as would be expected given the scale and density of the scheme, but the ground floor spaces meet the summertime criteria when they would be more likely to be used for external amenity. I consider this acceptable

The level of amenity being afforded to future occupants is considered acceptable. I am generally satisfied in terms of possible issues of overshadowing or overlooking. Noise mitigation measures will be required to address potential noise from traffic. This could be addressed by condition if the Board is of a mind to grant permission.

13.3.7 Impact on adjoining properties

Having regard to the orientation and location of the site, the separation distances involved and the design of the proposed units, I do not have undue concerns with regards the impacts on amenity of properties in the vicinity. The level of overshadowing on surrounding existing buildings is similar to that from the 2018 permitted scheme. I am generally satisfied that the proposal will not impact on the amenities of the area, including issues of overlooking, overshadowing or loss of light to such an extent as to warrant a refusal of permission. I have no information before me to believe that the proposal, if permitted would lead to devaluation of property in the vicinity. Impacts on privacy would not be so great as to warrant a refusal of permission. This is an urban location and a certain degree of overlooking, overshadowing, impacts on privacy and loss of light is to be anticipated at such a location.

I acknowledge that there will be some disruption during the course of construction works, including that from construction noise. Such disturbance is anticipated to be relatively short-lived in nature. The nature of the proposal is such that I do not anticipate there to be excessive noise/disturbance once construction works are completed. If the Board is disposed towards a grant of permission, I recommend that such issues like wheel wash facilities, hours of works, site compound lighting and the like be dealt with by means of condition. A final Construction and Demolition

Management Plan should be submitted and agreed with the Planning Authority prior to the commencement of any works on site.

13.3.7 Non-Residential Uses:

Retail

Two retail units, c.156 and 323m² respectively, are proposed fronting onto Newmarket at street level. The location of the retail units fronting onto Newmarket Square and the enhance public realm will promote vitality in the area and ensure active frontages. I consider this acceptable.

Café/Restaurant

A c. 213m² café/restaurant is proposed at ground floor level fronting onto Newmarket. This is also acceptable.

Artist Studio

An Artist studio is proposed to the lower ground floor of the building located on the corner of St. Luke's Avenue and Brabazon Place, accessed from the internal street. It is envisaged that this space will provide a flexible space that can be used for exhibitions, collective working or individual studios as required. I consider this acceptable.

13.3.8 Conclusion

Given the nature of the development which is a BTR scheme and the guidance set out in the Apartment Guidelines that flexibility can apply in relation to proportion of private amenity space to be provided. I am satisfied that the proposed development, notwithstanding its limited number of units with private amenity provide a high standard of residential amenity which is still relevant in the covid 19 climate and requirements for social distancing etc. I refer the Board to SPPR 8 of the

aforementioned Guidelines in this regard. The planning authority is satisfied in this regard.

On balance, having regard to the nature of the development which is a BTR scheme and the guidance set out in the apartment guidelines that flexibility can apply in relation to a proportion of the private amenity space; the extensive amount of internal and external communal amenities which will play an integral part in the satisfaction of tenant life; the architectural aesthetic of the building which projecting balconies may undermine; the inner city centre location of the site and the range of facilities and amenities in proximity that in this instance the flexibility adopted with respect to the provision of private amenity space is acceptable.

Having reviewed the detailed housing quality assessment and other technical reports submitted with the application, I am satisfied that the development will provide a satisfactory standard of residential amenity for future occupants. The apartment units are generally designed to a high standard and meet or exceed all of the qualitative and quantitative standards set out in the guidelines with the exception of private amenity space. The scheme however, will provide a significant amount of communal floorspace with additional amenities and facilities to compensate for this.

I am satisfied that the level of amenity being afforded to future occupiers of the proposed scheme is acceptable and the proposal if permitted would be an attractive place in which to reside and that the development is consistent with the guidance set out in the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities.

I am also satisfied that the development will not have any material adverse impacts on the amenities of adjoining residential properties as a result of overlooking or overshadowing.

13.4 Traffic and Parking

A detail assessment of traffic impact from the proposed development is included with the application.

I am of the view that given the relatively limited extent of parking proposed and the likely trip generation rates, that the impact of the development on the carrying capacity of the local road network is unlikely to be material. In this regard, whilst the development may result in some additional traffic generation during peak hours, its impact in the context of wider issues of congestion is likely to be negligible and a refusal on the grounds of traffic impact is not warranted.

13.4.1 Access

Vehicular access is proposed via a two-way ramp accessed off Newmarket Street to serve the car park is intended to serve only the residential development. The entrance/egress is located approximately 6m south of the existing vehicular access and is detailed as gated. The width of the proposed vehicular entrance is 6.9m, which appears excessive and not pedestrian friendly. The main cycle access is via a designated cycle ramp off St. Luke's. The internal cycle access at lower ground floor level is not clear and is obstructed by car parking spaces.

The DCC Transportation Planning raised a number of outstanding issues that need to be addressed. I am satisfied that these can be addressed by condition if the Board is disposed to grant permission.

I am satisfied, in particular having regard to the TTA and comments from the Planning Authority, that the proposed development will not cause a traffic hazard or unduly impact on the carrying capacity of the surrounding road network, and that subject to conditions, the development is acceptable from a traffic/roads perspective.

