



An  
Bord  
Pleanála

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

## Inspector's Report ABP-309316-21

**Strategic Housing Development**

1005 no. apartments.

**Location**

City Block, North Wall Quay, Dublin 1

**Planning Authority**

Dublin City Council

**Applicant**

Waterside Block 9 Developments  
Limited

**Prescribed Bodies**

1. An Taisce
2. Department of Tourism, Culture,  
Arts, Gaeltacht, Sport and Media  
(Development Applications Unit)
3. Irish Aviation Authority
4. Inland Fisheries Ireland

5. Irish Water
6. National Transport Authority

**Observers**

1. Alan Mee
2. Ann Moroney
3. BLEND Residents Association
4. Brian and Valerie Kavanagh
5. Brídín O'Connor
6. Brian Sweeney
7. Caitriona Fisher
8. Castleforbes Square
9. Cieran Perry
10. Deirdre Kirwan
11. Docklands Business Forum
12. Frank McDonald
13. Gavin Daly
14. Joe Costello
15. John Reid
16. John Conway and Louth  
Environmental Group
17. Joseph Dillon
18. Louise Reilly
19. Maggie Stephenson
20. Miceal Ross
21. Patricia Carroll

22. Paul Keogh
23. Stephen Murphy
24. Stephen O'Farrell
25. T J O'Keeffe
26. Yvonne Cullen

**Date of Site Inspection**

20<sup>th</sup> April 2021 & 25<sup>th</sup> April 2021

**Inspector**

Rónán O'Connor

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## 1.0 Introduction

- 1.1. 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 Subject Site is located within the area of the North Lotts and Grand Canal Dock SDZ Planning Scheme, 2014.
- 2.2. The site is located at North Wall Quay, Dublin 1 and is located c. 1.9 km east of O'Connell Street in Dublin City Centre. It is a brownfield site with a stated area of c. 1.15 hectares. The site is bounded to the south by North Wall Quay (R801) with the River Liffey beyond, to the west by Castleforbes Road (R112), to the north by Mayor Street Upper and to the east by North Wall Avenue.
- 2.3. The site is brownfield in nature with the previous structures (primarily derelict and vacant warehousing) having been cleared from the site with the benefit of grants of planning permission received under Reg. Ref. DSDZ2242/16 and Reg. Ref. DSDZ3831/16. Site preparation works and excavation of the basement as consented under DSDZ3042/19 is currently ongoing. There is currently construction hoarding around the perimeter of the site. Utility buildings along the western boundary to Castleforbes Road are listed on the NIAH.
- 2.4. The area is largely redeveloped and is characterised by modern mixed-use developments with commercial office and residential the predominant uses. The 3 Arena, a large entertainment venue is to the east. A number of protected structures in the area have been retained and incorporated into modern redevelopments of the area. The Luas Red Line Docklands Extension runs to the north of the site along Mayor Street with 'The Point' terminus c. 25 metres to the east of the site. The Docklands commuter train station is on Sherriff Street Upper c. 700 metres to the north-west of the site. The site is also served by Dublin Bus Services No. 33D, 33X, 41X, 53A, 142 and 151.
- 2.5. This site, and the adjacent site to the west and south-west lands are defined as 'City Block 9' in SDZ Planning Scheme for the North Lotts and Grand Canal Dock. City

Block 9 extends to approximately 1.99 ha, and is bounded by North Wall Quay to the south, North Wall Avenue to the east, Mayor Street to the north and Castleforbes Road to the west. There is a concurrent application on the adjacent site for a commercial development which was lodged with Dublin City Council under the SDZ process (Planning Ref DSDZ2103/21).

### 3.0 Proposed Strategic Housing Development

The scheme, totalling 125,388 sq m, provides 22,499 sq m at basement levels, with 102,889 sq m from ground level upwards. The development will consist of the:

1. Construction of 1,005 No. residential units (with balconies and winter gardens on all elevations) arranged in 3 No. blocks ranging in height from 8 No. storeys to 45 No. storeys over a triple-level basement (including mezzanine plant level), the former comprising: Block A (8-14 No. storeys (including roof level terrace and extended access core); with an apartment mix of: 116 No. 1-bed; and 92 No. 2-bed; with landscaped terraces at Level 1 (south east elevation), Level 8 (south west elevation), Level 11 (south west elevation) and Level 14 (roof level)); Block B (8-41 No. storeys (including roof level terrace and extended access core); with an apartment mix of: 172 No. 1-bed; and 247 No. 2-bed; with landscaped terraces at Level 5 (south west elevation), Level 8 (north west elevation and south west elevation), Level 11 (north elevation), Level 12 (west elevation), Level 13 (east elevation), Level 14 (east elevation), and at Level 41 (roof level)); and Block C (11-45 No. storeys (including roof level terrace and extended access core); with an apartment mix of: 207 No. 1-bed; 168 No. 2-bed; and 3 No. 3-bed units; with landscaped terraces at Level 11 (north elevation), Level 24 (south, west and east elevation), Level 32 (south, west and east elevation), and Level 45 (roof level), incorporating a public viewing deck at Levels 44 and 45).

2. Provision of ancillary residential amenities and support facilities including: a residential study area (321 sq m), a gym/spa reception (52 sq m), a residents' games room (91 sq m), a residents' common room (110 sq m), a residents-only social space (193 sq m), a management office (96 sq m), a security office (50 sq m), concierge spaces (GFA of 369 sq m) all located at ground floor level; a residents' games room (122 sq m) located at Level 1 of Block B; a residents' common room

(86 sq m) located at Level 14 of Block B; a residents' wellness club and common room (408 sq m) located at Level 24 of Block C;

3. Construction of a triple level basement, comprising two levels of basement and a mezzanine plant level (total basement area 22,499 sq m), accommodating: waste storage areas (659 sq m), plant rooms (4,228 sq m), maintenance / management offices (GFA of 92 sq m), residents' courier / parcel rooms (GFA of 210 sq m), residents' laundry rooms (GFA of 138 sq m), ancillary residential storage (GFA of 291 sq m), residents' WCs (65 sq m), a residents' gym / spa (1,529 sq m) and ancillary gym storage room (100 sq m), residents' screening rooms (240 sq m), a residents' indoor plant cultivation room (356 sq m), 176 No. car parking spaces, 10 No. motorcycle parking spaces and 1,693 No. bicycle parking spaces, with vehicular access provided by ramp from North Wall Avenue.

4. Provision of 4,307 sq m of "other uses" as defined by the Planning and Development (Housing) and Residential Tenancies Act 2016, comprising: a childcare facility (450 sq m), a restaurant (110 sq m), an indoor Farmers' Market/foodhall (299 sq m), and 3 No. café units (110 sq m, 167 sq m and 261 sq m, respectively), all located at ground floor level; a restaurant (609 sq m) located at Level 32 of Block C; office use (1,894 sq m) from Levels 41 to 43 inclusive at Block C; and a public bar / function room (407 sq m) located at Level 44 of Block C.

5. Provision of 84 No. surface-level bicycle parking spaces, a pocket park, an external market area, a winter garden/seating area, and new pedestrian lanes from North Wall Quay, North Wall Avenue and Mayor Street Upper to the centre of the site.

6. All enabling and site development works, landscaping (including living walls), lighting, services and connections, waste management, interim site hoarding, and all other ancillary works above and below ground including the use of existing secant piling permitted under Reg. Ref. DSDZ3779/17 and DSDZ3780/17 (as amended by DSDZ3042/19).

Public realm works (inclusive of parking and loading bays) external to the planning application site boundary will be subject to agreement with Dublin City Council.

## **Key Figures**

Site Area	1.15 Ha
No. of units	1005
Density	914 units/ha
Height	Block A: 8-14 no. storeys Block B: 8-41 no. storeys Block C: 11-45 storeys
Public Open Space	C2,400 sq. m (Pocket Park)
Communal Space	<u>Residential Terrace Areas</u> Block A 1444 sq. m. Block B 2285 sq. m. Block C 1102 sq. m.
Part V	100 units (40 Block A, 60 Block B)
Vehicular Access	From North Wall Avenue
Car Parking	176 no. car parking spaces
Bicycle Parking	1,693 no. cycle parking spaces
Other uses	Childcare facility (450 sq m) Restaurant (110 sq m) Indoor Farmers'Market/foodhall (299 sq m) 3 No. café units (110 sq m, 167 sq m and 261 sq m) Restaurant (609 sq m) Office use (1,894 sq m) Public bar / function room (407 sq m)



Apartment Type	1 bed	2 bed	3 bed	Total
No. of Apts	495	507	3	1005
As % of Total	49%	50%	1%	100%

## 4.0 Planning History

Recent planning applications that relate directly to the SHD site are detailed below.

**DSDZ3042/19:** Permission granted for amalgamation and amendment to basements permitted under DSDZ3779/17 and DSDZ3780/17 and the construction of an additional basement level below the proposed amalgamated basement level that would result in an increase in total basement depth from approx. 3.85m to 16.0m.

The new basement level would accommodate plant, servicing areas and circulation cores (lifts and stairs, etc.) all associated with the previously permitted development under Reg. Ref. DSDZ3779/17 and Reg. Ref. DSDZ3880/17.

The proposed development does not propose any amendments to the buildings previously permitted under Reg. Ref. DSDZ3779/17 and Reg. Ref. DSDZ3780/17 from Ground to Upper Floor Levels. The proposed development does not result in any increase in car parking or bicycle parking from that previously permitted under Reg. Ref. DSDZ3779/17 and Reg. Ref. DSDZ3780/17

**DSDZ3779/17:** Permission granted for 420 no. apartments in 2 no. blocks of 6-11 storeys over basement with a GFA of c. 41,364.4 sq.m (above ground). The development also includes a creche of c. 281.4 sq.m and 4 no. café / restaurant / retail units with a total floor area of 763.5 sq.m.; one level of basement; Pocket Park.

**DSDZ37780/17:** Permission granted for the construction of 4 no. commercial office buildings of 6-8 storeys over basement with a GFA of c. 35,883sq.m (above ground) and one level of basement, as well as public plaza.

**DSDZ2242/16:** Permission granted for demolition of structures on site including the SHD pre-app site.

### **Adjacent Site on City Block 9**

DSDZ2103/21 – Current Application under assessment by Dublin City Council Planning Permission sought for the construction of 3 No. commercial office buildings (identified as four blocks (Blocks B1-B4)) ranging in height from 5-storeys to 9 storeys; Construction of basement accommodation (22,951 sq m). In a notice dated 25<sup>th</sup> March 2021 Dublin City Council have sought **Additional Information** in relation to the following:

- Public Realm requirements set out in section 5.5.9b.3 of the planning scheme include a statement that each urban block within the City block should contain at least two buildings of different architectural design. It is considered that this has not been achieved in the proposal submitted and therefore the applicant is given the opportunity to address the matter with an appropriate level of detail.
- The City Block Development Code at section 5.5.9.b.1 of the Planning Scheme seeks active uses onto North Wall Quay, and this objective is also supported by an Active Frontages Strategy (Figure 22) and specific objective RT6. Whilst an appropriate use, i.e. a gallery/exhibition space has been proposed, the applicant is requested to consider the provision of pedestrian access directly from North Wall quay in order to meet this requirement.
- The applicant is requested to submit a revised Daylight and Sunlight Report which provides the following: Assessment of the Annual Probable Sunlight Hours including for winter months of affected residential properties and an assessment of the overshadowing of private and communal open spaces of the neighbouring residential properties to the west and north of the site; A complete assessment of the daylight and sunlight impact on the residential properties within City Block 8 particularly the east facing units in sub-block B and E and assessment of the impact on the existing dwelling at No. 34- 38 Mayor Street Upper. In the event that the results indicate that there would be a significant detrimental impact on existing/approved residential amenities, the applicant is requested to submit amendments to the scheme.

### **Proposed Amendments to the SDZ Planning Scheme**

ABP Reference 304604 - Proposed Amendments to North Lotts & Grand Canal Dock Planning Scheme

Decision: **Refuse to Approve** (decision date 23<sup>rd</sup> March 2021). The Board Order sets out the reasoning behind the refusal and I have summarised same below.

- Were the Board to have considered approval of the amendments proposed, it is considered that a comprehensive Screening for Appropriate Assessment (Stage 1) would be required, and that if mitigation is required that a NIS should be submitted; Deficiencies in the SEA submitted; Noted the relatively minimal changes proposed, notwithstanding the material and significant changes in the wider environment and policy context since the adoption of the SDZ in the first instance (in 2014); The proposed amendments provide for minimal increases in height throughout the scheme/one location a reduction in height is proposed/an increase of only 225 residential units is proposed/Proposed increases in commercial floor area is also considered in submissions received to be equally restricted/The proposed increases in residential and commercial floor area were not considered to be material or significant/Therefore, and having regard to a number of the submissions received, the Board is of the opinion that options to consider greater housing provision within this strategic location have not been fully assessed and have not been realised.
- Reference is made to the Urban Development and Building Heights guidelines; Board was concerned that the implications and potential impact of not facilitating meaningful population increase within this strategic location could place greater demands to provide housing in locations further away from services and the city centre and that these potential impacts would not appear to have been considered or documented in the planning reports (including the document titled SEA) submitted and accompanying the proposed SDZ amendment.
- Minimal increase in office space provided for within the proposed amendments
- The Board is not satisfied that the proposed amendments reflect the objectives of the NPF, Building Height Guidelines or national strategic objectives; not satisfied that all reasonable alternatives have been considered and/or the environmental impact of the proposed amendments when considered against related plans or programs.

- The Board noted the 29 submissions received, 21 of which sought greater height, density or commercial opportunity; not satisfied that meaningful engagement with these submissions has occurred.
- Board considered that the full scope of potential environmental impacts of the proposed amendments have not been adequately considered such as would demonstrate the proposals are the most environmentally sustainable response to the Urban Development and Building Height guidelines and requirements of national policy objectives; obligations and requirements in respect of SEA legislative provisions (SI No. 435/2004) may not have been met, specifically in terms of how the plan (ie proposed amendments to the scheme) deals with its relationship with other relevant plans, the current state of the environment and likely evolution thereof without implementation of the plan or modifications of the plan, the likely significant effects on the environment with particular regard to population, climate and material assets, and an outline of the reasons for selecting the alternatives dealt with.
- Board is not satisfied that the proposed amendments fully reflect national policy objectives to deliver compact growth and/or the promotion of height and urban development as outlined in the Urban Development Building Height Guidelines, given the very minimal changes proposed.
- The Board is not satisfied that the proposed amendments constitute proper planning and sustainable development of this strategic land bank, and are further not satisfied, that in their decision not to utilise such a strategic land bank for increased population and employment, that the potential environmental impact for other relevant plans within the city and suburbs has been considered, as would have been provided for were an SEA to have been carried out.

## 5.0 Section 5 Pre Application Consultation

- 5.1.1. Two no. pre-application consultation meetings with the applicants and the planning authority took place via Microsoft Teams on 7<sup>th</sup> February 2020 and 2<sup>nd</sup> July 2020 in respect of the following developments:

Meeting of 7<sup>th</sup> February 2020: 999 no. apartment units arranged in 3 no. blocks of 14, 41 and 45 no. storeys, other uses and associated works.

Meeting of 2<sup>nd</sup> July 2020: 1008 no. apartment units arranged in 3 no. blocks of 14, 41 and 45 no. storeys, other uses and associated works.

- 5.1.2. An agenda was issued prior to both meetings.
- 5.1.3. In the Notice of Pre-Application Consultation Opinion dated 20<sup>th</sup> July 2020 (ABP Ref. ABP-306158-20) the Board stated that it was of the opinion that the documentation submitted with the consultation request under section 5(5) of the Act **required further consideration and amendment** in order to constitute a reasonable basis for an application under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016.
- 5.1.4. In the opinion of An Bord Pleanála, the following issue needed to be addressed in the documents submitted to which section 5(5) of the Act of 2016 relates that could result in them constituting a reasonable basis for an application for strategic housing development:
  1. Having regard to the provisions of the Planning and Development (Housing) and Residential Tenancies Act 2016, and considering the potential nature and scale of proposed non-residential and ancillary elements of the development, in particular relating to the development at basement level, including the car parking, further consideration and / or justification of the documents as they relate to compliance with the provisions of the 2016 Act should be provided. In particular, further consideration and / or justification should clearly demonstrate that the proposed development is not dependent on or inclusive of future s.34 development proposals and can be assessed and considered at application stage as a standalone application/development.
  2. Further consideration and / or justification of the documents as they relate to consistency with the North Lotts and Grand Canal SDZ Planning Scheme to include compliance with fixed parameters in relation to use mix; block layout and building lines, streets, open spaces, active frontages and building height. Where the applicant considers that the proposed strategic housing development would materially contravene the relevant development plan, other than in relation to the zoning of the land, a statement should be included with the application indicating the objective (s) concerned and why permission should, nonetheless, be granted for the proposed development, having regard to the criteria in section 37(2)(b) of

the Planning and Development Act 2000. Notices published pursuant to Section 8(1)(a) of the Act of 2016 and Article 292 (1) of the Regulations of 2017, shall refer to any such statement in the prescribed format.

3. Further justification of the documents as they relate to the overall height strategy, including the rationale for providing a cluster of taller buildings of the height proposed on the subject site. The further consideration and / or justification should have regard to, inter alia, the guidance contained in the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) and the accompanying Urban Design Manual, the Urban Development and Building Height Guidelines for Planning Authorities (2018); the Dublin City Development Plan 2016-2022 (inc. Section 16.7) and the North Lotts and Grand Canal Dock SDZ Planning Scheme, 2014.
4. Further consideration and / or justification of the documents as they relate to the amenities for future occupants and users of the development and the amenities of occupants of adjacent developments. The further consideration and / or justification should include a detailed assessment of sunlight and daylight access to the proposed apartments and of impacts on existing developments in the vicinity; a detailed assessment of sunlight and daylight access to streets and public spaces; and a detailed assessment of micro-climate impacts arising from wind.

5.1.5. The prospective applicant was notified that the following specific information should be submitted with any application for permission:

1. The drawings, images and assessments at application stage shall address the proposed SHD development as a standalone development on the City Block 9 site. An indicative future Scenario used to show potential cumulative impacts arising from development on the balance of the City Block 9 site should be consistent with the parameters of the approved North Lotts and Grand Canal Dock SDZ Planning Scheme.
2. A Report addressing the capacity of the area to accommodate a development of the scale proposed. The assessment should include an audit of physical and social infrastructure in the area and assesses the capacity of the area to accommodate the proposed development.