13.4.2 Parking

The lower ground floor / basement level includes car parking spaces (50no.), cycle spaces (540no.), motorcycle spaces (2no.) and plant/services with a new vehicular access provided from Newmarket Street. Cycle parking and facilities have an access

from St. Luke's Avenue. A disabled access parking space is provided on Newmarket Street. A new service set down area is provided on St. Luke's Avenue. 10no. additional surface cycle spaces are provided on St. Luke's Avenue (5no.) and semi-private residential courtyard (5no.).

The DCC Transportation Planning Division clearly set out in their report the accessibility of the application site which is c. 1km from the city centre and well connected via St. Luke's Avenue. There are cycle lanes or combined bus and cycle lanes along Cork Street and Clanbrassil Street into the city centre. A primary cycle route (Route 8) is planned for Cork Street and a secondary route (Route 9B) is planned for Clanbrassil Street. The nearest Dublin Bikes locations are at Francis Street and Kevin Street Lower. St. Luke's Avenue along the northern boundary of the site is a two-way carriageway with a bus corridor and cycle lanes on both side. Local access roads include Brabazon Place and Newmarket Street via Newmarket Square or Ward's Hill. There are existing vehicular entrances on Brabazon Place and Newmarket Street. There is on-street parking on Newmarket Street and Newmarket Square. There is an existing tourist bus stop on Brabazon Place and a loading bay. The site is readily accessible to public transport including the Cork Street bus corridor, adjacent to the site and the Clanbrassil Street bus corridor (routes 49 and 54a). The site is also within walking distance of the LUAS Red Line (Fatima Stop) and the Luas Green Line (St. Stephen's Green stop). Cork Street/St. Luke's Avenue forms part of Bus Connects Route 9 Greenhills to City Centre, which will see bus routes consolidated and frequency increased. The proposed Metro Link at St Stephen's Green is within walking distance.

The site can be defined as a Central Accessible Location in accordance with the categorisations set out in the 2018 Apartment Guidelines. A detailed Mobility Management Plan is submitted with the application. A number of measures are detailed to promote use of more sustainable transport nodes.

Given the location and context of the site, future residents will be well served by public transport and encourages a modal shift away from the private car.

13.4.3 Internal Street/link from Newmarket to St. Luke's Avenue

The proposed development also includes a new internal street/ public routeway through the site from Newmarket to St. Luke's Avenue and landscaping and public realm improvements are proposed on the St. Luke's Avenue frontage between a new public footpath and the proposed building.

The Planning Authority have raised concerns in relation to the proposed link and are of the view that further consideration of this matter is required, I note that the Planning Authority did not recommend refusal on this basis.

The provision of a route/public access through the development linking Newmarket with St. Luke's Avenue is welcomed.

13.4.4 Conclusion

The development is to be located in an existing built-up urban area, where cycle and pedestrian facilities are good. The area is served by good public transport. The location of the site within the inner city centre is also noted. I consider that there will be limited increased traffic as a result of the proposed development. Whilst it is acknowledged that there is congestion on the local road network in the vicinity of the site, given the limited extent of parking proposed and likely trip generation, having regard to the location of the site within an inner urban area on zoned lands, I do not have undue concerns in relation to traffic or transportation issues. Having regard to all of the above, I have no information before me to believe that the proposal would lead to the creation of a traffic or obstruction of road users and I consider the proposal to be generally acceptable in this regard.

I have highlighted that the proposed development falls within the area for an adopted Section 49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephens Green to Broombridge Line) under section 49 Planning and

Development Act 2000, as amended. I consider this acceptable if the Board is disposed to grant permission.

13.5 Site Services and Flood Risk

13.5.1 Water

There is an existing 150mm diameter cast iron watermain located to the south of the site along Newmarket square c.7m from the site and an existing 150mm diameter MOPVC watermain located under the footbridge to the north of the site. There are two more existing watermains on Brabazon Row of unknown size and material, both connect to the 150mm diameter cast iron watermain to the south of the site.

It is proposed to provide a new 200mm diameter HDPE watermain to serve the development. This will connect to the existing 200mm diameter MPPVC watermain on St. Luke's Avenue.

In respect of water, Irish water has highlighted that in order to accommodate the proposed connection at the premises, upgrade works are required to the existing Irish Water network as follows:

The current distribution networks works is currently operating beyond its capacity. Any demand increase would result in very low, or no pressure, at several locations across the district during peak demand. In order to facilitate this proposed connection network upgrade is required to be funded by the developer. The upgrades include approx. 775m of existing 4" CI watermain along Newmarket, Ward's Hill and Blackpitts Road has to be replaced with 200mm ID watermain. Should the applicant wish to progress with the connection, the upgrade works fee will be calculated and be part of the Irish Water connection offer for the development and delivered by Irish Water.

The applicant has engaged with Irish Water in respect of design proposal for which they have been issued a Statement of Design Acceptance for the development.

DCC Drainage Division noted no objection subject to conditions.

I am satisfied in this regard.

13.5.2 Foul

There is a 600mm foul sewer located on St. Luke's Avenue. There are two combined sewers adjacent to the site, a 330mm clay sewer on Brabazon Row and a 790mm brick sewer on Newmarket Square. There is an existing connection to the sewer on Brabazon Row.

The new foul drainage system will connect to the combined sewer on Brabazon Row. This combined sewer is connected to the dedicated foul sewer 7m downstream.

A Confirmation of Feasibility for 453 residential units was issued by Irish Water to the application confirming new connection to the existing wastewater network is feasible without upgrade.

DCC Drainage Division noted no objection subject to conditions.

I am satisfied in this regard.