3. The documentation should include architectural drawings and imagery at a scale that articulates the detail of the scheme including: cross sections through blocks, streets and open spaces; details of finishes, frontages and shopfronts; the treatment of feature elements including reveals, cut outs, undersides, entrances, landscaped areas and pathways; typical design details for base, middle and upper sections of the blocks; and detail of the proposed cladding and living wall systems. The documents should have regard to the requirement to provide high quality and sustainable finishes and address the long-term management and maintenance of the development.
4. A schedule of public and communal open space for the overall development and on a block by block basis.
5. Drawings and cross sections showing the relationship between the proposed development and adjacent developments to the west on Castleforbes Street, north on Mayor Street Upper and east on North Wall Avenue / Point Square detailing separation distances, height differences and opposing windows, balconies or external amenity spaces.
6. A micro-climate analysis that addresses the impact of wind.
7. An assessment of potential glint and glare impacts arising from the proposed cladding system.
8. A detailed Phasing Plan.
9. Relevant consents to carry out works on lands which are not included within the red-line boundary.
10. A detailed Quality Audit to include Road Safety Audit, Access Audit, Cycle Audit and Walking Audit.
11. An updated Car Parking Strategy that addresses matters raised in the submission of the PA dated 29th June 2020 in relation to the car parking strategy.
12. A site layout plan that distinguishes between the developable area of Block 9 and areas of existing public road and footpaths. Works proposed to the existing public road and footpath should be clearly detailed.

## 5.2. Applicant's Statement

5.2.1. The application includes a statement of response to the pre-application consultation (Response to the Opinion), as provided for under section 8(1)(iv) of the Act of 2016, which may be summarised as follows:

**Item 1 – SHD Legislation**

- Proposal complies with the relevant SHD definitions, and to demonstrate that the proposed development is independent of and not dependent on or inclusive of future s.34 development proposals.
- Two concurrent applications are being submitted to An Bord Pleanála and to Dublin City Council, respectively: the former an SHD; the latter an SDZ-compliant commercial scheme.
- The development proposal can be assessed and considered as a standalone application/development.
- The Applicant is also submitting a concurrent SDZ-compliant Application for the balance of the lands, with that site including some 710 sq m of lands common to this Application. A survey undertaken by land surveyors that was issued to the Applicant on 29 August 2018 calculated the overall lands owned by the Applicant as 1.99 hectares in total when all plots were accumulated. This includes lands on what is now known as North Wall Avenue that is not part of either application.
- The respective definitions of “strategic housing development” and references to “other uses” are of particular relevance.
- Some 4,307 sq m of “other uses” are proposed/calculated all residential and residential ancillary uses (such as concierge spaces, security offices and management suites) and also “other uses”
- No car parking is allocated to office or other uses.
- Have had regard to recent Judgements in respect of Judicial Review challenges, including, but not limited to, Mr Justice Denis McDonald’s comments in respect of “other uses” in the Connolly Quarter Decision (Ref. 2020 No. 248 J.R.) of 19 November 2020/append a Counsel Opinion from Mr Eamon Galligan SC addresses the issue of ‘residential’ and ‘other uses’, providing an opinion on the jurisdiction of the Board to grant permission for a Strategic Housing Development proposal, which is of a height materially greater than the maximum



height set out in the 2014 Planning Scheme/also addresses our interpretation of the Scheme's Schedule of Areas having regard to the mixture of "residential "and "other uses" proposed.

## **Item 2 – Consistency & Material Contravention**

- Enclose a stand-alone Material Contravention Statement/Heights are in contravention to the SDZ Planning Scheme.
- A commentary on the proposed development's compliance with the Planning Scheme is provided.
- The proposals complies with policies and objectives as relates to use mix/50:50 mix will broadly be achieved at City Block 9 through the provision of a commercial development on the western portion (c. 0.85 ha, excluding the common pocket park of 0.071 ha), and an SHD (primarily) residential development on the eastern portion (c. 1.03 ha, excluding the common pocket of 0.071 ha) of the site.
- A site area ratio of 1.0:0.84 or 50:41.5 (residential / commercial) is achieved. Section 4.13.4 of the Planning Scheme notes that: "Variations on the 50:50 ratio and the ratios set out in the City Block Objectives [...] may be considered, subject to a minimum of 30% residential or 30% commercial within each City Block" [...]"
- Planning Scheme allows for a reasonable amount of flexibility in this parameter, and that both commercial and residential use elements proposed at City Block 9 exceed the 30% minimum indicated in the Planning Scheme.
- The spatial distribution of the required ratio of commercial to residential uses across the City Block achieves a co-ordinated and rationalised pattern of land use, and a mono-use environment is avoided.

### **Block Layout and Building Lines**

- The Planning Scheme stipulates that, in the interest of providing a high-quality public realm in a timely and co-ordinated manner, the public realm indications as per Figure 35, 'Development Code for City Blocks' are fixed elements. (See Figure 2.3 below.)

- Planning Scheme also notes that: “In relation to the proposed new streets and lanes within the City Blocks, the block building line may be varied to provide for a more varied streetscape, including curves, setbacks and indents [...] subject to the overall objective of providing connectivity through City Blocks being achieved.”
- The precise alignment of the new lanes and streets form part of the City Block Rollout Agreement. The Planning Scheme notes the importance of streets in defining a quality urban streetscape, and specifically seeks to avoid the risk of isolated buildings being developed, which do not harmonise with each other/ proposed structures do not extend forward of the building lines indicated on the City Block Development Code.
- There is a degree of design flexibility with regards to areas within the Block envelope to provide for variety, good architecture and amenity considerations.
- Footprint of the Subject Proposal generally accords with this fixed outer building line and no part of the proposal development extends beyond the building lines indicated in Figure 35 of the Planning Scheme.
- Balconies and winter gardens are contained within the site boundary and will not project over the public footpath.

#### Streets

- Planning Scheme provides for a new central civic space within City Block 9, complete with SuDS features.
- Improvement of north-south and east-west permeability throughout the City Block, and the insertion of a new north-south street between City Blocks 9 and 10 as per objectives within the Planning Scheme.
- Pedestrian legibility is maximised through the design of the public space and its interaction with the proposed buildings,

#### Open Spaces and Public Realm

- Proposal provides for a high-quality public realm/both covered and uncovered areas of public realm are proposed/varied use of materials and planting/the provision of publicly-accessible and fully landscaped destinations at the upper

floors of the development, including a restaurant, a bar / function room, and a viewing deck.

- View corridors to the River Liffey and Dublin Mountains are not only maintained, but are enhanced through the framing of southern vistas in view-lines through the Block/the proposed public viewing space at the upper floors of the residential development provide access to views of the River Liffey, the Dublin Mountains, Dublin Bay and the city of Dublin.

#### Active Frontages

- Provision of retail and other socio-cultural amenities (including, inter alia, an art gallery and exhibition space, a childcare facility, restaurants, cafes, and landscaped public open space) at ground floor level/establishing the area as a central mixed-use urban quarter
- provision of an art gallery and exhibition space in the vicinity of the proposed bridge crossing between Castleforbes Road and Sir John Rogerson's Quay will encourage pedestrian movement through the City Block from the LUAS stop on Mayor Street to the Liffey at North Wall Quay

#### Urban Form/Height

- Dublin City Council undertook a review of the 2014 Planning Scheme and those are currently before the Board for determination<sup>1</sup>
- Height Guidelines set out four Specific Planning Policy Requirements (SPPRs) objectives for the assessment of building height. The Board is required to comply with SPPRs. Section 1.14 of the Guidelines state that: "Accordingly, where SPPRs are stated in this document, they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes".

#### **Issue 3 – Height Strategy**

- National Planning Framework, Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) and the 2018 Urban Development and Building Height Guidelines for Planning Authorities facilitate

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<sup>1</sup> Since the making of the application the amendments to the Planning Scheme have been refused by the Board.

increased height on sites adjacent to quality transportation facilities and/or in urban areas.

- Refer the Board to Volume 2 of the EIAR submitted as part of the Application documentation, which comprises a detailed Heritage, Townscape, Landscape and Visual Impact Assessment,
- Refer to relevant Section 28 Guidelines/Plans

#### **Issue 4- Residential Amenity**

- Refer the Board to the Daylight, Sunlight and Overshadowing Analysis.

#### **Response to Specific Information**

- 5.2.2. The applicant has responded to each item of Specific Information as detailed in the Response to the Opinion.

#### **Material Contravention Statement**

- The applicant has submitted a Material Contravention Statement which considers the issues of Building Height, Use Mix, Block Layout and Building Lines, Streets and Open Spaces and Active Frontages.

#### **Height**

- In relation to Building Height, the height limits as set out in North Lotts & Grand Canal Dock Planning Scheme, 2014 are referred to.
- Stated the proposed development would contravene the provisions of the Planning Scheme with regards to building heights at CB9, as taller elements (extending to a maximum of 46- storeys)
- Is stated the existing height limitation of the Planning Scheme - adopted in May 2014 - is not in accordance with strategic planning policy at National level, particularly with the National Planning Framework, Project Ireland 2040 (2018) (NPF) and of the s.28 Urban Development and Building Height Guidelines (December 2018).
- Proposed development, is compliant with both the NPF and relevant Section 28 Guidelines including the Urban Development and Building Height Guidelines.

## 6.0 Relevant Planning Policy

### 6.1. National Planning Framework

The National Planning Frameworks supports increases in densities generally, facilitated in part by increased building heights. It is set out that general restrictions on building heights should be replaced by performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth (NPO Objectives 13 and 35 refer). 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.

### 6.2. Regional Policy

#### Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031 (RSES)

The primary statutory objective of the Strategy is to support implementation of Project Ireland 2040 - which links planning and investment through the National Planning Framework (NPF) and ten year National Development Plan (NDP) - and the economic and climate policies of the Government by providing a long-term strategic planning and economic framework for the Region.

- RPO 3.2 - Promote compact urban growth - targets of at least 50% of all new homes to be built, to be within or contiguous to the existing built up area of Dublin city and suburbs and a target of at least 30% for other urban areas.
- RPO – 4.1 – Settlement Hierarchy – Local Authorities to determine the hierarchy of settlements in accordance with the hierarchy, guiding principles and typology of settlements in the RSES.
- RPO 4.2 – Infrastructure – Infrastructure investment and priorities shall be aligned with the spatial planning strategy of the RSES.

The site lies within the Dublin Metropolitan Area (DMA) – The aim of the Dublin Metropolitan Area Strategic Plan is to deliver strategic development areas identified

in the Dublin Metropolitan Area Strategic Plan (MASP) to ensure a steady supply of serviced development lands to support Dublin's sustainable growth.

Key Principles of the Metropolitan Area Strategic Plan include compact sustainable growth and accelerated housing delivery, integrated Transport and Land Use and alignment of Growth with enabling infrastructure.

#### Transport Strategy for the Greater Dublin Area 2016-2035

The Transport Strategy for the Greater Dublin Area 2016-2035 provides a framework for the planning and delivery of transport infrastructure and services in the Greater Dublin Area (GDA). It also provides a transport planning policy around which other agencies involved in land use planning, environmental protection, and delivery of other infrastructure such as housing, water and power, can align their investment priorities.

The Strategy sets out the necessary transport provision, for the period up to 2035, to achieve the above objective for the region, and to deliver the objectives of existing national transport policy, including in particular the mode share target of a maximum of 45% of car-based work commuting established under in "Smarter Travel – A Sustainable Transport Future".

### 6.3. **Section 28 Ministerial Guidelines**

The following is a list of section 28 Ministerial Guidelines considered of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (including the associated 'Urban Design Manual').(2009)
- 'Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities' (Updated December 2020)
- Urban Development and Building Height, Guidelines for Planning Authorities, 2018.
- 'Design Manual for Urban Roads and Streets' (DMURS) (2019) / DMURS Interim Advice Note – Covid 19 (2020)

- ‘The Planning System and Flood Risk Management’ including the associated ‘Technical Appendices’.
- ‘Childcare Facilities – Guidelines for Planning Authorities’.

#### 6.4. Local Policy Context

6.4.1. The Dublin City Development Plan 2016-2022 and the North Lotts and Grand Canal Planning Scheme 2014 are the relevant statutory plans for the area.

#### 6.4.2. Dublin City Development Plan

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

Chapter 4 ‘Shape and Structure of the City’ sets parameters for the creation of sustainable communities in association with the objectives of other chapters. Policies include: SC5 to promote the urban design and architectural principles set out in Chapter 15, and in the Dublin City Public Realm Strategy 2012, in order to achieve a quality, compact, well-connected city; SC7 to protect and enhance important views and view corridors into, out of and within the city, and to protect existing landmarks and their prominence (Fig. 4 details ‘Key Views and Prospects’); SC13 to promote sustainable densities (that are appropriate to their context and supported by community infrastructure), particularly in public transport corridors, which will enhance the urban form and spatial structure of the city and having regard to the safeguarding criteria set out in Chapter 16; SC14 to promote a variety of housing and apartment types; and SC16 to recognise that Dublin City is fundamentally a low-rise city and that the intrinsic quality associated with this feature is protected whilst also recognising the potential and need for taller buildings in a limited number of locations subject to the provisions of a relevant LAP, SDZ or within the designated SDRA’s.

Section 4.5.4: Taller Buildings states the following:

- “Clustering of taller buildings of the type needed to promote significant densities of commercial and residential space are likely to be achieved in a limited

number of areas only. Taller buildings (over 50m) are acceptable at locations such as at major public transport hubs, and some SDRAs.....

- The plan states that it is policy to provide for taller buildings in those limited locations identified in the 'Building Height in Dublin Map' in order to promote investment, vitality and identity. 4 locations are identified for high rise buildings of 50m+ including Docklands Cluster (Fig. 39 Chapter 16 refers).
- It is stated that "In all cases, proposals for taller buildings must respect their context and address the assessment criteria set out in the development standards section, to ensure that taller buildings achieve high standards in relation to design, sustainability, amenity, impacts on the receiving environment, and the protection or framing of important views."

The section states that the Irish Aviation Authority must be notified in the cases where a development exceeds 45 m in height.

Chapter 5 'Quality Housing' sets out policies to support sustainable building and design. Policies include: QH6 relating to attractive mixed use neighbourhoods; QH7 relating to sustainable urban densities and high standards of urban design and architecture; QH8 relating to the development of vacant or under-utilised infill sites; QH18 and QH19 relating to the provision of high quality apartments that meet a range of needs.

Chapter 15 relates to Strategic Development and Regeneration Areas. The site is within SDRA 6 Docklands. Section 15.1.1.7 sets out guiding principles for SDRA 6 addressing social & community development; housing; employment; education; social; economic; business; maritime; marketing; environmental; movement / transport; land-use; urban design; flood risk; and implementation.

Chapter 16 sets out 'Development Standards' including standards for Density (16.4), Plot Ratio (16.5), Site Coverage (16.6), Building Height (16.7), Standards of Accommodation (16.10), Car Parking (16.38) and Cycle Parking (16.39).

Section 16.7 addresses Building Height. Proposals for high buildings should be in accordance with the provisions of the relevant LAP/SDZ/SDRA in addition to the assessment criteria for high buildings. All proposals for mid-rise and taller buildings must have regard to the assessment criteria for higher buildings are set out below:



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

Section 16.2.2.1 of the plan addresses Large-Scale Development.

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

- 6.5.1. The North Lotts & Grand Canal Dock SDZ Planning Scheme sets out a detailed framework for the development of the SDZ. The scheme provides a development code to guide the nature and extent of development in the scheme area with both fixed and flexible elements.
- 6.5.2. Chapter 4 sets out the high-level themes, the key structuring principles, and the key building blocks, together with a suite of objectives. Chapter 5 translates these identified themes, principles and objectives into a development code to guide the nature and extent of the proposed development in the SDZ. The scheme calculates, based on the overall framework plan and development code (Fig. 30 & Fig. 33) that c. 1800 residential units and 200,000m<sup>2</sup> of commercial space can be accommodated

on the North Lotts and c. 830 residential units plus 105,000m<sup>2</sup> commercial floor-space on the southside. The scheme states that the Development Code Map (Fig. 35) provides for a range of typologies which will provide for sustainable residential densities in the range of 100-247 units per hectare (S 5.4.7 refers). The subject site is in the Point Village Hub Area (Fig. 30 refers) and is City Block 9 (Fig. 30A refers).

6.5.3. Specific Objectives for City Block 9 are set out in Section 5.5.9 as follows:

#### **1. Use Mix**

- Secure 50:50 residential: commercial use mix.
- Ground floor active uses onto Mayor Street and North Wall Quay with a particular emphasis on quality active uses including retail, cultural and amenity uses in the vicinity of the proposed bridge crossing between Castleforbes Road and Sir John Rogerson's Quay.

#### **2. Urban Form/Height**

- Building heights to range from 5-storey commercial (6-storey residential) to 8-storey commercial (10-storey residential) to allow for residential amenity and appropriate transition in scale, as well as sufficient enclosure onto main streets, and appropriate scale fronting quays.

#### **3. Public Realm**

- New central civic space with SUDS features (See paragraph 4.5.4.3.3)
- New north-south and east-west connections within block.
- New north-south street between City Blocks 9 & 10.
- View lines through City Block to include central civic space.
- To enliven the quays and provide for variety in the streetscape, each urban block within the City Block should contain at least two buildings of different architectural design.
- New streets to be within the range of widths as shown on Fig. 31 and subject to the criteria set out in Section 5.4.3.

#### **4. Infrastructure**

- Each site to complete access and attendant public realm prior to occupation.
- Drainage/water infrastructure to be installed with access.
- Foul drainage: Block to drain westwards via new pipelines along proposed road network to 600mm diameter pipeline along Castleforbes Road (this pipeline is at tender stage).

- Surface water drainage: Block to drain westwards to 930x970mm storm-water pipeline via proposed new road.

## 7.0 Observer Submissions

- 7.1.1. 26 no. submissions on the application have been received from the parties as detailed above. 21 of these submissions raise objections to the proposal, 4 of these submissions support the proposal and 1 submission is neither for nor against the proposal. The issues raised in the submissions are summarised below.

### **Principle/Material Contravention**

#### Against

- Does not respond to the zoning objective/Contravenes the 2014 North Lotts SDZ masterplan.
- Proposed scheme contravenes the plot ratio/density recommendations and heights of the North Lotts and Grand Canal Dock SDZ 2014 Planning Scheme to a substantial extent/material contravention of same
- Arguments of the applicant are clearly refused in JR 2020 IEHC 557 by Mr Justice Richard Humphreys/SHD Applications must be assessed by An Bord Pleanála under the specific framework of the Planning Scheme/Amendments to the SDZ regarding building heights, as it is not approved, cannot be applied to the SHD under consideration/There are no grounds for any material contravention of the SDZ Planning Scheme/Board has no jurisdiction in this regard/as previously indicated by the Board's Inspector/Application contravenes both the Planning Scheme and the Dublin City Development Plan/ Board cannot rely on the height guidelines to override the provisions of extant planning schemes (see Spencer Place Development Company V Dublin City Council)
- Section 170(2) of the Planning & Development Act 2000 (as amended) ('the Act' states that, "...no permission shall be granted for any development which would not be consistent with such a planning scheme"/In 2020 Dublin City Council (DCC) successfully instigated legal proceedings in the High Court to require the Board to uphold the integrity of the Planning Scheme (PL29N.305219)/Board has

no legal jurisdiction to materially contravene a legally operable Planning Scheme.

- Material Contravention Statement seeks to characterise the SDZ amendments as minor – they are not/ Material Contravention Statement abstracts elements of the Plan and cites them out of context/To allow a material contravention would seriously undermine the integrity and legitimacy of the planning system/would set a dangerous precedent/ A grant of permission would amount to a material contravention of the requirements of the SEA Directive
- Board approved the Planning Scheme in 2014/Creates the framework to deliver the stated vision of the Docklands SDZ/Board applied 44 modifications, a significant number of which related to building heights/Board has a wider obligation to proper planning and sustainable development of the city beyond the narrow confines of the proposed development site.
- Planning Scheme was adopted following a defined statutory preparation process, including extensive public consultation, a Strategic Environmental Assessment (SEA), Appropriate Assessment (AA), a Views & Prospects Analysis and ultimately approved by the Board itself, following an oral hearing.
- Proposed development is also not with other predefined elements of the Planning Scheme, including the fixed building lines and the location and extent of public open space provision.
- Higher densities can still be achieved with different urban forms/ Stoneybatter, Portobello and Rathmines achieve a density of 100 plus persons per hectare or more
- Would set a precedent/Proposed development does not comply with the requirements of the Building Height Guidelines/Taller buildings inflate the 'hope value' of development land/ Site was bought for 180m – 40m more than the guide price
- Board should be aware that, if it were to grant permission will distort planning policy in the city/This is ultra vires the Board's function in the planning system.
- Development Plan envisages a Docklands Cluster of high-rise buildings (located at the eastern end of the area/Pattern of development in the North Lotts includes

no scheme taller than the 17 storey Exo Building/Insufficient justification for a cluster of taller buildings on this site/as Per DCC response/Board has previously raised this as an issue

- Board has previously sought clarification/justification of the proposed towers as they relate to adjacent developments as well as their relationship with North Wall Quay and the River Liffey
- DCC has raised serious concerns/reservations in relation to the proposa/No input from the public at pre-application stage

#### Not in Support or against

- It is the suburbs that require increased densification/Recommended densities in the 2009 guidelines are far too low to achieve the compact urban form that the NPF and the Dublin City Development Plan seek/SPPR 4 – will allow for car dependant development/SPPR 1- allows for sprawling suburbs/Optimum solution for Dublin is to contain the intensification of the urban core and to focus on planning on development the capital on the 'compact city model' – a network of well-designed mixed use neighbourhoods/Dublin needs to increase its population density/In this case the planning case for a 9:1 ratio and 874 dwellings per hectare do not stand up/Extensive evidence to indicate that greater height does not deliver increased urban densities.

#### In Support

- Accommodation crisis in Dublin/lack of apartments for Docklands young workforce/Insufficient living accommodation has been approved in the Docklands to date/Would provide tourist amenities and other uses which are welcomed.

### **Design/Visual Impact/Layout/Height/Public Realm/Conservation**

#### Against

- Overdevelopment/Inappropriate scale, built, mix, height and mass/Will be a significant visible eyesore across the city, Dublin Bay, north east inner city and surrounding neighbourhoods/Out of proportion with the established urban pattern from the approved and mostly completed North Lotts and Grand Canal Planning Scheme/ Fails to address the visual and conservation impact on the city, Dublin Bay, north east inner city and surrounding neighbourhoods, on significant views,

including the Liffey corridor/ Contest the conclusions of the HTLVIA/More views needed

- Within a zone of archaeological interest/site is of historic and civic value
- Public space will be compromised by the height, scale and overbearing mass of the proposals/Already an underprovision of open space in the north inner city and surrounding neighbourhoods
- No rationale for a 40 storey building which would be visible far and wide/Would uncomfortably dominate wide parts of the city/Development would intrude in many views/Would compete with the Poolbeg Chimneys in a very direct and negative manner/Development would be an unduly obtrusive backdrop to Trinity College when viewed from Dame Street/same for all views
- Inadequate information provided, in terms of wider visual impact, for any conclusions to be drawn/Imagery supplied is misleading/quality of architecture is lacking/upward extrusion of a regular floor plate/awkward stacking of regular geometric elements/Architects do not appear to have a track record of building tall buildings of this nature/Limited information regarding the vertical landscaping/no detail on the appropriateness of this approach in the Dublin climate/implications for management and maintenance/ Visual Impact/ /proposed development will be visible from Georgian core of Dublin
- Such high density housing reduces access to leisure and recreational facilities/do no promote social integration/Would house at least 3,000 people/Completely out of harmony with the provision of green spaces/Blocks are in a very exposed area of the city/would be subjected to high winds
- Residents had the reasonable expectation that height limits in North Lotts and Grand Canal Dock SDZ 2014 would be maintained/Section 10.2 of the Urban Development and Building Height Guidelines 2018 lays particular emphasis on Protected Structures/site criteria requires analysis of the micro-climate/given the scale of development, micro-climate issues raised must be analysed far beyond the application site.
- Renders are deceptive/Poor design/Towers are too close together/Shadowing of amenity spaces/Will appear even taller given the existing low lying nature of

Dublin/High rise is more successful within a cluster of taller buildings/requires a masterplan

- Heights in the SDZ were agreed after significant debate and scrutiny by the City Council and An Bord Pleanála/height of this development with two of the blocks at 41 storeys and 45 storeys /would dwarf the entire Docklands landscape/ National Convention Centre and Samuel Beckett Bridge are the major landmarks in the area/development would have a particularly negative visual impact on these two important Docklands structures.
- the median price for a residential unit within this proposed development will be somewhere in the region of at least €700,000/market price likely to be much, much higher/reflects the significantly higher construction costs associated with building taller structures.
- Human scale building heights of c.6-10 storeys provide the optimum density yield whilst delivering high-quality living environments at residential densities in the region of 130 homes per hectare
- The taller tower would be nearly three times the height of Liberty Hall/smaller tower would be 26.5m higher than the Spire/The only structures that would outstrip their height would be the Poolbeg Towers
- Few facilities at ground floor/Pocket park will not get enough sunlight/Tall buildings are no necessarily the best way of achieving the highest population density in a city
- Cannot be compared to La Defence in Paris/this was an municipally planned project to avoid random eruptions of high rise like the 59 storey Tour Montparnasse
- Very abrupt and jarring jump in scale between the commercial development and the adjoining SHD proposal
- Current application would be a significant departure from the development envisioned for the site/exponential increase in the height, scale and massing of development for the site without delivering a proportionate improvement in the provision of public open spaces, public realm or active frontages and uses.

- Larger scale appropriate in Docklands given the wider River Channel/needs to a proportional relationship between the height of buildings and breath of the river/many of the existing buildings are underscaled
- Only passing reference to the fact the site is within a designated Conservation Area/Impact on protected structures/Provision has been made for a landmark building of up to 25 storeys/Metaphorically gives two fingers to the city's human scale

### In Support

- Supports development/Development marks an inspiring imaginative (and long awaited) step forward for Dublin's skyline/Would send a positive message about Dublin's growing self confidence as a global city/Potential of the docklands has not been realised/High density schemes are needed/Will add greatly to the skyline/Must allow for the construction of buildings of sufficient scale and height in order to facilitate the continued life and vibrancy of the city centre/Beautifully designed/Will be Irelands first mid-to-high rise cluster/Docklands is traditionally a high rise zone/If not approved city will be unbalanced/Will give more options to purchase property/Time to build upwards
- Docklands is the ideal location for high rise/Height is modest compared to other cities.

### **Surrounding Residential Amenity**

- Overlooking and Overshadowing of neighbouring properties/Overbearing impact/Height will cause wind tunnels/Will create massive shadows
- Castleforbes Square (420 apts) lies immediately to the north of the site/Will bear the brunt of the adverse impact/Also businesses and workplaces that would be affected/Loss of sunlight/reduced levels of daylight/Increased heating and lighting costs/Increased maintenance costs/Overbearing presence/Will lead to a reduction in physical wellbeing and mental health/Apts will be difficult to rent or sell/Many thousands of residents will be affected
- Do not appear to have visited Castleforbes Square and its vicinity to carry out baseline studies/The Daylight, Sunlight and Overshadowing Analysis does not state the statutory basis for the assessment/The blocks included in the IES



Studies are not sufficient to allow a comprehensive assessment/shadow diagrams show that shadows are cast beyond the model/model should be extended to include the furthest point of overshadowing/View of shadowing effects is not clear/3D model is not clear

- No close up views of the surrounding streets/affected properties is shown/lack of real information in relation to the general amenity of the area
- Loss of daylight during winter is particularly harmful/many sunny days in mid-winter where the sun is low in the sky/In order to assess sunlight impacts, room layouts/floor levels/window conformation is required/The only buildings identified/assessed in Section 4.3 were two no blocks on junctions so in part received the benefit of light from the crossing and both streets/2 storey block on Mayor Street Upper was not assessed/should have been/No measurement of existing percentage has been given/no information provided regarding room functions/depths/height size of openings/VSC calculations are without context/VSC is considerably below the minimum acceptable levels/considerable loss of amenity/Have no quantifiable grounds that rights to lights are not infringed upon/Projected VSC Readings for Castelforbes Road and Castleforbes Square are very poor/Example of Thirty Casson Sq. in London cited by the applicant is not relevant/is within a different context/there is minimal overshadowing
- Inconsistences in the representative drawings/Impact on the combined developments is considerable worse than existing/Provision of private amenity space to offset public amenity space is not acceptable planning
- Have carried out a non-specialist 3D Cad Study – clear that the effects of the development far surpass those demonstrated.
- Would also impact negatively on the local residential streets of Mayor Street and New Wapping Street/impact of overlooking and overshadowing/skyline would be totally dominated by tall buildings/residents in Mayor Street are particularly concerned that they will have no daytime sunlight in their homes if this development goes ahead
- Existing residents have purchased properties in the expectation that the planning scheme would be followed by future developments

## **Residential Standards/Mix/Tenure**

- Only 101 social housing units/lower floor to ceiling heights/access to sunlight will be compromised/Only 15 no. 3 bed units/Will only be suitable for young couples/single people/those with one child/Will not be affordable for people who live in the surrounding area/Little incentive for occupants to engage in the wider community/Will deprive surrounding residents of sunlight/Have the apartments are built-to-rent/people want to purchase their own property/Maintenance charges are likely to be high/will not be affordable for many renters
- Social housing constantly in shadow/social inequality/poorer standards Social housing units are smaller/north facing/single aspect/unacceptable on moral and social grounds
- Proposed park would get insufficient light/Open spaces offer nothing to the residents of this development/not likely to be owners permanent residence/will be more important to the social housing residents
- Wind tunnel impact on surrounding residents
- Low level of dual aspect/comparative schemes in London would typically have in excess of 70% dual aspect/minimum unit floor areas exceeded by 10% or more
- More apartments are not required/Apartments do not provide a decent sized living space
- Inadequate provision of open space, community facilities and amenities
- Concern about the mix of units proposed/Just three apartments of the 1,005 (0.3%) proposed are three-bedroom units while 495 (49.5%) one-bedroom units are proposed/small number of three-bedroom units and high number of one-bedroom units would be unacceptable for a quality landmark development/Such a development will have more rental than long-term family appeal/will result in an increasing transient community within the Docklands rather than building communities with a long-term investment in the area.
- Delivering high rise is significantly more expensive than for more modest scaled buildings

## **Appropriate Assessment/Environmental Impact Assessment/Ecology/Climate**

- No mention of the impact to birds/is a well-known risk/ Hazard to bird-life including Brent Geese/Proposed development does not consider impacts on birds/bat collisions/Insufficient detail in relation to sub-structures/piles – in the CEMP and the NIS/relevant to EIAR, AA Screening Report and the NIS
- Does not comply with the mandatory requirements of the Planning and Development Regulations 2001 (as amended) and the EIA Directive (as amended)/does not include all the information/statements required under these regulations/does not consider the potential significant effects arising from the construction phase of the proposed development
- No consideration of potential historical site contamination/identified hydrological connections to protected sites/identified gaps and data in the information provided/Board does not have sufficient information to carry out a complete Appropriate Assessment in relation to the proposed development/Does not comply with the Habitat Directive and Birds Directive
- Foundations would need to be very deep at this location given the ground conditions/unlike Manhattan where bedrock is very close to the surface
- EIAR is defective/does not adequately address the many interactive/cumulative effects and mitigations of the proposed development/Cumulative impact of shadowing and loss of sunlight/reduced levels of daylight has not been adequately addressed.
- Higher level balconies/communal open space required a redesign/no references to this in the drawings/in the EIAR/Mitigations as suggested in the EIAR have not been reflected in the drawings/this fundamental change has not been clearly explained in the non-technical summary of the EIAR/EIAR is inadequate/full of inconsistencies/little account of local interactions or cumulative
- Information may have been recycled from previous use/reference to the Mayor of London in the EIAR Non-Technical Summary 16.6.1 Construction Phase/Not clear what modifications have been made to the application
- No alternatives are considered besides 'do-nothing'/No serious considerations of alternatives.

- Have a high carbon footprint/ High rise buildings cannot be built in a carbon-neutral way/ Climate Adaption/Impact of Climate Change and Tidal Flooding has not be considered appropriately.
- There is significant complexity and risks associated with high rise buildings

#### Part V

- No social housing development in this area since the 1980's/Development takes no account of the surrounding community/social context/Need affordable housing/social housing/does not address critical housing needs/Cheapest social housing in the block would cost 600,000/Not enough social housing

#### Other

- Request an oral hearing – misuse of the EIA process/failure to address issues such as sunlight within the proposed development or on Castleforbes Square.
- Will likely require specialised workers from abroad/not in line with SDZ concept to prioritise local labour to build community
- Implications of high rise include - High level of skill/maintenance/reinforced structures/sway/impact on foundations/adjoining sites/impact on the water table/Impacts on pipe infrastructure/impact on lift operations/blockage of refuse chutes/would be unsuitable for people with certain medical conditions such as vertigo.
- Role of the State in the scheme must be examined
- Local investment is needed for children and older residents of the scheme
- Two bed apt in the scheme is estimated to cost E946,030/is not affordable
- Worker safety
- Irish regulatory systems has proved incapable of protecting conventional buildings/let alone high rise
- The Board should consult the HSE in light of Covid-19/implications for health as a result of high density
- Refer the proposal to Dublin Airport Authority/Irish Pilot's Association/An Garda/Defence Forces/AA

- Impact on telecommunications/existing antenna/no study has been submitted/current permissions for antenna equipment
- Only 10% of SHD approvals issued by An Bord Pleanála are challenged/of the 24 judicial review cases that have been determined by the High Court/19 have resulted in decisions being quashed/failure rate of nearly 80%/is a commentary on the quality and robustness of its decision-making on SHD/Majority of SHD units permitted have not been commenced/SHD has been used to achieve an uplift in land values
- Maintenance issues/safety issues
- Strongly disagree with the conclusions in the Social Infrastructure Audit/development site is located in one of the most socially deprived areas of Dublin/just one astro-turf playing pitch in the area which can only accommodate up to 7-side soccer teams. There are no facilities for any other sport.
- Additional sporting facilities, playgrounds and parks required/social infrastructure proposals in this application fall short of the social infrastructure required by a project of this scale.
- Little in this proposal that provides for social/community infrastructure that would promote “greater integration between communities” as required by Policy SN16 of The Dublin City Development Plan
- Concerns in relation to the naming of the development/If permission is granted then it should be a condition that the Local Authority is consulted on and approves the name of the Development.
- Should permission be granted for this development, strict regulations should be put in place in relation to the management of the construction site and construction traffic/a liaison structure be established with the local community, particularly with residents of Mayor Street and New Wapping Street/Construction traffic, parking for construction workers, working hours, noise levels, levels of dust, window cleaning, street cleaning should all be addressed by the liaison structure.
- Planning policy objectives to address the global environmental crisis cannot be limited to spatial form, design and location but must fundamentally tackle socio-

spatial inequality, which is a key driver of the climate crisis/Recommendations of the Mulvey Report are relevant

- Board's planning inspectorate should have told the applicants that their proposals were simply unacceptable.
- Board has not option but to refuse permission
- Board should move swiftly to approve the amended planning scheme

## 8.0 Planning Authority Submission

- 8.1.1. Dublin City Council has made a submission in accordance with the requirements of section 8(5)(a) of the Act of 2016. *It summarises observer comments as per section 8(5)(a)(i). The planning and technical analysis in accordance with the requirements of section 8(5)(a)(ii) and 8(5)(b)(i) may be summarised as follows.*
- 8.1.2. The report sets out a detailed site description and the surrounding context of the site, with a description of schemes currently under construction. A detailed development description is set out as is the relevant planning history. Interdepartmental reports are summarised and relevant High Court Judgements are referred to. Relevant Policy is set out, including a detailed description of relevant policies within the North Lotts & Grand Canal Dock SDZ Planning Scheme.
- 8.1.3. A detailed Planning Assessment is set out. It is stated that:
- The proposed uses are permissible within the zoning.
  - The current proposal would not be in compliance with a number of fundamental objectives of the adopted Planning Scheme.
  - Plot Ratio – proposal provides for a plot ratio of 8.5:1 and the proposed site coverage is 44% - indicative plot ratio for Z14 sites is 1.0 to 30.0/site coverage is 50% - proposal would significantly exceed the indicative plot ratio.
  - Density – proposed is 940 units/ha – target density is 247 units/ha. – significantly in excess of both the target densities or the prevailing densities within the area.
  - While S16.5 of the Development Plan allows for higher plot ratios in certain circumstances, the PA raise serious concerns in relation to the ability of the

proposal to deliver high quality urban environment and high quality residential amenity.