13.5.3 Surface water

The exiting site is comprised of existing buildings and hardstanding unattenuated outflow to the public drainage network an river system. The existing surface water drains directly into the combined sewer on Brabazon Row, which connects downstream into a combined sewer on The Coombe/Dean Street.

The GSDSDS shows The Coombe/Dean Street combined sewer flooding for a 30 year return period. There are also significant problems with foul water overflowing into the River Poddle watercourse at Combined Sewer Outflow Number 3 during storm events.

It is proposed that rainwater will be collected at either roof level, in the courtyard area or the hardstanding areas within the proposed development in compliance with SUDs. Surface water from both the roof and courtyard will flow into an attenuation tank before being discharged via hydrobrake and then via gravity sewer to the public 300mm concrete surface water sewer on St. Luke's Avenue.

The new development will divert surface water runoff from the overcapacity combined system and CSO 3 overflow location, and into a dedicated surface water system. The River Poddle, to which the surface water system connects to, does not flood in a 30 year return period or surcharge for a 1 or 2 year return period based on 2031 GDSDS modelling. Therefore, the applicant's Engineers in the Civil Infrastructure Report has concluded that this new connection, along with site SUDs measures and a hydrobrake restricting the surface water discharge, is a significant improvement compared to the existing development.

DCC Drainage Division noted no objection subject to conditions.

I am satisfied in this regard.

13.5.4 Flood Risk Management

A Flood Risk Assessment has been submitted with the application. The site is located on Flood Zone C.

The coastline is c.4.25km to the east of the site and the nearest point of the River Liffey, which is subject to tidal fluctuations, is c.750m to the north of the site. The lowest spot elevation on the site is +12.9m. The FRA concluded, therefore, that coastal flooding does not pose a threat.

The river Poddle runs c. 250m east of the site under Clanbrassil Street Lower. The OPW map shows no flood incidents recorded on the site on the area adjacent to the site. The FRA concluded that there is no risk from fluvial sources.

All rainfall on the site will pass through various SUDs measures. The drainage system is designed not to flood for a 1 in 30 year storm minimum in accordance with standard guidelines. The FRA concluded that risk of pluvial flooding within the site is small.

The contents of the submitted Flood Risk Assessment appear reasonable and robust. Based on all of the information before me, including the guidance contained within the relevant Section 28 guidelines, I am satisfied in this regard.

13.5.5 Conclusion

A Civil Infrastructure Report and a Flood Risk Assessment were submitted with the application. The information contained within these documents appears reasonable and robust. The report of the Drainage Division of the planning authority, as contained in the Chief Executive Report, states that there is no objection to the proposal, subject to proposed conditions. Based on all of the information before me, including the guidance contained within the relevant Section 28 guidelines, I am satisfied in this regard, subject to standard drainage conditions.

13.6 Architectural Heritage and Archaeology

13.6.1 Built Heritage

There are no protected structures on site. Newmarket is a Conservation Area but is not a designated ACA. The site is a former IDA site that was cleared, with the exception of No. 32 Newmarket, in the late 1970s to facilitate its redevelopment at

the time. The demolition of No. 32 Newmarket was included in the proposal under PA Ref. 3323/17 (ABP 300431-17).

A Conservation Impact report submitted with the application sets out the historical context of the site and assesses the impact of the proposed development.

There is no report on file from DCC Conservation Division. No architectural conservation issues were highlighted in the DCC Chief Executive Report, the DAU (DCHG) or by Mr. Fingleton in his submission.

There is an extant permission on the site for a mixed use development, the demolition of all structure on the site was included in this application and site clearance has taken place on foot of said 2018 permission.

The report concluded that the development proposed 'accords with the recurring themes of brick facings and vertical windows visible in other redevelopment sites. The current proposal goes further than this, though with the facade broken up into vertical sections through variations in facing materials, to recreate the original urban grain that arose as a result of the unified horizontal streetscape of the seventeenth century being comprised of repetitions of narrower vertical elements, represented by individual houses. Accordingly, the proposed development respects the present

character of Newmarket, while reflecting the original character and grain of the street in the detailing of the proposed façade.

13.6.2 Archaeology

Newmarket is located outside the walled medieval town of Dublin but within the Zone of Archaeological Potential for Dublin (DUO18-020)

An Archaeological Report submitted with the application outlines the archaeological background to the site and set out details of the archaeological test excavation carried out in July 2019 (relating to ABP 300431-17) under licence 19E0430 from National Monuments DCHG. This Report included a study of the former Grays of Newmarket Public House which occupies the south western corner of the larger plot.

The DAU examined the archaeological report submitted and on the basis of the information in the report and the proposed archaeological mitigation (page 13) it is the Department's recommendation that a planning condition pertaining to Archaeological Excavation, further Archaeological Testing and Monitoring be included in any grant of planning permission that may issue.

DCC Archaeology Division have no objection subject to conditions.

I have no objection on archaeological ground subject to appropriate conditions.

13.6.3 Conclusion

The southern section of the site is located in the Newmarket Conservation Area I am satisfied that the proposed development has due regard to its location within a Conservation Area and will not have a negative impact on it. The Planning Authority have not raised any objection on architectural conservation grounds.

The site is located in a zone of Archaeological Interest Dublin City (DU0180-020). The Archaeology Division and DAU noted no objection subject to conditions. I am satisfied with the Assessment submitted and subject to the appropriate condition that any potential archaeological finding will be addressed.