#### Building Heights

- Reference is made to S168(2) and 170(2) of the Planning and Development Act 2000 (as amended)
- Reference is made to Fig 35 of the SDZ Planning Scheme which sets out indicative layouts/max heights are restricted to between 6 and 10 storeys for residential development.
- Reference is made to SPPR3(B) of the Height Guidelines/S28(1C) of the PDA 2000/noted that the proposed amendments were refused by the Board in March 2021.
- Compliance Statement noted/proposed development fails to comply with the height provisions set out within the adopted Planning Scheme and therefore cannot be supported by the Planning Authority.
- Assessment provided in the context of Appendix 5 of the North Lotts and Grand Canal Docks Planning Scheme – criteria for mid-rise and high buildings.
- The primary rationale for the proposed development centres on the location of the application site adjacent to public transport and the positioning of the site in relation to other consented and constructed taller buildings as well as government policy to promote additional height.
- Adopted planning scheme recognises that urban scale and building height are key components to legibility and placemaking in the area/current concept for taller landmark buildings provides for the clustering of higher buildings at the inner dock of Grand Canal Dock, at and near Station Square, Britton Quay and Point Square in the North Lotts area/site is not located within an area identified for taller landmark buildings within the planning scheme.
- The spatial approach to taller buildings in the city is, in essence, to protect the vast majority of the city as a low-rise city, including established residential areas and conservation areas within the historic core/Dublin City Council remains committed to the need to protect conservation areas, architectural conservation areas and the historic core of the city/Policy SC17 refers.

- Proposal fails to present a logical or consistent rationale for the scale of the proposed development, beyond a generic rationale that relates to the suitability of the docklands for tall buildings/no robust analysis to demonstrate and justify why a building of this height scale is, from an urban design and placemaking perspective, suitable for this specific site within the masterplanned and largely complete North Lotts SDZ.
- Limited information has been provided demonstrating the design evolution of the site and how the appropriateness of the building heights was derived/key driver for the proposed building height appears to be desire to deliver the tallest and second tallest buildings in Ireland, irrespective of context.
- Proposed development would be highly visible in the majority of the views provided/visibility is not analogous to visual impact/one cannot consider development to be harmful on the sole basis of its visibility/Planning Authority does not concur with the findings of the submitted HTLVIA/only identifies a single instance of harmful impact.
- Fails to demonstrate that the application site is suited to the development of a building that is significantly taller than the identified district landmark buildings with the North Lotts/verified views illustrate the proposed development would visually dominate the surrounding buildings, including the Exo and Capital Dock buildings/would damage the established award-winning placemaking principles and height hierarchy established within the master-planned docklands area.
- Developments should make a positive contribution to placemaking, whereby tall buildings can provide a significantly improved area of public open spaces along with active and vibrant ground floor levels.
- Development would provide narrow and uninviting areas of public realm, which would be adjoined by a limited convenience retail/ restaurant provision/offer very limited benefits to the wider area, and would not outweigh the significant impacts of the proposed development.
- Fails to deliver either a mixture of uses or an area of high quality, an attractive public realm that would be required to mitigate against the overbearing impact of high density, high rise development/noted the submitted HTLVIA repeatedly



justifies and offsets the negative impact of the proposed development against the high-quality architectural quality of the proposal.

- Good quality design is a combination of factors and is not solely limited to the appearance of the building/design is not considered to be of good quality and is largely derived by the extrusion of a building footprint upwards.
- Serious concerns in respect to the provision of high level living walls within an exposed and windy environment, and if unsuccessful would result in the loss of a key element of design, in an otherwise unarticulated glazed tower.
- Planning authority would note the potential impact of the design changes recommended by the Development Applications Unit: Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DAU) to mitigate bird collision/proposed changes could significantly affect the design as currently presented and would be required to be fully considered before permission being granted.

Daylight, Sunlight and Overshadowing:

- Fundamental issues with the methodology applied within the submitted report/assessment of Annual Probable Sunlight Hours (ASPH) and Winter Probable Sunlight Hours (WSPH) for the surrounding residential developments located to the west and north of the application site has not been carried out/assessment of the overshadowing of neighbouring private and communal open spaces, or the public streets has not been provided/submitted assessment of the neighbouring residential development located at City Block 8 does not provide an accurate assessment of the development as consented under previous permissions/Failure to assess the existing residential dwellings at No. 34- 38 Mayor Street Upper;
- Shadow Analysis - Overshadowing impacts would extend significantly beyond the immediate adjoining City Blocks/applicants should also provide an assessment of the Annual Probable Sunlight Hours including for winter months of affected residential properties and an assessment of the overshadowing of private and communal open spaces/Based on the limited information submitted, it is considered that a thorough and accurate assessment of the proposed development cannot be carried out.

- Public Realm- the submitted report states the proposed development would result in an improvement in the overall sunlight access of the proposed internal streets, in comparison to the consented development/when the cumulative assessment is considered/a only small portion of the proposed new street, adjacent to the quays would receive the minimum 2-hour standard on 21st March/serious concerns in relation to the quality of the proposed public realm.
- Impact on adjoining sites - Daylight Analysis/City Block 8/significant concerns in relation to the level of assessment provided for the residential development in sub-block B and E of City Block 8/the submitted VSC results indicate the worst affected windows would be at lower levels/the proposed development SHD standalone development would range between 19.8% and 30.23%/the combined commercial and SHD development would result in the windows at the lower three floors being worst affected retaining values between 13.1% and 9.72%, significantly below the recommended value of 27%/without full details of the impact on all units within this development, a full assessment cannot be carried out.
- Castleforbes Square Development/assessed the associated loss of daylight (through an assessment of reduction of VSC) to windows located between Floor 00 to Floor 09 of the Castleforbes Square development/located to the north of the application site/demonstrates significant levels of reduction in the level of daylight received in comparison to the levels provided for by the consented planning scheme/level of impact is again exacerbated when the cumulative level of impact of the proposed SHD and commercial development is accounted for.
- Nos 34- 38 Mayor Street Upper - an assessment of the impact of the proposal on the levels of daylight and sunlight received by these residential properties should have been provided.
- Proposed Residential Units Average Daylight Factor/The submitted report has set out a sample assessment of a select number of units located at Level 01, 03, 05, 09,11 for block A, B and C/level 16 of Block B and C and Level 25 of Block C/ applicant has incorrectly applied the 1.5 % ADF standard for living areas to combined Kitchen/ Living area/higher standard of 2% is the applicable criterion

and therefore a significant number of units have been incorrectly identified as meeting the required BRE standard.

- Significant concerns in relation to the proposed standard of amenity for the proposed units, particularly at lower levels. The courtyard configuration of Block A and B would result in significant failures between Level 01 and 05/submitted assessment has not considered all units at these levels and therefore would impact significantly more units than outlined within the submitted report.
- Proposed units within the courtyard of Block B, which accounts for approx. 10% of the overall units in the subject scheme/None of the kitchen/living units between Level 01 and 09 would meet the lower 1.5% standard, while only the living areas at Level 11 would meet the 1.5% standard/none of the units would meet the 2 % ADF standard for this portion of the developments.
- Concerns are maintained in relation to the large numbers of assessed rooms located between the proposed blocks that fall significantly below the BRE Standard/the proposed commercial development on the balance of City Block 9 would further exacerbate the level of impact.
- Page 70 of the submitted report sets out that 90% of the assessed rooms in the SHD only assessment and 85% of the cumulative development meets the BRE Guidance/raise significant concerns with the misleading representations presented by the applicant in this regard/an assessment of all units has not been carried out and therefore this contention has not been properly evidenced/applicant has incorrectly applied the lower 1.5% ADF standard for shared kitchen/ living rooms/a number of failures that appear to have been mistakenly counted as passing results including the following;
- Based on the submitted report, it is clear that the proposed development, particularly on the lower floors would fail to meet the lower 1.5% standard indicating an overdevelopment of the application site would directly affect the proposed residential units and therefore represents an over development of the application site.

#### Wind

- Significant concerns are maintained in relation to the impact of the proposed development on the public realm on the local environment surrounding the application site/Significant proportion of the rooftop communal open spaces to Block A and the lower portion would exceed the sitting criterion and therefore significantly diminish the usability of these spaces/Particularly concerning when the level of internal daylight amenity for proposed units is considered.

#### Public Realm

- Submitted wind analysis illustrates poor compliance for the 'Sitting' and to a lesser extent, 'Standing' comfort activities/the overall quality of the proposed space is considered to be poor.
- Pedestrian Safety - winds in excess of 15 meters per second (or 54 kilometers per hour) predicted on the footpaths adjoining the heavy trafficked North Wall Quay and Mayor Street frontages/Significant concern in relation to the potential impact on pedestrian and cyclist comfort and safety
- Social, Economic and Cultural Criteria - Significant concerns are maintained in relation to the contribution of the proposed development to the vibrancy of the area/animation of the street at the ground floor level/not provide a level of activity or vibrancy at ground floor levels, which would be expected of a development this scale/provides narrow and uninviting areas of public realm/limited incentive to draw members of the public into the proposed development, thereby activating the public realm/no culture offer proposed
- Transport and Movement Criteria - Site is therefore suitable for a high density of development in accordance with the principles established in the National Planning Framework. This is reflected in the designation of the site and surrounding area as an SDZ.
- Serious concerns regarding the subject development, which would also be contrary to the overall height and place-making approach envisioned within the adopted planning scheme for the subject site.

#### Compliance with the North Lotts & Grand Canal Dock SDZ Planning Scheme:

- The applicant has submitted a CBRA as required/Areas to be taken in charge have not been set out in the CBRA document submitted.

- Quantum envisaged is achieved through building heights that exceed those allowable under the planning scheme/quantum is not accepted.
- The proposal seeks a ratio of 50;41.5 across the city block and refers to the flexibility allowable under section 4.13.4 of the scheme whereby ratios allowing a minimum 30% commercial or 30% residential may be considered/accepted that the 30% is met for both uses/must be viewed in the context that proposed heights are excessive.
- Heights very significantly exceed the maximum allowable planning scheme in respect of all three proposed blocks/is not acceptable under the scheme.
- Dublin City Council as the Development Agency has completed a review of heights in the scheme/An Bord Pleanála decided not to approve the making of the proposed amendments and as a result the maximum building heights set out within the existing planning scheme remain unchanged.
- The laneway arrangement for Sub block D (Block C in the application) is broadly similar to that previously permitted on the site under DSDZ3780/17/in relation to sub block B of the planning scheme, the fixed building line around the north-eastern corner has not been fully observed for all floors. Given the design proposed however, this is considered compliant.

#### Public Realm

- A public space is provided at a location between sub blocks B and D of the planning scheme, rather than centrally positioned and fronting all 4 sub blocks.
- Each urban block within the city block to contain at least two buildings of different architectural design/may be achievable yet building heights are non-compliant/Street widths are generally complied with/landscaping arrangement restricts the openness of the east west street/encourages a less than direct route through the scheme.
- Planning scheme seeks the dimensions of the pocket park to be approx. 35 x 20m/applicant has provided a figure that greatly exceeds this in area terms.
- Part V - an additional unit is required.

- Mix is in compliance with the relevant Section 28 guidance/note the comments of the National Transportation Authority in respect of the sustainability of the proposed unit mix.
- 58% of the apartments proposed are 10% larger than the minimum standards/welcomed by the planning authority.
- Dual Aspect Ratio/431 of the 1,005 proposed units are dual aspect (43%) with the remaining being single aspect/significant number of units however, (approx. no. 75) would be single aspect north-facing/ is excessive/ relatively unconstrained site.
- Approx. 24 of the Part V are single aspect north-facing, while only approx. 25 of the proposed Part V units would be dual aspect/proposed Part V units would have a disproportionately lower standard of residential amenity than is typical within the remainder of the development/not considered acceptable.
- Private Open Space - All balconies are above the minimum standards and are considered acceptable.
- Communal Amenity Space - required provision is met/Block C would propose a significant under provision of communal amenity space (1651 sqm of the required 2,238 sqm)/would appear that however, the applicant is relying on the provision of a "Gym and Spa" facility at lower ground floor level/Limited details of the layout of this element has been provided
- Children's Play Space- The 2018 Apartment Guidelines require that the recreational needs of children must form part of the communal amenity space within apartment schemes.
- Floor-to-ceiling heights are acceptable.
- Storage - The applicant has stated within the Housing Quality Assessment that 746 (74%) apartments meet the requirements and 253 (26%) do not meet the requirements.
- Landscaping and Public Open Space - As part of the consented development, (DSDZ3779/17 and DSDZ3780/17) permission was granted for a new public open space areas including a pocket park and a public plaza onto the quay, which would have a total area of 3,800 sqm/Applicant has set out that the

proposed development would incorporate a public open space of approx. 2400 sqm/appear to include streets running between the proposed building/excluding the courtyard area of Block B/the development does not propose an appreciable increase in public open space/would be expected for a substantial increase in building height and residential density/planning authority would raise significant concerns in relation to the performance, design and overall quality of the proposed open spaces.

- The applicant has also referenced the proposed provision of the “public landscaped amenity” on the roof top level of Block C/Access would be controlled by the applicant or a future third party owner/ operator/no planning mechanism to ensure free public access to this space can be secured in perpetuity/this element is a positive aspect of the proposed scheme but not considered to represent a significant planning gain that would mitigate against the provision of a ground floor public open space with poor quality microclimatic conditions.

#### Transportation Planning

- Significant concerns in relation to the proposal/Impact of a development of this scale on local street infrastructure and public realm where there is insufficient capacity to serve the activity generated by the development/recommended that the proposed development be refused permission

#### Environmental Impact Assessment

- Report from the Transportation Planning Division considered that the operational servicing requirements associated with the increased provision of additional residential units would endanger public safety by reason of a traffic hazard and obstruction of road users/Concerns in relation to pedestrian safety have been set out in this report
- (DAU) has raised significant concern in relation scope of the submitted EIAR and the impact of the proposed development on Biodiversity in the area.
- Objections have been raised by the Drainage Division of Dublin City Council
- The submitted Landscape and Visual Impact Assessment (LVIA) of 46 viewpoints, which include close up and distant viewpoints, located within the immediate vicinity of the site, the docklands area and the wider city/Planning

Authority does not accept the conclusions within the submitted EIAR in relation to Landscape/Townscape and Visual Impact.

#### Appropriate Assessment

- A submission has been received (DAU), which has reviewed the submitted NIS and has raised significant concerns in relation scope of the submitted NIS and the impact of the proposed development on Biodiversity in the area.

#### Conclusion

- Planning authority objects to the principle of the proposal on grounds of non-compliance with the parameters of the SDZ planning scheme, particularly in respect of maximum building heights and fixed building lines./overdevelopment/inadequate design response/insufficient architectural quality/poor placemaking outcome/negatively impacting the receiving environment, in terms of daylight, sunlight and wind, and resulting in a poor standard of residential amenity for future residents.
- Note the significant objection raised by both statutory consultees and internal Dublin City Council departments, including the Transportation and Drainage Divisions, which have highlighted specific deficiencies in the scope of information submitted and the associated impact.

#### **Planning Authority's Recommendation**

- On the basis of the above assessment, the Planning Authority recommended that the Board **REFUSE** the proposed development for the 4 no. reasons set out below.
  1. Having regard to the nature and extent of development permitted on City Block 9 by the North Lotts and Grand Canal Dock SDZ Planning Scheme, it is considered that the proposed development would not be consistent with Section 5.5.9(b) of the adopted scheme, which sets out specific height limits for the application site. Accordingly, it is considered that the proposed development would materially contravene the North Lotts and Grand Canal Dock SDZ Planning Scheme and would be contrary to the proper planning and sustainable development of the area.



2. It is considered that the proposed development, by virtue of the height, design, bulk and extent would be out of character with the context of the site, would represent a visually prominent form of development relative to its immediate environment and, in particular, the wider cityscape. Furthermore, it is considered that the proposed development would constitute overdevelopment of a tightly constrained site, which would be exacerbated by the proposed block layout and associated provision of narrow and uninviting areas of public realm, which would experience a significant degree of overshadowing and associated discomfort as a result of the impact of wind. It is therefore considered that the subject site would be contrary to the provisions of the North Lotts and Grand Canal Dock SDZ Planning Scheme, the Dublin City Development Plan and the Urban Development and Building Heights Guidelines for Planning Authorities (2018) in terms of standards of urban design, architectural quality and place-making outcomes and the proper planning and sustainable development of the area

3. On the basis of the Sunlight/Daylight and Overshadowing analysis submitted, the Planning Authority maintains serious concerns in respect of potential detrimental impact on the amenities of the surrounding residential developments and public realm. Furthermore, the submitted report demonstrates that a significant quantum of the proposed residential units would fail to meet the recommended Average Daylight Factor requirements, thereby resulting in a poor standard of residential amenity.

4. By virtue of the impact of the operational servicing requirements of a development of this scale generated on the local road network, the proposed development would be injurious to the safe and convenient movement of people, would result in potential vehicular and pedestrian conflict along the road and would, therefore, endanger public safety by reason of a traffic hazard and obstruction of road users. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

### **Internal Reports**

Appendix 1 of the Planning Authority's submission includes the internal reports which are summarised below.

City Archaeologist - Recommends condition.

Environmental Health Officer – Monitoring required.

Parks, Biodiversity & Landscape Services - no overall objection to the application proposals subject to conditions that address concerns/Provision of public open space presented is a confluence of movement corridors rather than a defined space/delineation of the pocket park arbitrary/does not seem to meet the spatial objectives of the original SDZ planning scheme/central open space will not achieve BRE standards for 21<sup>st</sup> March nor will internal courtyards/SDZ Scheme would not achieve it/potential to introduce natural light should be examined/public terraces will have better light conditions/serve to compensate for ground level conditions/light conditions for planting/fire safety of the vertical greening/public art required/conditions recommended.

North Lotts & Grand Canal Dock SDZ Planning Scheme Implementation Team - A report is provided on compliance or otherwise with the Planning Scheme. A compliance matrix is set out and where concerns are raised these have generally be addressed in the 'Planning Assessment' of Dublin City Council's submission or in separate internal reports.

Drainage Division Engineering Department - Drainage Division objects to this proposal because clarifications sought in relation to surface water and flood risk management issues at SHD Pre Application Consultation Stage have not been addressed/details relate to surface water management strategy and compliance with Section 16.3 of The Greater Dublin Regional Code of Practice for Drainage Works/Proposed location of surface water outfall/discrepancies between the drainage layout drawing, FRA and Engineering Report/Retention storage in accordance with the Planning Scheme for the event of tidal locking/Comprehensive SUDS masterplan layout required/Details on principles of sustainable drainage within the overall landscaping proposal/Details on how an exceedance storm event (in excess of the 1% AEP + 20% Climate Change) is proposed to be dealt with/Basement Impact Assessment assessing the impact of the proposed basement construction on the surrounding environment and structures shall be submitted.

Transportation Planning Division

- Concerns regarding the overall principle of a development of this scale in the context of the SDZ Planning Scheme/ Planning Scheme was modelled, in the

context of public transport, public realm, road and footpath widths and layouts and pedestrian/cycling demand, on a predicated population, both residential and commercial. This population was detailed in the Scheme as approximately 5,600 residents, 23,000 workers/the development of 1005 no. residential units at this location (with a predicated residential population of c. 2200 persons), raises serious concerns about the capacity of the area to cater for such an increase in footfall and the associated demand on infrastructure, both in terms of public realm and public transport.

- The assumptions and predications made in the TIA are noted/accepted that there are public transport infrastructure proposals proximate to the site and in the wider City,
- Notwithstanding the conclusions of the Space Syntax report regarding pedestrian movement/considered that a building of this height and scale would overwhelm the adjacent public realm/minimum 5 m wide footpaths would be required around the external envelope of the building
- The quantum of car parking proposed relative to the residential element is considered acceptable given the central location of the subject site./unclear how these car parking spaces will be managed i.e. leased to residents, available by permit etc. details around the management of the car parking spaces are required
- While the quantum of cycle parking spaces for the residential element is considered acceptable in principle, there is concern that the cycle parking proposed to serve the staff of the development is externally located and not secure/staff/employees of the development should be provided with access to secure and sheltered bicycle parking/Shower/changing facilities - unclear if these are available to staff of the development/recommended that a bicycle parking management strategy be included as part of an updated MMP and CMP
- Refer to the NTA submission/supports the view that an updated MMP should be prepared for the development which is tailored specifically for the residential development.
- Supports the concerns raised by the NTA in the context whereby the cumulative impact of servicing has the potential to overwhelm the local street network/have

concerns about the ongoing operation of a development of this scale and its impact on the street network in the context of traffic safety as well as pedestrian safety.

- Recommends that the proposed development be refused permission as per Reason for refusal no. 4 above.

Housing - Note that has the applicants have previously engaged with the Housing Department in relation to the above development and are aware of the Part V obligations pertaining to this site if permission is granted

Environment and Transport (Waste): Recommend conditions, including but not limited to, a condition requiring the completion of an invasive plant species survey.

### **Elected Members**

A summary of views of Elected Members, as set out in the Central Area Committee Meeting, Thursday, 25th February 2021, is included within the Planning Authority's submission. In summary, Members strongly objected to the height of proposed development which was stated to be in contravention of the Development Plan and SDZ for Docklands Area and was completely out of kilter with existing developments in the area. Serious concern was expressed about the impact of overshadowing and overlooking of adjoining properties in Mayor Street and surrounding areas. Members expressed frustration that ABP had still not completed their review of the SDZ and it was stated that developments such as this should not be coming before the committee for consideration until the Board have made a decision with regard to same. Concern was expressed about the shortage of amenities and community facilities in the area and lack of provision for same in the proposed development.

## **9.0 Prescribed Bodies**

### An Taisce

- Development is overblown/It is unsupportable environmentally/Materially contravenes the 2014 North Lotts Strategic Development Zone Masterplan/High buildings require enormous energy consumption relative to lower buildings/To construct two 40-plus storey glass towers simple because Dublin does not have such buildings or because it does not look 'international' without them is

ludicrous/Climate Emergency was declared by the Irish Government in May 2019/High rise towers are enormously expensive to build, maintain, operate and rent/Net density yield can be quite low – high value tenants/occupants are required/Contribute to inflation of land prices/increases in unaffordability/make no real contribution to housing need/High rise areas tend to be business districts/not places where people want to spend time/Tend to be soulless clinical places/Housing is rarely affordable/most likely to end up as corporate lettings/Net result of little or no contribution to housing supply/housing crisis/High rise towers generally fall into one of two categories/high end commercial or residential sector/public authority housing (brought to the fore by the tragic Grenfell Tower case)/Dublin does not have the climate or latitude for high rise buildings/high rise areas are dark and windy/Docklands is a windy area/no escaping the proposed 45 and 41 storey towers will create major down-drafts/wind tunnels and other unpleasant microclimates/Will overshadow large areas to the north/Will impact on amenity/usability/outlook/light reach and rental/resale value of surrounding existing property, both residential and commercial/Form and architectural design of the proposed high rise towers is, to put it mildly, unremarkable/have an 'anywhere in the world' appearance/High rise buildings are firetraps/there are high profile international cases of fires resulting in major loss of life/how will a fire be dealt with?/Lots of material available that support the argument against high rise/Urges that permission is refused.

#### IAA

- Applicant be directed to engage directly with daa/Dublin Airport to assess the impact of development/Condition recommended in the event of a grant relating to crane operations.

#### Irish Water

- Irish Water previously noted at pre consultation stage that the applicant has been issued a confirmation of feasibility for connection(s) to the Irish Water network(s) subject to the following/Wastewater- The storm water connection for the development into the existing storm water sewer should be agreed with Dublin City County Council Drainage Division/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/Conditions suggested.

#### National Transport Authority (NTA)

- Proposed development in principle, could be considered broadly consistent with the land use planning principles of the Transport Strategy, subject to the other planning considerations being addressed as set out below.
- Sites such as this one should be developed in a manner that clearly demonstrates how the proposed development contributes to the establishment and long-term maintenance of a viable, integrated and successful residential neighbourhood and community.
- The NTA emphasises the importance of the application of the 12 criteria in the Urban Design Manual – A Best Practice Guide
- Not evident that the proposed development would meet the above transport and land use objectives related to diversity of tenure, the accommodation of a wider demographic profile, or social inclusivity/failure to achieve these may undermine strategic transport aims.
- Not clear that the full impact of deliveries and servicing on the local road network has been assessed in a comprehensive manner/ servicing functions should be undertaken within the site/a full assessment of servicing requirements should be undertaken/the use of on-street loading bays as an option should be re-examined.
- Revised Mobility Management Plan required which is tailored specifically for the proposed residential development.
- Development will contribute significant numbers of cyclists to the local road network/ a requirement for a full audit of cycling facilities in the surrounding area to be undertaken and a set of measures devised to address the deficiencies of same.
- Welcome the provision of a bus stand on Castleforbes Road/will be considered for use by the NTA as part of the implementation of the BusConnects/may be prudent to allocate the northern bay entirely to bus/reallocate the loading bay to the south for use as a taxi stand.

## Transport Infrastructure Ireland

- No submission received.

## DAA

- Condition recommended in relation to crane operations.

## Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (Development Applications Unit) - Nature Conservation (NPWS)

- Measures set out in the NIS, if effectively implemented, should prevent pollution of run-off and any negative impacts on the downriver Dublin Bay Natura sites.
- EIAR fails to consider the possibility of bird collisions/proposed to install an extensive system of living walls, terraces and roof gardens throughout the development and though these will provide habitats for some birds and other wildlife, they may also act to disguise glazed features and thereby promote bird collisions with the buildings/bird mortality as a result of collisions with buildings has come to be regarded as a major problem.
- Urban Development and Building Guidelines for Planning Bodies require an assessment of same.
- Given the development's location on the River Liffey referred to in this same chapter as a wildlife corridor, and the reports in recent years of collisions of swans and cormorants with the nearby Samuel Beckett Bridge, some consideration of the possibility of bird collisions with the buildings proposed would therefore seem obviously to have been required.
- Toronto's Green Standard (Version 3) includes measures for 'Bird Collision Deterrence for Mid to High Residential and all Non-Residential Developments/suite of measures set out in this document to deter bird collisions constitutes a reasonable model for similar measures to be employed in the case of present development/proposes conditions derived from Toronto's Green Standard to be attached to any planning permission granted in response to the current application.
- Provision of nest boxes for swifts, tits, sparrows, starlings and greenfinches is referred to/the greenfinch is not a cavity nester and does not utilise nest

boxes/provision of swift boxes would be valuable however, as they are a declining species in Dublin and will nest in tall buildings such as mills and grain silos/no locations appear to have been selected as yet within the development where swift boxes will be installed.

- Bats - no measurement of the light levels in the vicinity of the development site appears to have been carried out or any prediction of future light levels attempted.
- In the supporting Landscape Access & Design Statement it is stated “The inclusion of bat boxes can help provide roosts for a variety of species, such as Pipistrelle, Noctule, Leisler’s, Natterer’s, Daubentons and Brown Long-eared bats.” /the Noctule bat has never been recorded in Ireland, and Natterer’s and brown long-eared bats are light sensitive bat species usually inhabiting timbered areas which would not be expected to occur in an urban environment such as the location of the proposed development. Leisler’s, soprano and common pipistrelle bats are relatively light tolerant species that have regularly been recorded in recent years in surveys carried out ahead of development applications on the opposite side of the Liffey about 770 m away from the development site around the Grand Canal Basin and the confluence of the River Dodder with the Liffey./this light tolerant trio of bat species could not however realistically be expected to utilise bat boxes sited in locations as necessarily illuminated as the residential tower blocks proposed.
- The Daubenton’s (or water) bat was similarly recorded in the recent past around the Grand Canal Basin, but surveys in recent years suggest this species no longer regularly occurs in this area, probably because of the increased nocturnal light levels now prevalent there as a result of recent development The seeming disappearance of the Daubenton’s bat from the Grand Canal Basin environs illustrates the threat that increasing artificial light levels pose to the continued usage of the Liffey docklands by bat species, all of which are afforded a regime of strict protection under the Habitats Directive, and highlights the importance of minimising as far as is feasible light pollution arising from new developments such as that proposed in the current application in order to maintain bat populations in this area.



- Conditions are recommended.

#### Inland Fisheries Ireland (IFI)

- Recommend conditions in relation to construction works and in relation to the surface water proposals.
- Note that Ringsend is currently working at or beyond its design capacity and will not be fully upgraded until 2023.

## 10.0 Environmental Impact Assessment

- 10.1.1. The applicant has submitted an Environmental Impact Assessment Report (hereafter referred to as an EIAR). Where relevant I have also had regard to other documentation submitted with the application including, but not limited to, the Appropriate Assessment (AA) Screening and Natura Impact Statement (NIS), the 2 no. Hydrogeological Impact Assessment Reports, the Traffic Impact Assessment and the Mobility Management Framework Plan, the Engineering Services Report, the Site Specific Flood Risk Assessment, the Landscape, Access and Design Statement, the Part L (NZEB) assessment for the Sustainability & Energy Design, the Greenhouse Gas (GH) Assessment, the Outline Construction Management Plan, the Generic Quantitative Risk Assessment, the Draft Operational Waste Management Plan and the Daylight, Sunlight and Overshadowing Analysis.
- 10.1.2. I have had regard the comments of the Planning Authority as relates to the EIAR. In summary it is stated that the PA does not accept the conclusions of the Heritage, Townscape, Landscape and Visual Impact Assessment. It is also stated that the proposal raises traffic safety concerns, and objections are also raised in relation to drainage.
- 10.1.3. The DAU (NPWS), An Taisce, National Transport Authority (NTA) and Inland Fisheries Ireland (IFI) have made comments on matters relating to the EIAR. In summary the DAU (NPWS) raise concerns in relation to the lack of commentary on potential bird strike (I have also considered this in Section 11 Appropriate Assessment), impacts on bats and the adequacy of the proposed mitigation measures for both birds and bats. Conditions are recommended to overcome same. An Taisce have raised concerns in relation to the carbon footprint of the proposal

and the impact on climate and note that high rise towers and expensive to build, maintain, operate and rent and make little contribution to the housing crisis. The NTA have raised concerns in relation to servicing impacts on the surrounding road network as well as the diversity of tenure proposed, as it relates to overall transport objectives. The IFI have suggested conditions in relation to the construction and operational stages and have highlighted capacity issues at Ringsend WWTP. I have addressed all of these matters within the assessment below.

- 10.1.4. I have had regard to Observer comments as relates to the submitted EIAR. In general observers have set out that the submitted EIAR does not comply with the mandatory requirements of the Planning and Development Regulations 2001 (as amended) and the EIA Directive (as amended) as it does not contain sufficient information on impacts, including those related to birds and bats, site contamination, impact of foundations, cumulative impacts, lack of alternatives considered and does not address the carbon footprint of the development. Errors within the EIAR report are also highlighted. I have addressed of these matters within the assessment below.
- 10.1.5. As required by Schedule 6 the EIAR submitted to the Board contains a non-technical summary, reference lists detailing the sources for the assessments within the EIAR, and a list of the experts who contributed to the preparation of the report.
- 10.1.6. As is required under Article 3(1) of the amending Directive, the EIAR describes and assesses the direct and indirect significant effects of the project on the following factors: (a) population and human health; (b) biodiversity with particular attention to the species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC; (c) land, soil, water, air and climate; (d) material assets, cultural heritage and the landscape. It also considers the interaction between the factors referred to in points (a) to (d).
- 10.1.7. I have carried out an examination of the information presented by the applicant, including the EIAR. I am satisfied that the EIAR has been prepared by competent experts to ensure its completeness and quality, and that the information contained in the EIAR and supplementary information provided by the developer is up to date, adequately identifies and describes the direct and indirect effects of the proposed

development on the environment, and complies with article 94 of the Planning and Development Regulations 2000, as amended.

10.1.8. The main issues raised specific to the EIAR can be summarised as follows:

- Site Context;
- Project Description;
- Alternatives Considered;
- Population and Human Health;
- Biodiversity;
- Lands and Soils;
- Hydrology;
- Air Quality and Climate;
- Noise and Vibration;
- Waste;
- Traffic and Transportation;
- Site Services;
- Cultural Heritage (Including Archaeology);
- Interactions;
- Mitigation Measures;
- Difficulties Encountered; and
- Heritage, Townscape, Landscape and Visual Impact Assessment (EIAR Volume 2).

10.1.9. These issues are addressed below under the relevant headings, and as appropriate in the reasoned conclusion and recommendation.

10.1.10. The EIAR is laid out in three volumes -the EIAR (Volume 1), a Heritage, Townscape, Landscape and Visual Impact Assessment (Volume 2) and a non-technical summary (Volume 3).

- 10.1.11. Chapter 1 of the EIAR sets out *inter alia* a detailed development description, the legislative context, an EIA Screening, EIA Scoping and the methodology and format.
- 10.1.12. Chapter 2 sets out *inter alia* the site location and context. Chapter 3 sets out a detailed description of the proposed development, including a description of the building height, form and massing, as well as the proposed design and building materials for each block. I have set out details of same in Section 12.5 of this report.
- 10.1.13. Chapter 4 sets out an examination of alternatives and this examines the alternative development options that were considered for the subject site during the design development process. The main alternatives studies were alternative design solutions and layouts for the redevelopment of the eastern portion of City Block 9 to provide a primarily residential development on the site, in accordance with national, regional and local planning policy guidelines. Of particular note is Section 4.3.4 'Alternative Design Approach' which sets out that the project architects undertook an extensive site appraisal to determine the appropriate scale, mass and layout of the scheme. Reference is made to the Design Statement submitted with the application.
- 10.1.14. The layout and placement of blocks on site has largely been informed by the guidance set out in the North Lotts and Grand Canal Dock SDZ Planning Scheme. However there have been a number of previous proposals for the site, detail of which is included with the EIAR. These included a previously permitted scheme on the site (Reg. Ref DSDZ3780/17) which comprised of *inter alia* 4 no. commercial office buildings ranging in height from 6 storeys to 8 storeys, a public places and new pedestrian routes. This was lodged concurrently with a residential scheme (SDSZ3779/17) on the western portion of City Block 9, which comprised *inter alia* 2 no. residential buildings ranging in height from 6 storeys to 11 storeys accommodating 420 no. apartment units, a crèche, 4 no. café/restaurant/retail units and a pocket park of 760 sq. m.
- 10.1.15. It is set out in the EIAR that it was decided that the permitted schemes did not represent the most appropriate density and quantum of uses for City Block 9 and that regard was had to national planning policies published since the granting of the above permissions.
- 10.1.16. Alternative No. 2 refers to a proposal dating from 2008 (by Zaha Hadid), which featured a landmark tower. This did not progress to application stage, due to the

economic downturn. In not pursuing this scheme, the applicants state that the current proposal is considered to represent a more suitable design response to the site.

10.1.17. Section 4.6 of the EIAR sets out the final proposed development, and notes the amendments that have been made since the submission of the pre-application documentation to An Bord Pleanála in December 2020 and May 2020.

10.1.18. It is concluded within the EIAR that 'having examined various reasonable alternative designs it is considered that the proposed development is the preferred option in terms of the sustainable development of the subject site'. It would have been preferable in my view, that given the nature of this scheme, which arguably has wider impacts than the majority of residential SHD applications, as a result of the height proposed, to present further detail of the various design iterations that have taken place, in order to arrive at what is considered to be the most appropriate design for the site. While the layout appears to be somewhat dictated by the provisions of the SDZ Planning Scheme, the process of arriving at the final design, including the final height, is not set out in detail. One would expect to see this iterative process set out in detail in the 'Alternatives' Chapter in the EIAR. However there is some discussion of alternatives and justification for the height set out in the applicant's Design Statement and HTLVIA report, and justification for the overall final layout including block arrangements and public realm provision is set out in various documents submitted with the application, including, but not limited, to the Design Statement and the Landscape Access and Design Statement.