13.7 Part V

It is proposed to provide 41 no. units to meet the requirements of Part V. These consist of 30 studio and 11 1 bed units. Mr Fingleton has raised that studio apartments should not be purchased by DCC to add to their building stock and that DCC should be considering 1 bed units. However, the PA is the housing authority for the area and they are satisfied that the proposals meet their requirements and as such I am satisfied that this is acceptably addressed, subject to condition.

If the Board is disposed to grant permission a condition should be attached requiring the development to comply with the provisions of section 97 of the Planning and Development Act 2000 as amended.

13.8 Other Matters

13.8.1 Site A and PA Reg Ref. 4743/19

I acknowledge that there is a concurrent application under PA Reg. Reference lodged with Dublin City Council for a hotel, retail and café (6,448m²) and new street to the south west corner of the site (Site B) currently with Dublin City Council and no decision has been made.

The Chief Executive Report has highlighted on going concerns relating to this application and in particular the provision of a route between site A and B and the interface of both development with same, its maintenance and overall attractiveness for use by the public. I noted previous in my report that both site A and B have been designed to be developed in unison or independently, if one does not proceed for what ever reason. Site A is the subject of the SHD application before the Board and while I am cognisant of the proposed development on site B, the manner in which they are designed mean they can be assessed and subsequently developed independently, The proposed new route/street has been included in both applications and details relating to its maintenance and management have also been addressed.

13.8.2 Social Infrastructure

A Social Infrastructure Audit has been submitted with the application. This concluded that in the areas of health and education, while there is sufficient provision and access for the resident population. DCC should ensure that the quality of this care or education is kept high. Any influx of population from new developments should require sufficient consideration for additional capacity.

Given the provision of studio and 1 bed units proposed within the development, I am satisfied that the non-provision of childcare facilities is acceptable in this instance. The planning authority have raised no objection in this regard.

13.8.3 Publication of documentation.

I note that Mr Fingleton raised issue with access to documentation on the DCC website. The requirement that DCC make available documentation on its website is not within the scope of this report.

13.9 Material Contravention

The applicant has submitted a Statement of Material Contravention with Dublin City Development Plan 2016-2022 with the application. The public notices make reference to a statement being submitted indicating why permission should be granted having regard to the provisions s.37(2)(b). There is one issue raised in the applicant's Material Contravention statement, it relates to building height and the Dublin City Development Plan 2016-2022.

Section 37(2)(b) of the Act of 2000 (as amended) states that where a proposed development materially contravenes the Development Plan, the Board may grant permission where it considers that:

- (i) the proposed development is of strategic or national importance,*
 - (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned,*
- or*

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

or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

13.9.1 Height and the Dublin City Development Plan 2016-2022

The building heights range from 16.9m (parapet) on Newmarket to a highpoint of 43.1/43.6m (parapet/max. height including lift overrun) on the 13 storey building on the corner of St. Luke's Avenue and Brabazon Way. This exceeds the prescribed height in the development plan (24m residential).

Section 16.7.2 of the current Dublin City Development Plan: Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development addresses the issue of building height in the city. The Plan sets 24m as the maximum height permissible for residential developments in this area. I draw the Boards attention to the height of the previous consent on the site was also above this datum

I have considered the issue raised in the applicants submitted statement and advise the Board to adopt the precautionary approach and invoke the provisions of s.37(2)(b) of the 2000 Act (as amended).

I have considered the Statement of Material Contravention submitted with the application which describes the justification for the proposed height. I consider that the site is appropriate for increased height in light of guidance in the Urban Development and Building Height, Guidelines for Planning Authorities. Particularly in consideration of the Development Management Criteria in section 3.2 of the guidelines relating to proximity to high quality public transport services, character of the location, the contribution of the proposal to the street, the avoidance of uninterrupted walls, contribution to public spaces, compliance with flood risk management guidelines, improvement of legibility and daylight and sunlight considerations alongside performance against BRE criteria. My assessment of the development against the section 3.2 criteria in the Building Height Guidelines is set out in detail in section 13.2.2 above. Specific assessments have also been provided to assist my evaluation of the proposal, specifically CGI visualisations and a landscape and visual impact assessment. There are no additional specific assessments required for a building of this scale (less than 50m in height).

Section 37(2)(a) of the Planning and Development Act 2000 (as amended), states that the Board may decide to grant a permission even if the proposed development contravenes materially the development plan. Section 37(2)(b) (i)-(iv) lists the circumstances when the Board may grant permission in accordance with section 37(2)(a).

Under section 37(2)(b) (i) the proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) and its potential to contribute to the achievement of the Government's policy to increase delivery of housing from its current under supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016; and (iii) permission for the development should be granted having regard to guidelines under section 28 of the Act, specifically SPPR 3 of the Building Height Guidelines which states that where a development complies with the Development Management Criteria in section 3.2, it may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise and national policy in Project Ireland 2040 National Planning Framework (in particular objectives 13 and 35). An assessment of the

proposed development was carried out to determine that the proposed development conforms with the development management criteria in section 3.2 of those guidelines. I refer the Board to section 13.2.2 of this report above that addresses these criteria in detail.

13.9.2 Unit Mix and the Dublin City Development Plan 2016-2022

While not addressed in the applicant's Material Contravention Statement I would also highlight to the Board Section 16.10.1 of the Dublin City Council Development Plan 2016 – 2022, which sets out the requirements in relation the mix of dwellings provided as part of new apartment developments, which provides for a maximum of 25-30% one-bedroom units and a minimum of 15% three or more bedroom units.

I acknowledge that the operative Dublin City Development Plan standards with regards to unit mix and floorspace is at variance with the aforementioned Guidelines and the planning authority while highlighting unit mix in the Chief Executive Report do not refer to a material contravention of the plan.

However, I would advise the Board, having regard to, inter alia, recent Court judgements in relation to decisions on SHD applications, to adopt the precautionary approach and invoke the provisions of s.37(2)(b) subsection (i), (iii) and (iv) of the 2000 Act (as amended) if a grant of permission is forthcoming.

Under the Planning and Development Act 2000, the Bord is precluded from granting permission for development that is considered to be a material contravention, except in four circumstances. These circumstances, outlined in Section 37(2)(b), are in the (i) national, strategic interest; (ii) conflicting objectives in the development plan or objectives are not clearly stated (iii) conflict with national/regional policy and section 28 guidelines; and (iv) the pattern of permissions in the vicinity since the adoption of the development plan.

The current application has been lodged under the strategic housing legislation and is considered to be strategic in nature.

I note the policies and objectives of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' (March 2018) and the Specific Planning Policy Requirement (SPPRs) contained therein. In

particular, I note that SPPR 8 of these Guidelines (2018) states that no restrictions on dwelling mix shall apply to declared 'Build to Rent' residential development. SPPPR 8 further states that the requirement that the majority of all apartments in a proposed scheme exceed the minimum floor areas standards by a minimum of 10% shall not apply to BTR schemes, due to the requirement to provide compensatory communal facilities and amenities for use by residents. The operative City Development Plan conflicts with these guidelines.

I note the policies and objectives within Rebuilding Ireland – The Government's Action Plan on Housing and Homelessness and the National Planning Framework – Ireland 2040 which fully support and reinforce the need for urban infill residential development such as that proposed on sites in close proximity to quality public transport routes and within existing urban areas. I consider this to be one such site.

13.9.3 Conclusion

I am of the opinion that given its residential zoning, the delivery of residential development on this prime, infill, underutilised site, in a compact form comprising well-designed, higher density BTR units would be consistent with policies and intended outcomes of the NPF and Rebuilding Ireland – The Government's Action Plan on Housing and Homelessness. The site is considered to be located in a central and accessible location, served by good quality public transport in an existing serviced area. The proposal serves to widen the housing mix within the general area, and would improve the extent to which it meets the various housing needs of the community. The proposed development has been lodged under the strategic housing process, which aims to fast-track housing development on appropriate sites in accordance with the policies and objectives of Rebuilding Ireland. This legislation recognises the strategic importance of such sites in the provision of housing in meeting both current and future need. It is therefore my opinion that the Bord is not precluded from granting permission in this instance, despite the material contravention of the operative Development Plan.

I would recommend that in the interest of clarity and transparency, that the board adopt a precautionary approach and deal with material contravention in a comprehensive manner – invoking the provisions of s.37(2)(b) subsection (i), (iii) and (iv) of the 2000 Act (as amended) if a grant of permission is forthcoming.

14.0 Recommendation

I recommend that permission be GRANTED for the development as proposed, in accordance with the said plans and particulars based on the reasons and considerations marked hereunder and subject to the conditions set out below.

15.0 Reasons and Considerations

Having regard to the following:

- (a) the site's location within Dublin Inner city, within an established built-up area and in the Liberties Newmarket Strategic Development and Regeneration Area (SDRA 16),
- (b) the policies and objective set out in the Dublin City Development Plan 2016,
- (c) the Rebuilding Ireland Action Plan for Housing and Homelessness, (Government of Ireland, 2016),
- (d) the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March, 2013 (Interim Advice Note Covid 19, May 2020)
- (e) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009
- (f) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2018
- (g) the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009
- (h) Urban Development and Building Heights, Guidelines for Planning Authorities, 2018

- (i) Chief Executive Report received by An Bord Pleanála on the 17th July 2020 and associated appendices
- (j) the nature, scale and design of the proposed development,
- (k) the availability in the area of a wide range of social, community and transport infrastructure,
- (l) the pattern of existing and permitted development in the area,
- (m) the planning history within the area, and
- (n) the submissions and observations received.

I consider the principle of residential development to be acceptable on this site. I am of the opinion that this is a zoned, serviceable site within an established inner city centre area where a wide range of services and facilities exist. In my opinion, the proposal will provide a high quality development, with an appropriate mix of units and an acceptable density of development catering to a certain cohort of the population. The height and visual impact of the development is considered acceptable and there is a robust rationale for the design approach adopted.

I consider the proposal to be generally in compliance with both national and local policy, together with relevant section 28 ministerial guidelines. I also consider it to be in compliance with the proper planning and sustainable development of the area and having regard to all of the above.

It is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this urban location, would not seriously injure the residential or visual of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

16.0 Recommended Draft Board Order

Planning and Development Acts 2000 to 2019

Planning Authority: Dublin City Council

Application for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, in accordance with plans and particulars, lodged with An Bord Pleanála on the 17th day of April 2020 by Carrey Issuer DAC c/o BMA Planning, Taney Hall, Eginton Terrace, Dundrum, Dublin 14.

Proposed Development:

Permission for a strategic housing development on site (0.66ha) at Newmarket, Dublin 8, comprising part of the site known as the former IDA Ireland Small Business Centre/Newmarket Industrial Estate (site bounded by Newmarket, Brabazon Place, St. Luke's Avenue and Newmarket Street).