10.1.19. As such I conclude that, in relation to alternatives, that there is adequate information on file to carry out an EIA based on the EIAR submitted, when taken in conjunction with the Design Statement, the Landscape Access and Design Statement and HTVIA, and it is possible to gain an appreciation and an understanding of the final design approach and, as such, I am satisfied that a description of reasonable alternatives has been set out in compliance with Annex IV (2) of the EIA Directive (2014/52/EU) and in Schedule 6(1)(d) of the Regulations.

#### Population and Human Health.

10.1.20. Population and Human Health is assessed in Chapter 5 of the submitted EIAR. I note the formatting error in Table 5.10 'Private household by type of accommodation'

which makes the table a challenge to read - however it is understood from the reading of this table in conjunction with text (immediately above the table) that 6% private households are within house/bungalows; the greatest percentage at 93% are understood are within apartments - however this is not readable from the table. And it is unclear how the remainder are housed, however, being c.0.3% it is not considered significant or an issue in terms of understanding how the population are accommodated within the private residential stock. At operational phase there will be a positive contribution to the regeneration of the North Lotts as a result of the additional population residing within the development, some 2,764 persons. No negative impacts were identified. The application is also accompanied by a Social Infrastructure Audit which sets out that there is a wide range of education, childcare, healthcare and cultural facilities within a 1km radius of the site, with the proposed development also contributing to the social infrastructure provision. Some gaps in terms of higher order shopping centres and provisions for elderly persons such as nursing homes are identified. In terms of the latter, the lower cohort of elderly persons in the area is identified. In relation to the former, I note the site is within walking, cycling or a short public transport commute to the centre of Dublin City where a wide range of social infrastructure is available.

10.1.21. I generally concur with the conclusions of Section 5.5.1 of the EIAR, in relation to impacts on population profile and trends, and it would appear that the immediate and wider area has adequate social infrastructure provision to serve the proposed residents of the proposed development.

10.1.22. In terms of 'Housing Impacts', I concur with the conclusion that the provision of housing will help address housing demand. I note the comments of the NTA as relates to the mix of units, and the wider impacts on transport objectives. There is no evidence put forward on how the mix of units proposed, which is essentially 1 and 2 bed units, would detrimentally impact on transport objectives. Such a mix is supported by Sustainable Urban Housing: Design Standards for New Apartments (2020). In terms of 'Employment Impacts', employment during the construction phases is considered to result in a positive impact, and the non-residential element is expected to give rise to between 291 to 345 permanent jobs. The additional demand for goods and services at local business from the additional population in the area is also considered to be a positive impact. Minor negative impacts were identified as a

result of the demolition of employment centres on the site (this has in fact already occurred as allowed for under previous permissions). In relation to traffic impacts on population, it is stated that after proposed mitigation measures are implemented (which include a Construction Traffic Management Plan and a Mobility Management Plan) it is anticipated that the effect on population arising from traffic at operational stage will be slight, negative and long - term. No impacts at construction phase are discussed, although it is my view that with the Construction Traffic Management Plan in place, impacts will be slight, negative and medium-term. I do not concur that impacts at operational stage will be negative, and in my view, impacts on population arising from additional traffic from the site will be neutral and long-term (see also detailed discussion on transport issues in this section of this report).

10.1.23. Economic impacts are expected to be positive at construction and operational phase and I concur with this conclusion.

10.1.24. In terms of impacts on Human Health, the EIAR considers impacts in terms of Air Quality, Noise and Vibration, Traffic, Landscape and Health and Safety. In terms of Air Quality, reference is made to the Air Quality Impact Assessment (AQIA) that is included in Appendix 9A of the EIAR, which indicates that there are potential significant impacts associated with construction dust. With mitigation, as described within the AQIA, impacts are reduced to negligible. Impacts from vehicle emissions in traffic on air quality at construction and operation stage were considered to be negligible. Emissions from operational traffic were within EU ambient air quality standards, and it is concluded that the impact human health will be neutral, long-term and not significant. I generally concur with this conclusion and measures in a revised Environmental and Construction Management Plan can adequately deal with impacts as relates to dust. The minimal level of car parking proposed would result in only limited vehicle emissions, as reported in the EIAR, and subject to conditions, impacts of service vehicles can be minimised (i.e. servicing taking place mainly at basement level can help reduce impacts of emissions on surrounding sensitive receptors).

10.1.25. This chapter also considers the interaction of landscape/townscape on human health. During the construction phase, short term negative visual impacts are identified. I do not necessarily concur with this conclusion, as the current site presents a negative visual impact at present, and I do not consider that a working

construction site would result in additional negative impacts over and above the current situation. My view is that visual impacts at construction stage would be short-term and neutral. During the operational phase, a positive, significant and long-term effect on human health in the local area is predicted. For a more detailed discussion on visual impacts at operational stage, I refer the Board to Section 12.5 of this report. I note the submissions of observers and the planning authority in relation to same, and I have considered these submissions in Section 12.5 of this report.

10.1.26. This chapter concludes that the proposed development would have a neutral, long-term and not-significant impact on the health of the local population. While I have considered the visual impact of the development in the relevant section below, I have no reason to dispute this conclusion, and I refer the Board to my complete assessment of visual impact in Section 12.5 of my report.

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

10.1.27. As advised in Section 11 of this report, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of on any site designated under Directive 92/43/EEC or Directive 2009/147/EC.

10.1.28. The site description refers to the site as comprising of bare ground and reclaimed bare ground. Reference is made to the site being historically used for light industrial uses, including timber treatment and manufacturing. The closest protected areas to the site are the non-statutory, proposed Natural Heritage Areas (pNHA) of the Grand Canal, located c. 330 m south, and Royal Canal located c. 600 m west of the site. There are 17 Natura 2000 sites within 15 km of the Proposed Development. It is noted that the nearest European designated sites are the SPAs and SACs of Dublin Bay (2.8 km east) and that there is no direct hydrological connection to any of these designated sites. It is noted that a walkover survey was conducted in August 2019.

10.1.29. In relation to mammals, the nearest bat roost is located 1km to the south at Grand Canal Dock. Otters are known to use the River Liffey and a holt was recorded 600m west of the proposed development during the Dublin City Otter Survey completed in 2019, with signs of otter at Grand Canal Dock and at the mouth of the Dodder. It is stated that directly opposite the Proposed Development, and in the close vicinity, the



river edge is a hard engineered quay wall, and so no signs of otters (footprints, droppings, holts) were found during the field survey along this stretch of the river. The site contains no buildings or trees that could potentially form a bat roost, there is also no evidence, or signs of bats recorded at the time of the survey. No bird species were observed foraging or nesting on the site during the time of the survey. A number of limitations to the 2019 field survey are set out in the EIAR, and of note is that no bat activity surveys were undertaken in the vicinity of the site, and hence the use of the River Liffey as a commuting corridor is undetermined, although it is stated that this is likely. It is also stated that no breeding bird data was collected for the site.

10.1.30. It is concluded within the EIAR that the limitations as set out therein are not considered to present significant limitations to the impact assessment, as the site (at the time of the survey) was largely hard standing with negligible semi-natural habitats present, limited to the occurrence of ruderal habitats between the hard standing areas and occasional patches of invasive non-native plant species (buddleia). While Table 6.5 of the EIAR notes that the potential use of the site for bird foraging and roosting, no evidence is put forward for this statement and I do not concur with this statement. While I note that no surveys were carried out in relation to birds and bats, the inner-urban brownfield nature of the site is noted with no habitats on site that are suitable for bird breeding or bat roosting with subsequent limited opportunities for foraging. I note also that works to facilitate the permitted basements also appear to have commenced on the site, further decreasing any biodiversity value to birds or bats. As such I concur with the conclusions of the EIAR that the data gaps set out therein do not present significant limitations to the impact assessment.

10.1.31. Mitigation measures as set out in the Construction Management Plan are referred to and include measures at dewatering stage, water treatment measures, measures during the excavation and movement of soils and during the enabling works. In relation to possible ground contamination, it is stated that ground investigations are to be carried out in advance of the main works as part of the detailed foundation design and will determine if any ground contamination is present. All excavated material will be disposed to licensed landfill sites. Any contaminated materials will be kept separate and removed to specialist facilities in accordance with environmental legislation.

10.1.32. Section 6.5 sets out potential impacts, in the absence of mitigation, at construction and operational phase. At construction phase these impacts include, but are not limited to, loss of approximately 0.2 ha of less than local value semi-natural habitats, disturbance and noise increases arising from cranes, and increase in construction vehicles and construction workers, artificial lighting arising during the construction phase, accidental pollution affecting surface water quality in receiving environment and spread of invasive non-native invasive species. During the operational stage, potential impacts include disturbance arising from operational artificial lighting, wind tunnelling impacts, buildings at height intruding on commuting bird and bat assemblage and operational run-off affecting surface water quality in receiving environment. Reference is made also to Hydrogeological Impact Assessment report submitted with the application, which identifies areas of contaminated lands within the site. Section 6.5.2 sets out potential construction stage impacts on non-statutory designated sites and the River Liffey. These include polluted surface water run-off, and clearance of contaminated materials which could enter adjacent surface water networks and the River Liffey. Impacts also relate to the dewatering of foundations, resulting in pollutant entering watercourses, and breaking of concrete which may emit noise and dust in the local environment.

10.1.33. In terms of the impacts on birds, it is noted there are no suitable habitats within the site for nesting and foraging bird species. Other potential impacts are not considered significant at construction stage. In relation to bats, there are no suitable habitats within the site for roosting/foraging bat species. Nighttime working would be avoided, where possible. No significant effect to commuting/foraging bats is expected at construction stage.

10.1.34. At operational stage, no non-statutory sites nor the River Liffey were considered to be at risk of likely significant effects from the development. In relation to birds, living walls and roof, and the inclusion of bird boxes and trees are considered to have a perceptible positive impact on local breeding bird populations. In relation to bats, it is stated that the additional light created through the operation phase of the proposed development on the River Liffey would not be above that of which other developments in the vicinity are emitting. The operational phase is likely to increase foraging resources for bats due to the creation of biodiverse living walls and roofs. There would also be an increase in roosting potential due to bat boxes being

included within the Proposed Development. Therefore, the EIAR concludes that unlikely that the operational phase of the Proposed Development would result in a negative impact on local foraging bat populations. Cumulative impacts are ruled out for the reasons set out in Section 6.5.4 of the EIAR. Mitigation measures at construction phase to protect designated sites and the River Liffey, as well as birds and bats, are set out in Section 6.6 of the report and include best practice construction measures at construction phase. Monitoring measures in relation to water quality are set out. Section 6.7 sets out anticipated residual impacts, and positive residual impacts are expected for habitat biodiversity, bats, birds and insects due to the increase in biodiverse semi-natural habitats present on the site. No adverse impacts on sites or habitats is expected. Monitoring measures are set out in Section 6.9 and relate to the construction stage only, with no monitoring measures set out during the operational stage.

10.1.35. In relation to the conclusions made within the EIAR, I am satisfied that the site has no potential to accommodate bird or bat roosting, or bird or bat foraging, given the brownfield nature of the site, with very limited biodiversity value. As noted, works have commenced on the site, presumably implementing the permissions for basement works, which further decreases any biodiversity value of the site. In relation to bats specifically, I note the site is an inner urban site and the use of the site for bat commuting or foraging is very unlikely, given this location and the lack of hedgerows and trees on the site. I also note that there is an extant permission on the site and as such the redevelopment of the site already been accepted. While it is concluded that the site itself is not used by bats, the EIAR sets out that the river channel of the River Liffey is likely to be used as a wildlife corridor (and hence used by bats) and potential impacts relate to light spill onto the River Liffey during construction stage. No impacts at operational stage are considered likely due to minimal impact of the additional light created by the development, which would not be above that of other developments in this urban area. Mitigation measure to minimise impacts are set out with the EIAR and these relate to restrictions on the unnecessary use of nighttime lighting during construction. Positive residual impacts on bats are predicated due to the provision of increased foraging resources for same as well as nesting resources in the form of bat boxes.

10.1.36. I note the submission from the DAU (NPWS) in relation to potential impacts on bats, which notes that no measurement of existing or predicted light levels has been carried out. The suitability of the proposed bat boxes is also questioned, given the potential level of illumination of the proposal at operational stage. The submission highlights the importance of minimising light pollution arising from new developments in order to maintain bat populations in this area. In this regard, a condition is recommended in relation to the external lighting scheme proposed. I am satisfied that such a condition is sufficient to minimise any impact on bats at operational stage, resulting from light spill onto the River Liffey. I am also satisfied that the mitigation measures set out for the construction stage will be sufficient to ensure impacts on bats are minimised. Such measures are common for such residential sites.

10.1.37. I note the submissions of observers have also raised concerns in relation to impacts on bats and birds, in particular the lack of assessment of potential bird strike. The submission of the DAU (NPWS) also highlights these issues but have considered that such impacts can be adequately dealt with by way of condition, which relates to the type of glazing and balcony treatment used in the development, including the treatment of glazing immediately surrounding the proposed living wall panels. I am satisfied the detailed condition suggested by the DAU (NPWS) will be sufficient to minimise the potential for bird strike.

10.1.38. Given the statutory role of the DAU (NPWS), which is to advise on the protection of the habitats and species identified for nature conservation, I have given their submission significant weight, and I am satisfied that the Board has sufficient reassurance in relation to the protection of birds and bats.

10.1.39. The EIAR highlights the biodiversity value of the proposed living wall panels. A large number of submissions have questioned the viability of this living wall, given both the height of the scheme and the site's location, which can be subject to high winds. I concur with these submissions. Within the Landscape Access & Design Statement, examples of where such systems have been provided are set out. I do not consider that these provide sufficient reassurance as to the viability of such a living wall system within this site-specific environment. There are no examples given where this has been achieved on a building of such height, and there is no discussion as to how such a living wall would be successful having regard to the site-specific climate at

the heights proposed, and, how such a living wall would be impacted by potentially high wind velocities at this location. I am of the view that there insufficient reassurance that such a living wall would be successful, and the potential failure would be of detriment to the scheme, and to the wider city as a whole. It is my view that this living wall should be omitted from the proposal and revised plans and elevations requiring the omission of same by sought be way of condition. However, should the Board be minded to retain the living wall, I consider that information in relation to the viability and maintenance of same should be required by way of an oral hearing. Notwithstanding that the issue of bird strike can be overcome by way of condition, as suggested by the NPWS, the attention of the applicant should also be drawn to the comments of the NPWS, as they relate the issue of the living wall panels and their potential contribution to an increased risk of bird strike (see further discussion in Section 12.9 of this report in relation to other matters recommended to be heard at an oral hearing).

10.1.40. As such, the contribution of such a living wall to the biodiversity of the area should not be considered in my view, as I am of the view that it should be omitted from the proposal. However I do note that the proposed development would introduce areas of new planting at ground level and within some of the terrace areas, which would have a positive impact on biodiversity. I note the comments of the DAU (NPWS) as relates to the suitability of the bird and bat boxes proposed. While the provision of boxes for swifts is welcomed, boxes for greenfinches are not suitable as they do not utilise such boxes. The suitability of the bat boxes is also questioned, as noted above. As a result of the potential omission of the living wall, and the limited biodiversity value of the proposed bird and bat boxes, I am of the view that the residual impacts on habitat biodiversity, bats, birds and insects is neutral and long-term, rather than positive as concluded in the EIAR.

#### Land and Soil

10.1.41. Chapter 7 of the EIAR refers to Land and Soils. This chapter notes that a site investigation comprising the installation of boreholes using a rotary drilling rig to a depth of 17 m below ground level (bgl) was undertaken as part of an environmental assessment of the site completed in July 2019, and that the borehole logs and results of laboratory analytical testing have been reviewed as part of this impact assessment. The site is reported to be underlain by made ground to a maximum

thickness of 9m and localised hotspots of contamination were detected including heavy metal, hydrocarbon, and asbestos. I note that observer submissions have stated that the former use of the site for timber processing means it is likely that the site is contaminated, and the results of the site investigation confirm that this is the case. Geology beneath the site is reported by the GSI as alluvial deposits and glacial Limestone Till underlain by the Calp, Marine Shelf Facies Formation of Carboniferous age. Borehole drilling confirmed the presence of alluvial deposits consisting of natural silts overlying sands and gravels to a maximum depth of 14 m bgl (below ground level), although the sands and gravels were underlain by boulder clay, bedrock was not encountered during the site investigation. In relation to the hydrogeology underlying the site, the GSI have categorised the bedrock aquifer underling the site as a locally important aquifer, bedrock is moderately productive only in local zones. The vulnerability of the aquifer has been classified as 'Low'. Results of groundwater gauging indicated that it was unlikely a there is a continuous 'shallow' groundwater table within the overburden soils encountered beneath the site. Of the thirteen shallow wells, installed within the made ground, only five had groundwater present. Groundwater levels within the monitoring wells installed within the alluvial deposits indicated the presence of a continuous groundwater body. The estimated groundwater flow was in a south to south-easterly direction. Given the site's proximity to the estuary of the River Liffey, it is likely that the groundwater contained within the alluvial deposits is in hydraulic connectivity with the River Liffey and likely subject to a tidal influence. Hotspots of hydrocarbon contamination were detected in the groundwater samples from the made ground and no contamination was detected in samples from the alluvial deposits.

10.1.42. In terms of potential impacts, basement excavation works were considered to be the greatest potential impact associated with the construction phases. Removal of contaminated soil was considered to be a positive impact on land and soils, with an associated positive impact on the shallow groundwater aquifer. Exposure of the soils to construction traffic may lead to a negative short term impact. The risk of accidental spills and leaks is also highlighted. There is no impact expected on the geological environment, as the basement is to be excavated into the overlying alluvial deposits and boulder clay. In relation to the operational phase, it is started that the operational phase of the proposed development is unlikely to have any impact to the land, soil or

groundwater underlying the site. The proposed drainage plan for the development will reduce any potential impact from impacted/contaminated site run-off impacting the soils or groundwater at the site.

10.1.43. Section 7.6.1 sets out mitigation measures which include the production of a Construction Environmental Management Plan, and an Emergency Response Plan in the event of spills, flooding or other incidents that may contribute to water pollution during construction. Measures for dewatering and surface water discharges are set out, as are measures for the exaction of subsoil, importation of fill, construction traffic wheel washing and to prevent accidental spills and leaks. After implementation of the mitigation measures for the construction phase, the proposed development will not give rise to any significant long-term adverse impact. Moderate negative impacts during the construction phase will be short term only in duration. No impacts are anticipated at operational stage.

10.1.44. While I note the localised hotspots of contamination on the site, it would appear that contamination is limited to the made ground and is not within the main groundwater body of the alluvial deposits that lie beneath the made ground. The applicants have submitted a large volume of information in relation to the hydrology and hydrogeology of the site and sufficient site investigations appear to have been carried out. As such I am satisfied that the identified impacts on land and soil would be avoided, managed and mitigated by the measures which form part of the layout and design of the proposed scheme, the proposed mitigation measures, and through suitable conditions, including details of a method statement for the proposed dewatering, surface water discharge and the importation of soil.

#### Hydrology (Water, Wastewater & Groundwater)

10.1.45. Chapter 8 considers Hydrology (Water, Wastewater & Groundwater). Potential impacts include the potential for surface water run-off to be contaminated during the construction phase. During the excavation works, groundwater within the shallow perched aquifer and the sand and gravel aquifer will be dewatered to facilitate construction of the basement and the removal of the groundwater could have a permanent positive effect on the receiving surface waters. In terms of flood risk, it is stated that surface water run-off has the potential to flood basement levels & excavations during the construction period and ground water encountered during

excavations has the potential to flood basement construction. During the operational phase, it is stated that there is a minimal risk of stormwater impacting on the quality of the water in the River Liffey but potential issues such as blockages are highlighted in the EIAR. In relation to surface water, the proposed development is designed to limit surface water runoff from the site to greenfield runoff rates (and to 2 l/s/Ha as per the requirements of the SDZ Planning Scheme) and to store flows exceeding this in an attenuation tank with 20% additional capacity to account for climate change. SUDs measures are also proposed. Potential blockages of the foul sewer system are highlighted.

10.1.46. In relation to flooding, I have set out my assessment of Flood Risk in Section 12.8 of this report, and have concluded that, subject to conditions, the development will not be at an unacceptable risk of flooding, nor will the proposal unacceptably increase the risk of flooding off site.

10.1.47. Section 8.6 sets out a range of mitigation measures as relates to the water environment. The measures described therein are standard construction and operational measures and the efficacy of such measures is established in practice. Subject to the implementation of those measures, the construction of the proposed development would be unlikely to have significant effects on the quality of the water environment. The implementation of the mitigation measures outlined in section 8.6, should reduce the potential for impact on the River Liffey during the construction phase of the project. The risk of impact to the River Liffey during the construction phase to considered to be low and temporary in nature. At operational phase surface run off measures, including petrol interceptors and flow control will reduce any impact. Long term impacts will be positive due to the removal of contaminated made ground. There is sufficient capacity in the foul sewer network, subject to upgrades, and Irish Water have not raised an objection to the proposed development. Low flow devices will reduce potable water demand and subject to upgrades. I note that Irish Water have not raised any capacity issues.

10.1.48. I generally concur with the conclusions of this section of the EIAR. While there are land contamination issues that require particular mitigation measures, these are clearly detailed in the EIAR, and within the CEMP. Other measures described therein are standard construction and operational measures and the efficacy of such measures is established in practice. Subject to the implementation of the measures



as set out above, the construction of the proposed development would be unlikely to have significant effects on the quality of the water environment.

### Air and Climate

- 10.1.49. Air and Climate are considered in Chapter 9 of the EIAR. It is stated that the proposed development will result in impacts on air quality. This Air Quality Impact Assessment (AQIA) assesses these impacts and identifies mitigation measures where required. It is stated that, as the residential and commercial elements of the project are being constructed and operated together, impacts at receptors will be cumulative and it is appropriate to consider impacts to air quality together. A joint AQIA encompassing both projects has been undertaken and is set out in Appendix 9A, with Chapter 9 of the EIAR summarising the key points of same.
- 10.1.50. During the construction stage the main source of air quality impacts will be as a result of dust emissions and NO<sub>2</sub> and PM<sub>10</sub>/PM<sub>2.5</sub> emissions from site activities. During the operational phase, there is the potential for a number of emissions to the atmosphere during the operational phase of the development. In particular, the traffic-related air emissions may generate quantities of air pollutants such as NO<sub>2</sub> and PM<sub>10</sub>/PM<sub>2.5</sub> emissions.
- 10.1.51. In terms of predicted impacts, of note is that there is a high risk of dust and PM<sub>10</sub> impacts on surrounding residential and commercial properties, at construction stage, which would equate to major impacts if unmitigated, with a medium risk of dust and PM<sub>10</sub> associated with HGV movements (trackout), equating to moderate impacts if unmitigated. In terms of emissions from construction traffic, traffic flows are screened out as not significant and no mitigation was required. At operations stage, where potential significant impacts from operational stage traffic were identified, on North Wall Avenue, detailed modelling was undertaken which concluded that emissions from traffic generated on North Wall Avenue will be negligible for all pollutants.
- 10.1.52. Detailed Mitigation measures are set out in Section 9.4 of the EIAR, which include, but are not limited to, the implantation of a Dust Management Plan (DMP). The residual impacts, once these mitigation measures are in place, are considered to be negligible.

10.1.53. In terms of human health, the Air Quality Impact Assessment concludes that potential impacts to human health are not significant, subject to the mitigation measures being put in place.

10.1.54. Neither Chapter 9 nor Appendix 9a discussed impacts on climate, in term of contribution to climate change. This issue has been raised by An Taisce and by a number of observers on the application. At construction stage, I am satisfied that overall impact will be minimal, having regard to the limited impact of emissions as discussed above. At operational stage, the integration into the design of the operational development of sustainable aspects and energy reduction features reduce the overall energy consumption of the building. Such measures are set out in a number of the application documents, including the Building Life Cycle Report, and the Design Statement. The applicant has also submitted a Greenhouse Gas (GHG) Assessment, which concludes the significance of emissions from the operational phase of the development are not likely to be significant. In addition, locating populations close to employment and services, and the subsequent reduction in private car travel should also assist to address climate change potential impacts associated with unsustainable travel patterns.

10.1.55. In conclusion therefore I am satisfied that potential effects on air quality and climate would be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and best practice measures. I am satisfied therefore that the proposed development would not have any unacceptable direct, indirect or cumulative effects on air and climate.

#### Noise and Vibration

10.1.56. Chapter 10 refers to Noise and Vibration. The chapter refers to scenarios where works may have to be take place at night, including works such as

- to carry out power floating following concrete pours of the larger floors, which will take the majority of the day to complete; and
- should the reinforced concrete (RC) cores be constructed using a technique called slip form in which each core is constructed in a continuous concrete pour lasting several weeks.

- 10.1.57. The EIAR notes that there is potential for significant noise impacts at the nearest noise sensitive receptors. Mitigation measures are therefore necessary and are set out in the EIAR. These measures include selection of quiet plant, acoustic covers, use of silencers/mufflers and positioning of plant away from noise sensitive receptors.
- 10.1.58. For the purposes of modelling a total of 12 points were selected that represented nearby noise sensitive receptors. Predicated mitigated construction noise impacts are set out in Table 10.7 of the EIAR, and refers to daytime noise as a result of concreting, and nighttime noise levels as a result of slip form and powerfloating. I note in particular that impacts from the slip form process exceed night time noise level recommendations by a large degree. The EIAR describes these impacts as major. This, combined with the fact that this process can take several weeks continuously, would result in significant adverse impacts, albeit it for a short term. The EIAR refers to the potential for further mitigation measures to be considered, such as the use of local screening around the slip form rig. I consider that the use of this should have been modelled also, to give an indication of the potential level of noise reduction that could be achieved utilising such a measure. While it has not been confirmed that this process is in fact to be used, I consider that a detailed condition requiring amended noise modelling to be submitted, which includes the use of additional mitigation measures, so as to reduce the impacts on the nearest noise sensitive receptors.
- 10.1.59. Other exceedances result from the power floating technique, but are not as significant as above, and are described as medium magnitude exceedances within the EIAR, and affect those blocks facing onto Mayor Street Upper and North Wall Avenue. Predicted impacts are considered minor due to the limited duration of this process and that impacts are reduced as the floors exceed surrounding floor levels.
- 10.1.60. Impacts from traffic noise during construction are not considered to be significant.
- 10.1.61. Subject to the condition as suggested above, I am satisfied that the identified impacts would be avoided, managed and mitigated by the measures which form part of proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of noise and vibration.

### Material Assets - Waste

10.1.62. Chapter 11 refers to Waste Management. Potential impacts at construction phase include the generation of non-hazardous and hazardous waste materials during demolition, excavation and construction. It is noted that there will be limited or no opportunities for the reuse of excavated material on site (approx 600,000 tonnes of soil and stones) and it will be removed from the site. Correct handling of potentially contaminated material is cited as being necessary. It is concluded that, the potential effect of construction waste generated from the proposed development is considered to be short-term, not significant and neutral. At operational phase it is concluded that the potential effect is long-term, not significant and neutral.

10.1.63. Mitigation measures are set out in Section 11.6 of the EIAR. At construction stage, the Construction Management Plan will ensure effective waste management and minimisation. A copy of the Outline Construction Management Plan is included in Appendix 11.A.1 of the EIAR and a Draft Operational Waste Management Plan is included in Appendix 11.A.2 of the EIAR. Adherence to the Operational Waste Management Plan is proposed at operational stage. During the construction phase, predicted impacts, after mitigation, will be short-term, neutral and imperceptible. During the operational phase, the predicted impact of the operational phase on the environment will be short-term, neutral and imperceptible. I generally concur with the conclusions above, save for the operational phase impact being long-term rather than short term. Subject to conditions, and specifically conditions in relation to the appropriate disposal of hazardous waste material at construction stage, I am satisfied the proposal would not have any unacceptable impacts in terms of waste management.

### Material Assets - Traffic and Transportation

10.1.64. Chapter 12 of the EIAR refers to Traffic and Transportation. I have also had regard to other relevant information as related to Traffic and Transport, including the Traffic Impact Assessment (TIA) and the Mobility Management Plan Framework (MMP), the submission from Dublin City Council, Prescribed bodies including the NTA, as well as Observer submissions.

Accessibility

10.1.65. I have considered the accessibility of the site in detail in Section 12.5 of this report, and in summary the site is very well served by existing and proposed public transport infrastructure, as well as by existing and proposed cycle infrastructure. It is within walking distance to a wide range of amenities and services.

#### Road proposals

10.1.66. Section 3.4 of the TIA sets out proposed local infrastructure improvements in the immediate area of the site. It is noted that the current Dublin City Development Plan includes as specific objectives the provision of two no. new pedestrian and cyclist bridges across the River Liffey between the Samuel Beckett and Tom Clarke Bridges, with one of the bridges following the line of Castleforbes Road. The Development Plan also proposes a new road bridge across the mouth of the River Dodder, connecting Sir John Rogerson's Quay Directly towards Ringsend. The North Lotts and Grand Canal Dock Planning Scheme 2014 includes the provision of new north-south access roads through Blocks 2 and 7 of the North Lotts and Grand Canal Dock Strategic Development Zone; these will connect Sheriff Street Upper, Mayor Street Upper, and North Wall Quay. Previously granted applications for development within these blocks (refs. DSDZ3367/15 and DSDZ3368/15) incorporated these planned roads.

#### Access

10.1.67. Vehicular access to the proposed development is via a priority controlled junction on North Wall Avenue, on the eastern boundary of the development site. There are 3 no. basement levels, with all car and motorcycle car parking at level -3. Cycle storage will be at level -1. Sufficient sightlines in excess of 25m in both directions have been achieved at the entrance to the ramp access.

#### Car and Cycle Parking

10.1.68. Section 6.1 of the TIA sets out the overall car parking provision within the development. A total of 176 no. car parking spaces are proposed for the residential element, located at basement level -3. No parking is allocated for the commercial, retail, crèche or other uses proposed within the scheme. The maximum car parking provision is set out in the Dublin City Development Plan 2016-2022. For proposed development a maximum of 1,014 spaces is set out. Objective MV8 of the Planning Scheme refers to the car parking standards as set out in the Development Plan.

Section 4.4.4.3 of the Planning Scheme states that new residential development should have sufficient off-street car parking for residents, in order to address the need for car storage.

10.1.69. Reference is made to the provisions of the Development Plan and to relevant Section 28 Guidance. It is also set out that car ownership rates in the surrounding area are low and this supports a minimal provision of car parking in this instance.

10.1.70. The Development Plan sets out, in relation to residential car parking in apartment developments, that car parking standards are maximum in nature and may be reduced in specific, mainly inner city locations where it is demonstrated that other modes of transport are sufficient for the needs of residents. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018, seek to reduce car parking standards in central /accessible urban locations sites, such as this one.

10.1.71. In relation to the proposed car parking provision, I note the Planning Authority have not objected to the quantum of parking that has been provided, although details are sought in relation to the management of same. I consider the overall quantum of parking is acceptable having regard to the highly accessible nature of the site to existing and proposed Public Transport routes, as well to existing and proposed cycle and pedestrian routes.

10.1.72. In relation to management of the spaces, all car parking spaces within the development (including the 10no. accessible spaces) shall be controlled by the development's Management Company. Parking spaces are not proposed to be assigned to individual apartment units; spaces shall instead be allocated and/or leased to residents on the basis of availability and need, by means of a permit/lottery system, in order to optimise the use of parking spaces. Additional details can be sought in relation to same, by way of condition.

10.1.73. 10 no accessible spaces are proposed, which exceeds the requirement for 5% of overall parking provision to be accessible.

#### Cycle Parking

10.1.74. A total of 1,639 secure cycle spaces are provided at lower ground floor, accessed via internal lifts. 84 no. publically accessible cycle spaces are also proposed, designed to cater for visitor and staff parking for all aspects of the scheme. This provision is

well in excess of the minimum parking provision of 1,057 cycle spaces (1,005 for residential and 52 for other uses) Development Plan (Table 16.2 refers).

#### Impact on the Surrounding Road Network

10.1.75. Section 12.2.1 of the EIAR refers to a traffic survey carried out on 10<sup>th</sup> April 2019.

The surveyed traffic flows were then scaled up using TII growth factors to obtain background traffic flows for the baseline year of 2020. I assume, but it is not stated, that surveys were not carried out in 2020 due to Covid-19 restrictions. It is accepted that traffic surveys during the restrictive travel periods associated with Covid-19 would not provide a reliable data source as it is noted that traffic movement was reduced by c.70% during this time (CSO datasource).

10.1.76. In terms of trip generation total vehicular trips at AM peak period is 103 and 149 at PM Peak (as per Table 12.2 of the EIAR). Predicted trip generation rates are set out for permitted development in the area, and for the proposed development (at application stage with DCC) on the remaining areas of City Block 9.

10.1.77. In terms of the existing situation, the EIAR sets out that the 5 existing junctions that were surveyed and modelled were currently operating within the effective capacities. In terms of potential impacts of the proposed development, it is expected that, during construction phase, the subject development is likely to result in a short-term slight adverse impacts on the operational efficiency of the 5 no. junctions assessed. At operational stage, the modelling indicates that the 5 No. existing junctions that were surveyed and modelled will continue to operate well within their effective capacities on all approaches during the AM and PM peak hour periods past the year 2038, with the proposed development in place, although there is an increase of up to 17 seconds in mean vehicle delay on any junction approach. Therefore it is concluded that the subject development is likely to result in a long-term, slight adverse impact on the 5 modelled junctions, as compared to the baseline scenario, which may be offset to a degree by any future measures to reduce local vehicular traffic volumes. Mitigation and monitoring measures are set out in Section 12.6 of the EIAR and include adherence to a Construction Management Plan (CMP) at construction stage. At operational stage, it is noted that the development incorporate design elements including a reduced car parking and a high provision of secure bicycle parking. Reference is also made to the submitted Mobility Management Plan (MMP)

Framework Document which sets out that the site is well served by existing and future public transport infrastructure, is located close to amenities and employment locations and is within a 20 minute walk of O'Connell Bridge. The residual impact is as described above (a long-term, slight adverse impact on the 5 modelled junctions).

10.1.78. I note the submission of the Planning Authority to the impacts of the surrounding road network, and Recommended Reason for refusal No. 4 relates to same. This sets out concerns specifically in relation to the servicing requirement of the proposal, and the impact on the local road network, with resulting vehicular and pedestrian conflicts. In relation to same Section 7.4 of the applicant's TIA refers to servicing, and it is stated that servicing of the proposed development – such as deliveries and waste collection – shall be conducted using existing and permitted loading bay facilities on surrounding streets (including a permitted loading bay on Castleforbes Road) as well as at basement level within the development. There is little additional detail providing in relation to servicing, and I share the concerns of the Planning Authority in relation to the potential impact of service vehicles on the road network. However, I consider that a condition can be imposed requiring that servicing of the development, including commercial and residential deliveries, to take place at basement level, removing the potential for adverse impacts at street level. This is suggested as an option within the submission from the NTA.

#### Solar Glare and Traffic Safety

10.1.79. I have had regard to the Solar Glare Study submitted by the applicant, and this report considered impacts of solar glare on road users. No significant impacts on road safety are highlighted and impacts are considered to be minor. No mitigation is required in this regard. I concur with the conclusions of same and I am satisfied that solar glare will not lead to any adverse impacts on road traffic.

#### Conclusion

10.1.80. Having regard to the above, and subject to conditions, I am satisfied that the impacts on the surrounding road network will be limited, having regard to the conclusions of the TIA, the reduced level of car parking provision, the availability of existing and planned public transport services, the existing and proposed cycle and pedestrian network and the provisions of the Mobility Management Framework Plan.