The proposed development will consist of:

The development will consist of a residential / mixed-use development totalling 29,570sq.m as follows:

- A Specific BTR (Build to Rent) Development comprising 413 units with a total gross floor area of 28,735sqm and comprising 203no. studios, 136no. one bedroom units, 72no. 2 bedroom units and 2no. 3 bedroom units and will include Resident Support Facilities (including refuse stores, bike stores, bike repair area, maintenance workshop, package room, management suite, toilets, leasing suite, concierge/ cafe, residents storage totalling 838sqm) and Resident Services And Amenities (including Cinema/ TV Room, games room, café/lounge/ lobby, community room, gym, yoga studio, changing room, co-working space, meeting room, kitchenette, pet room, private dining room, private lounge/ breakout areas totalling 1,291 sqm). The building ranges from

6 storeys (including set back level) to Newmarket stepping to 9-13 storeys towards St. Luke's Avenue.

- The proposed development includes non-residential uses comprising 3no independent units on Newmarket comprising a 1no. café/restaurant (216sqm) and 2no. retail units (165 and 325sqm) and an artists' studio (129sqm).
- Lower ground floor / basement level includes car parking spaces (50no.), cycle spaces (540no.), motorcycle spaces (2no.) and plant/services with a new vehicular access provided from Newmarket Street. Cycle parking and facilities have an access from St. Luke's Avenue. A disabled access parking space is provided on Newmarket Street. A new service set down area is provided on St. Luke's Avenue. 10no. additional surface cycle spaces are provided on St. Luke's Avenue (5no.) and semi-private residential courtyard (5no.).
- Communal Outdoor Amenity space is provided for residents in 5no. rooftop terraces including a lounge terrace, gym terrace, social terrace, spa terrace and biodiversity terrace (totalling 1,925sqm) and a semi-public courtyard at ground level (736 sq.m).
- The proposed development also includes a new internal street/ public routeway through the site from Newmarket to St. Luke's Avenue and landscaping and public realm improvements are proposed on the St. Luke's Avenue frontage between a new public footpath and the proposed building.
- Permission is also sought for 2no. ESB substations, signage, roof plant and landscaping and public realm works and all associated site development works.

The demolition of all existing buildings on the overall site known as the IDA Ireland Small Business Centre at Newmarket Industrial Estate has been approved and will be carried out pursuant to Reg Ref: 3323/17 (Bord Ref: ABP300431-17). The remainder of the overall site bounded by Newmarket, Brabazon Place, St. Luke's Avenue and Newmarket Street and is the subject of a separate planning application to Dublin City Council (Reg. Ref. 4743/19) for a Hotel development with 2 no. retail/restaurant units.

The applicant contains a statement setting out how the proposal will be consistent with the objectives of the relevant development or local area plan.

The application contains a statement indicating why permission should be granted for the proposed development, having regard to a consideration specified in section 37(2)(b) of the Planning and Development Act 2000, as amended, notwithstanding that the proposed development materially contravenes a relevant development plan or local area plan other than in relation to the zoning of lands.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- a) the site's location within Dublin Inner city, within an established built-up area and in the Liberties Newmarket Strategic Development and Regeneration Area (SDRA 16),
- b) the policies and objective set out in the Dublin City Development Plan 2016,
- c) the Rebuilding Ireland Action Plan for Housing and Homelessness, (Government of Ireland, 2016),
- d) the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March, 2013 (Interim Advice Note Covid 19, May 2020),
- e) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009,
- f) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2018,
- g) the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009,
- h) Urban Development and Building Heights, Guidelines for Planning Authorities, 2018,
- i) Chief Executive Report received by An Bord Pleanála on the 17th July 2020 and associated appendices,
- j) the nature, scale and design of the proposed development,
- k) the availability in the area of a wide range of social, community and transport infrastructure,

- l) the pattern of existing and permitted development in the area,
- m) the planning history within the area, and
- n) the Inspectors Report, the submissions and observations received,

Appropriate Assessment

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban site, the information for the Screening for Appropriate Assessment submitted with the application, the Inspector's Report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environmental Impact Assessment Screening Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to:

- (a) the nature and scale of the proposed development on an urban site served by public infrastructure,
 - (b) the absence of any significant environmental sensitivities in the area,
 - (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),
- the Board concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment. The Board decided, therefore, that an environmental impact assessment report for the proposed development was not necessary in this case.

Conclusions on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this suburban location, would not seriously injure the residential or visual of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Height

The Board considered that a grant of permission that could materially contravene section 16.7.2 of the Dublin City Development Plan 2016-2022 in terms of height (24m) would be justified in accordance with sections 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, having regard to:

- (a) The Government's policy to ramp up delivery of housing from its current under-supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016;
- (c) SPPR3 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018;

all of which support denser residential development consisting of apartments on public transport corridors within the built-up area of Dublin City and its suburbs, as is proposed in this case.

The Board considered that a grant of permission that would materially contravene section 16.7.2 of the Dublin City Development Plan 2016-2022 which apply to the site, would be justified in accordance with sections 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, having regard to:

The proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) and its potential to contribute to the achievement of the Government's

policy to increase delivery of housing from its current under supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016.

SPPR 3 of the Building Height Guidelines which states that where a development complies with the Development Management Criteria in section 3.2, it may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise and national policy in Project Ireland 2040 National Planning Framework (in particular objectives 13 and 35). An assessment of the proposed development was carried out to determine that the proposed development conforms with the development management criteria in section 3.2 of those guidelines.

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework, the 'Urban Development and Building Height Guidelines' (in particular section 3.2, SPPR 3), 'Sustainable Urban Housing: Design Standards for New Apartments' and the Dublin City Development Plan 2016-2022.

Unit Mix

The Board considered that a grant of permission that could materially contravene section 16.10.1 of the Dublin City Development Plan 2016-2022 in terms of unit mix would be justified in accordance with sections 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, having regard to:

- (a) The Government's policy to ramp up delivery of housing from its current under-supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016;
- (b) SPPR8 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018;
- (c) SPPR3 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018;

- (d) Appendix 1 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018;
- (e) Section 16.10.1 of the city development plan,

all of which support denser residential development consisting of apartments on public transport corridors within the built-up area of Dublin City and its suburbs, as is proposed in this case.

The Board considered that a grant of permission that would materially contravene section 16.10.1 of the Dublin City Development Plan 2016-2022, which applies to the site, would be justified in accordance with sections 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, having regard to:

SPPR 8 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, issued in March 2018 which states no restriction on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise and that the requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10% shall not apply to BTR schemes; with which the proposed development would comply.

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework and 'Sustainable Urban Housing: Design Standards for New Apartments' and the Dublin City Development Plan 2016-2022 (in particular SPPR8).

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (March 2018) and be not be used for short term rentals. No portion of this development shall be used for short term lettings.

Reason: In the interest of the proper planning and sustainable development of the area and in the interest of clarity.

3. Prior to the commencement of development, the owner shall submit, for the written consent of the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period. The period of 15 years shall be from the date of occupation of the first residential unit within the scheme.

Reason: In the interests of proper planning and sustainable development of the area.

4. Prior to expiration of the 15-year period referred to in the covenant, the owner shall submit for the written agreement of the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

5. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority/An Bord Pleanála prior to

commencement of development. In addition, details of a maintenance strategy for materials within the proposal shall also be submitted for the written agreement of the planning authority, prior to the commencement of any works on site. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. Render shall not be used as an external finish.

Reason: In the interest of visual amenity and durability.

6. (a) All entrance doors in the external envelope shall be tightly fitting and self-closing.
- (b) All windows and roof lights shall be double-glazed and tightly fitting.
- (c) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes.

Details indicating the proposed methods of compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the residential amenities of property in the vicinity.

7. The gym shall be for the use of residents of the proposed development only and shall not be open to the public on a commercial basis, unless otherwise authorised by a prior grant of permission. The gym shall be maintained and managed by the Owner's Management Company.

Reason: To ensure the appropriate provision of communal facilities to serve the needs of the residents of the proposed development.

8. a) The precise detail of the retail/café use/restaurant proposed, together with opening hours shall be agreed in writing with the Planning Authority prior to opening of this premises.

- b) Before any café use commences, a scheme shall be submitted to, and approved

in writing by the Planning Authority for the effective control of fumes and odours from the café. The scheme shall be implemented before the use commences and thereafter permanently maintained.

c) Prior to the erection on site, the applicant shall submit detailed drawings of the proposed signage for the café for the written agreement of the Planning Authority.

Reason: In the interest of residential amenity, orderly development and visual amenity.

9. a). Retail units shall not be amalgamated or subdivided, unless authorised by a further grant of planning permission.

b) No external security shutters shall be erected for any of the commercial premises (other than at services access points) unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interests of clarity.

10. No development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

11. All plant including extract ventilation systems and refrigerator condenser units shall be sited in a manner so as not to cause nuisance at sensitive locations due to odour or noise. All mechanical plant and ventilation inlets and outlets shall be sound insulated and/or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interest of residential amenity.

12.The applicant shall provide a detailed management plan for access through the “semi-public courtyard” together specific opening hours for this access. This management plan shall be submitted for the written consent of the Planning Authority prior to commencement of development.

Reason: In the interest of residential amenity, orderly development and visual amenity.

13.No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

14.Proposals for a development name, commercial unit identification and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

15.Prior to the commencement of the development, the applicant/developer shall agree in writing with the planning authority works to the road and footpath on St. Luke’s Avenue, Brabazon Place, and Newmarket Street, and all works shall be provided at the applicant/developer’s expense, as follows:

- a) The applicant/developer shall contact TAG (Traffic Advisory Group) to ascertain their requirements regarding the loading bay on St Luke's Avenue and alterations to bus stop/onstreet parking/line markings/signage on Brabazon Place and Newmarket Street. The developer should note that a fee applies for the removal of a Pay and Display permit parking bay.
- b) Revised drawings shall be submitted for agreement showing the width of the public footpath on St. Luke's Avenue being retained except where the new footpath is proposed to accommodate the loading bay, this section of new footpath shall be at least 2.4 m in width. A revised taken in charge drawing shall be submitted.
- c) At the vehicular access/exit point to the development on Newmarket Street, the public footpath shall be continued at a raised level across the site entrance and exit, but shall be ramped and dropped as necessary (e.g. 32mm kerb over carriageway) to facilitate car entry/exit. Measures shall be implemented, including contrasting materials, signing, and road marking, etc. to ensure that vehicles entering/leaving the development are aware that pedestrians/cyclists have priority across the site entrance and that vehicles must yield rightof-way.
- d) The applicant/developer shall contact TAG (Traffic Advisory Group) to ascertain their requirements regarding vehicular access/exit points for the ESB substations on Brabazon Place and to agree the suitability of a vehicular access/exit point on St. Luke's Avenue.
- e) A revised taken in charge drawing shall be submitted
- f) Details of the materials proposed in public areas, including areas to be taken in charge, is required and should be in accordance with the document Construction Standards for Roads and Street Works in Dublin City Council and agreed in detail with the Road Maintenance Division.

Reason: In the interest of orderly development.

16.Drainage arrangements including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and surface water management.

17. The developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

18. A Mobility Management Plan / Residential Travel Plan shall be submitted for the development for written agreement with the planning authority prior to occupation of the development. The travel plan shall address the mobility requirements of future residents and should promote the use of public transport, cycling and walking. The residential travel plan shall, aside from the onsite car club facility, identify car club spaces outside of the development and in the vicinity of the site.

Reason: In the interest of orderly development.

19. a) An improved delineated internal cycle access route between the cycle access ramp and the bike store shall be provided. The potential for providing a secondary cycle entry/egress point via the vehicle basement ramp through incorporating delineated cycle route should be reviewed. Revised drawings shall be submitted to the planning authority for written agreement prior to commencement of development.

b) 540 no. cycle parking spaces shall be provided for the development and shall include 10 no. staff spaces at basement level and 20 no. Sheffield stands at surface level. Revised drawings showing required cycle parking provision and demonstrating operational dimensions shall be submitted prior to commencement of the development to the planning authority for written agreement.

c) Cycle parking shall be secure, conveniently located, sheltered and well lit. Shower and changing facilities shall also be provided as part of the development. Key/fob access should be required to bicycle compounds. Cycle parking design shall allow both wheel and frame to be locked.

Reason: In the interest of orderly development.

20. A Parking Management Plan shall be prepared for the site and submitted for the written agreement of the planning authority. This shall indicate how spaces will be assigned and how use of the car parking will be continually managed. 10% of spaces

shall be fitted with electric charging point. The car parking spaces on site shall be solely reserved for the use of residents and shall not be available to the commercial uses as long term commuter parking.

Reason: In the interest of orderly development.

21. Car parking spaces shall not be sold, rented or otherwise sub-let or leased to other parties. A minimum of 4 no. car parking spaces within the development shall be permanently allocated to Car Club use. Reason: In the interest of orderly development

Reason: In the interest of amenity and of traffic and pedestrian safety.

22. The public open spaces will operate as public realm in perpetuity, with public access and use operated strictly in accordance with the management regime, rules and regulations including any byelaws for public open space of the Planning Authority at all times.

Reason: In the interest of residential amenity and to secure the integrity of the proposed development including open spaces.

23. The landscaping scheme as submitted to An Bord Pleanála shall be carried out within the first planting season following substantial completion of external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

The developer shall retain the services of a suitably qualified Landscape Architect throughout the duration of the site development works. The developer's Landscape Architect shall certify to the planning authority by letter his/her opinion on compliance of the completed landscape scheme with the approved landscape proposal within six months of substantial completion of the development hereby permitted.

Reason: In the interests of residential and visual amenity.

24. Prior to the commencement of the development the applicant shall contact the Irish Aviation Authority in relation to all crane operations, with a minimum of 30 days prior notification of their erection. Details of a suitable marking and lighting scheme as agreed with the Irish Aviation Authority shall be submitted to the planning authority prior to the commencement of construction. Additional information regarding crane type (tower, mobile), elevation of the highest point of crane, dimensions of crane, ground elevation and location co-ordinate shall also be required by the Authority to allow for an aviation safety assessment.

Reason: In the interests of clarity and proper planning and sustainable development of the area.

25. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

26. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably qualified archaeologist who shall carry out site testing and monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

- (d) Agree in writing the archaeological method statements for mitigation with the Department of Culture, Heritage and the Gaeltacht, prior to commencement of any works on site

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection (in situ or by record) of any remains that may exist within the site

27. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

28. Site development and building works shall be carried only out between the hours of 07.30 to 18.00 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

29. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the

waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

30. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

31. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

32. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open

space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

33. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

34. The developer shall pay to the Planning Authority a financial contribution in respect of the Luas Cross City (St. Stephens Green to Broombridge Line) in accordance with the terms of the Supplementary Development Contribution Scheme

made by the Planning Authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Dáire McDevitt
Planning Inspector

17th August 2020

Appendix 1

Documentation submitted with the application included inter alia:

- Public Notices.
- Schedule of Accommodation.
- Part V proposals.
- Letter of consent from DCC.
- Letter to Prescribed Bodies.
- Letter to Planning Authority.
- Architects Drawings.
- Landscape Architects Drawings.
- Engineers Drawings.
- Planning Statement.
- Statement of Consistency/Material Contravention Statement.
- Design Statement.
- Housing Quality Assessment.
- Landscape report.
- Landscape and Visual Impact Assessment.
- Civil Infrastructure Report.
- Flood Risk Assessment.
- Traffic and Transport Assessment & Mobility Management Plan.
- Basement Impact Assessment.
- Daylight and Sunlight Report.
- Build to Rent Sector Report.
- Site Specific BTR Apartment Management Plan.
- Social Infrastructure Audit.
- Building Life Cycle report.
- Outline Construction Management Plan.
- Outline Construction Waste Management Plan.
- Operational Waste Management Plan.
- Energy Statement.
- Archaeological Report.
- Conservation Impact Assessment.
- Screening Report for Appropriate Assessment.
- EIA Screening Report. Statement of the Effects on the Environment and European Sites.