#### Material Assets – Site Services



- 10.1.81. Chapter 13 refers to Material Assets – Site Services. This chapter considers Surface Water Drainage, Foul Drainage, Water Supply, Gas, Power and Telecoms. Potential impacts from the development include potential contamination of surface water at construction stage. At operational stage potential blockages, contaminated surface run-off and accidental spillage are highlighted as potential impacts. Potential blockages of the foul system are also identified as potential impacts during the operational stage.
- 10.1.82. I note from the outset that no assessment on the impact on telecommunication channels has been included with the application (generally referred to as a Telecommunications Assessment) nor is the impact of same discussed in the EIAR. This has also been highlighted by an observer on the application who note the existence of antenna on the building to the immediate north of the site and extant permissions for further antennae on same. I note also that this is a specific requirement of the Building Height Guidelines. I consider that this technical information should be sought by way of an oral hearing (see further discussion in Section 12.9 of this report in relation to other matters recommended to be heard at an oral hearing)
- 10.1.83. Mitigation measures are set out in Section 13.5.1 and include the development of an Environmental Management Plan and other measures to prevent surface water contamination or run-off of contaminated surface water, during the construction phase. During the operational phase, flow control devices and storm water attenuation measures are cited, as well as SuDs proposals. Removal of the surface water from the existing combined sewers will reduce the hydraulic loading on the existing sewerage network and Waste Water Treatment Plan at Ringsend. It is stated that implementation of the above measures will mitigate any significant long-term adverse impact.
- 10.1.84. 'Predicted' Impacts are set out in Section 13.6 of the EIAR (In relation to same, it is likely that this is a typo and it should refer to 'Potential' Impacts). It is noted that surface water runoff during construction would be discharged to Irish Water's combined sewerage network. In relation to same, I noted that is some discrepancy in the documentation in relation to the location of this connection (the Screening Report and NIS states that it is on Castleforbes Road, while the EIAR refers to both Castleforbes Road and Mayor Street) and this has been raised as a concern by the

Drainage Division of DCC. However, I am satisfied that this discrepancy is not fundamental, and it accepted that surface water will be discharged to the existing combined sewer system and details of the final connection point, including details of agreement with Irish Water and the Planning Authority, where appropriate, can be achieved by way of condition, should the Board be minded to grant permission.

10.1.85. It is noted that the potential for combined sewer overflows present a residual risk that untreated surface water from the construction site would enter the Liffey Estuary. Surface water from the site could contain increased silt levels as well as pollutants and heavy siltation or grit in the surface water runoff would lead to maintenance issues for the receiving gravity sewerage network and at Mayor Street Pumping Station. In the absence of mitigation, these potential impacts would be adverse, significant and temporary. In relation to potential impacts on foul water, discharge from the excavated areas could potentially lead to siltation, surcharge and flooding within the sewerage system and effluent from the welfare facilities could potentially lead to pollution of watercourses and flooding within the sewerage system. In the absence of mitigation measures, these potential impacts are considered to be adverse, significant and temporary.

10.1.86. At operational phase, no significant impacts are expected. Specifically in relation to foul water, it is noted that the proposed layout and loading were vetted by Irish Water who deemed the local network, subject to up-grades, could accept the increased volumes.

10.1.87. Section 13.5 sets out mitigation measures. In relation to water, measures at construction phase include the development of an Environmental Management Plan as well as measures to prevent surface water contamination. At operational phase, these include measures to improve the quality of any surface water discharge, as well as flow control and attenuation devices.

10.1.88. I note Inland Fisheries Ireland have raised concern in relation to capacity issues at Ringsend WWTP. Irish Water has not raised any issues as relates the capacity of surrounding foul water infrastructure or in relation to the capacity of the Ringsend WWTP. In this regard I note upgrade works have commenced on the Ringsend Wastewater Treatment works extension permitted under ABP – PL.29N.YA0010 in

order to facilitate increased capacity and will be completed in 2023, which is ahead of the expected completion date of this project.

10.1.89. I am satisfied that any identified impacts would be avoided, managed and mitigated by the measures which form part of proposed scheme, the proposed mitigation measures and through suitable conditions. In relation to foul water, I am satisfied the additional load is relatively small compared to the volume treated at Ringsend WWTP and would have an insignificant impact, and I have regard to the upgrade works to increase capacity at the Ringsend WWTP. I note also that Irish Water have not raised any concern in relation to the foul water proposals.

10.1.90. In conclusion therefore, I am therefore satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of material assets, as relates to Surface Water Drainage, Foul Drainage, Water Supply, Gas, Power. I have set out my concerns in relation to the issue of Telecommunications above, and considered that insufficient information has been submitted to arrive at a conclusion of no impact.

#### Cultural Heritage including Archaeology

10.1.91. Chapter 14 refers to Cultural Heritage. This considers the impact on archaeological, and cultural heritage resources. It is noted that the southern limit of the site is located adjacent to the zone of archaeological potential for Dublin City, which is a recorded monument (DU018-020). The zone extends along North Wall Quay which contains one sub-constraint, the quay itself (DU018-020564).

10.1.92. It is noted that that archaeological monitoring of excavations associated with a permitted basement within the proposed development area is currently ongoing (October 2020) (Planning Ref.: DSDZ3042/19). To date, no features of archaeological significance have been identified. The EIAR sets out in detail the findings of other archaeological investigations in the surrounding area.

10.1.93. Section 14.3.4 sets out the provisions of the Development Plan. It is noted that there are 4 no. recorded monuments with 250m of the proposed development, and include the following:

10.1.94. It is also noted that the site previously contained a packing case factory and a saw mill, as per the Dublin City Industrial Heritage Record. No specific cultural heritage sites were identified (as defined in the EIAR). It is noted that the aerial photographic

coverage of the site and the site inspection failed to identify any previously unknown archaeological and cultural heritage features within the site. All post medieval structures have been removed and the site was covered by a concrete slab until the commencement of enabling works.

10.1.95. Potential impacts are set out in Section 14.4 of the EIAR. It is noted that Archaeological monitoring of excavations associated with a permitted basement within the proposed development area is currently ongoing (October 2020) (Planning Ref.: DSDZ3042/19) under licence 19E0436. As such, any archaeological remains that may be present will be identified and mitigated as part of the existing permission. Therefore, no negative impacts are predicted upon the archaeological resource as a result of the construction of the development. In relation to impacts on archaeological and cultural heritage I am satisfied the appropriate conditions will be sufficient to ensure impacts are limited.

10.1.96. In relation to architectural heritage, I have set out my assessment of these matters in Section 12.5 below.

### **Volume 2 - Landscape and Visual Impacts**

10.1.97. Volume 2 of the EIAR refers to Heritage, Townscape, Landscape and Visual Impact Assessment (HTLVIA). I note the ABP reference number on same refers to 306158-19 (which is the pre-application reference number). The Assessment is dated January 2021 however.

10.1.98. The documents includes an assessment of: the townscape/landscape character of the area; the design quality of the proposed development; the likely effects on the significance of nearby conservation areas, architectural conservation areas and protected structures, in relation to the requirements of relevant planning policy and guidance. In addition, standalone chapters are provided assessing the rationale for a tall building at City Block 9 and the proposed development's effects on Georgian Dublin in order to provide an assessment for the approach to acceptable heights.

10.1.99. A total of 54 verified views are assessed, 48 of which have been photo-realistically rendered to give a qualitative impression of likely effects. The HTLVIA provides commentary on effects on built heritage, townscape and landscape effects and, visual effects.

10.1.100. Chapter 3 of the HTLVIA sets out the historical development of the site and the study area context. It is noted that the quayside area of the site lies partially within the conservation area set out in the Dublin City Development Plan. Fig 3.28 illustrates the location of protected structures and NIAH registered buildings in the vicinity of the site. Chapter 4 sets out a description of the development site and the current context. Chapter 5 refers to 'Cumulative Development' and refers to developments that have been permitted and/or under construction and these have been tested for their visibility in the verified views and Fig. 5.1 shows the location of these developments in the context of the site. Chapter 6 describes the proposed development in detail. Chapter 6 also assesses the proposal against design policy and guidance and reference is made to the NPF, the Urban Development and Building Heights Guidelines, the Dublin City Development Plan. Paras 6.43 and 6.48 discuss the implications of the proposal for Dublin's skyline, and reference is made to other taller buildings previously proposed or permitted.

10.1.101. Verified views of the proposed development are considered in Chapter 12 of the HTLVIA. Cumulative effects owing to interaction between the proposed development and other relevant proposals have also been assessed. I have considered the contents of Volume 2 in detail in Section 12.5 of this report and I refer the Board to same.

10.1.102. While CGIs, and verified views assist in the assessment, the proposal has been assessed on the basis of scaled drawings submitted.

#### Interactions

10.1.103. Chapter 15 of the EIAR considers interactions. These interactions are also referred to in the various chapters of the EIAR. I have considered the interrelationships between factors and whether these might as a whole affect the environment, even though the effects may be acceptable on an individual basis. Having considered the mitigation measures in place, no residual risk of significant negative interaction between any of the other disciplines was identified and no further mitigation measures were identified.

#### Cumulative Impacts

10.1.104. Cumulative effects are considered within each individual chapter of the EIAR and no significant adverse cumulative impacts are identified. In relation to same, the

project of particular note that may have cumulative effects is the concurrent application for a commercial development on the adjacent site (the remainder of City Block 9). Where relevant, the EIAR has considered the cumulative impact of same (e.g. in relation to Air and Climate, Transport Impacts, Biodiversity and Noise) and no significant adverse effects are identified. The remainder of the North Lotts and Grand Canal Dock Area is largely built out and this is one of the few brownfield sites in the area. As such the cumulative impacts of other projects in the surrounding area is not likely to be significant. It is therefore concluded that the culmination of effects from the planned and permitted development and that currently proposed would not be likely to give rise to significant effects on the environment other than those that have been described in the EIAR and considered in this EIA.

10.1.105. In conclusion, I am satisfied that effects arising can be avoided, managed and mitigated by the measures which form part of the proposed development, mitigation measures, and suitable conditions. There is, therefore, nothing to prevent the granting of permission on the grounds of cumulative effects.

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

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

10.1.107. A positive impact with regard to population due to the increase in the housing stock that would be available in the area. Furthermore, an increased population will help to support future and existing services.

10.1.108. The proposed development is not likely to have adverse effects on population and human health.

10.1.109. I have considered Landscape and Visual Impacts in Section 12.5 of this report and have set out therein a detailed assessment of same. In summary, where one minor adverse effect has been recorded, resulting from the visibility of the proposal above Regents House, Trinity College, from a particular viewpoint on Dame Street, In relation to this particular view, I have considered the visibility of the proposal over

the roofline of Regent's House, and I have also have regard to the distance of the proposed development from the façade of a Regent's House, which is approximately 1.8km, and I concur with the conclusion that the residual effect is minor and adverse. However, I have concluded that given the general suitability of the site for a taller building, and the delivery of wider planning aims, including the provision of housing and urban regeneration, the overall effect on visual amenity is considered acceptable. The proposed development is not likely to have any other adverse effects, having regard to landscape and visual impacts.

- 10.1.110. Traffic and transportation impacts: These will be mitigated by the location of the site within walking and cycling distance of a wide range of amenities and services, by the reduced level of car parking and by the availability of a wide range public transport services.
- 10.1.111. In relation to water, surface water and foul water, impacts are proposed to be mitigated by construction management measures and operational phase measures.
- 10.1.112. Potential effects arising from noise and vibration during construction which will be mitigated by appropriate management measures.
- 10.1.113. Biodiversity impacts will be mitigated on the subject site by a range of measures identified in the EIAR, including construction management measures, landscaping, and the provision of bat and bird boxes, although I have noted the limitations of the proposed bat boxes, in terms of their suitability, and note that the bird boxes are only of value to swifts. However, I have concluded that residual impacts on biodiversity will be long-term and neutral.
- 10.1.114. Impacts on air quality and climate which will be mitigated by measures set out in the EIAR.
- 10.1.115. Having regard to the above, the likely significant environmental effects arising as a consequence of the proposed development have been satisfactorily identified, described and assessed and I consider that the EIAR is compliant with Article 94 of the Planning and Development Regulations, 2001, as amended.

## 11.0 Appropriate Assessment

- 11.1.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section.

### The Project and Its Characteristics

- 11.1.2. See the detailed description of the proposed development in section 2.0 above.

### Compliance with Article 6(3) of the Habitats Directive

- 11.1.3. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

- 11.1.4. This section of the report considers the likely significant effects of the proposal on European sites with each of the potential significant effects assessed in respect of each of the Natura 2000 sites considered to be at risk and the significance of same. The assessment is based on the submitted Appropriate Assessment (AA) Screening and Natura Impact Statement (NIS) for SHD Application, prepared by ERM (dated 19<sup>th</sup> November 2020).

- 11.1.5. The DUA (DAU (NPWS)) and IFI have made comments on matters relating to Appropriate Assessment. In summary the DAU (NPWS) raise concerns in relation to the lack of commentary on potential bird strike although conditions are recommended to overcome same. The submission also states that the measures set out in the NIS, if effectively implemented, should prevent pollution of run-off and any negative impacts on the downriver Dublin Bay Natura sites. The IFI have suggested



conditions in relation to the construction and operational stages and have highlighted capacity issues at Ringsend WWTP. I have addressed all of these matters within the assessment below.

- 11.1.6. I have had regard to Observer comments as relates to Appropriate Assessment and concerns have been raised in relation to the lack of an assessment of bird strike.
- 11.1.7. Section 2.1 of Screening Report and NIS sets out a description of the site and its context. Of note is that the site has historically been used as timber treatment and manufacturing prior during the 1800's, and for commercial and light industrial processes more recently. Habitats comprise bare ground and reclaimed bare ground. The site is c. 30m north of the River Liffey. The water quality status for the River Liffey at this location is classified by the EPA as 'unpolluted'. The River Liffey connects to the Liffey Estuary and wider Dublin Bay Area. Approx 250 m to the south east of the site the Dodder River flows into the River Liffey.
- 11.1.8. Section 2.2 of the Screening Report and NIS refers to a number of other technical assessments which the Screening Report and NIS have relied on, in order to provide an informed assessment of the potential impact pathways. These assessments include the Hydrological Impact Assessment, the Generic Quantitative Risk Assessment, the Engineering Services Report and the Site Specific Flood Risk Assessment. It is stated that these technical assessments have also been utilised to prepare an appropriate Construction Management Plan.
- 11.1.9. In terms of underlying ground conditions, investigations show that the site is layer of made ground overlying a silt layer, which in turn is underlain by a thick sequence of gravels and sands overlying a boulder clay layer and bedrock in excess of 16m below ground level. Reference is made to the Hydrological Impact Assessment which concludes that it is unlikely that significant diversion of groundwater flow paths will occur, as the main groundwater body for this area is within the underlying limestone bedrock aquifer which will not be impacted by the building development or operational phase of works. It is stated that these results suggest that the proposed development is not likely to result in any groundwater pathways. It is also stated that there is no evidence for a complete pollutant linkage has been identified between shallow groundwater contaminant concentrations on-site and the River Liffey. As

such it is concluded that there are no anticipated direct or indirect groundwater pathways between the Proposed Development and the European sites.

11.1.10. In terms of site services, foul effluent is proposed to be discharged to the existing 300mm diameter foul sewer on North Wall Avenue via a new connection to existing networks through to Ringsend WWTP. Foul waters generated in the basement would be pumped via a rising main to the external gravity network and on to Ringsend WWTP.

11.1.11. In relation to storm water, attenuation is proposed on site, with additional capacity to account for climate change and in case of a high tide/extreme storm event. Flow from the development is restricted to 2.0/s by way of a flow control device. SuDS elements are proposed including the use of green roofs and low water usage devices. It is proposed to connect to the existing combined sewer system. While there is some discrepancy in the documentation in relation to the location of this connection (the Screening Report and NIS states that it is on Castleforbes Road, while the EIAR refers to both Castleforbes Road and Mayor Street), and this has been raised as a concern by the Drainage Division of DCC. However, I am satisfied that this discrepancy is not fundamental, and it accepted that surface water will be discharged to the existing combined sewer system and details of the final connection point, including details of agreement with Irish Water and the Planning Authority, where appropriate, can be achieved by way of condition, should the Board be minded to grant permission.

11.1.12. Section 2.2.3 sets out the construction methodology, and the proposed development is to be completed in one phase, expected to last 4 years, commencing in Q4 2021. Details of the methodology for the sub-structure and super-structure is set out, which is to be in accordance with the Construction Management Plan.

11.1.13. Chapter 5 of the Screening Report and NIS sets out the Screening Stage and a potential zone of influence is firstly determined utilising a 15km buffer. A total of 17 sites are identified.

11.1.14. Section 6.1 notes there is no directly hydrological connection to the Natura 2000 sites. However an indirect connection to the Dublin Bay Natura 2000 sites via the surface water network to the River Liffey and foul networks via Ringsend WWTP. I note that such a connection is, in fact, to the Lower Liffey Estuary, which is where

the Ringsend WWTP currently discharges treated wastewater. Only the below sites are considered for further screening in the report.

- South Dublin Bay SAC (000210);
- North Dublin Bay SAC (000206);
- South Dublin Bay and River Tolka Estuary SPA (004024); and
- North Bull Island SPA (004006).

11.1.15. The remaining sites have no hydrological connection or other pathway to the Proposed Development and have been screened out at this stage.

11.1.16. Relevant details are in relation to the above 4 no. sites is set out below.

<b>European Site Name (Site Code)</b>	<b>Approximate Distance from proposed development (km)</b>	<b>Conservation Objectives and qualifying features of interest</b>
South Dublin Bay SAC (000210)	1.8km south-east	<p>Conservation Objectives:</p> <p>To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide in South Dublin Bay SAC, which is defined by the following list of targets:</p> <p>The permanent habitat area is stable or increasing, subject to natural processes.</p> <p>Maintain the extent of the Zostera – dominated community, subject to natural processes. Conserve the high quality of the Zostera –dominated</p>

		<p>community, subject to natural processes.</p> <p>Conserve the following community type in a natural condition: Fine sands with <i>Angulus tenuis</i> community complex.</p> <p>Feature of Interest:</p> <p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1210 Annual vegetation of drift lines</p> <p>1310 <i>Salicornia</i> and other annuals colonising mud and sand</p> <p>2110 Embryonic shifting dunes</p>
North Dublin Bay SAC (000206)	3.5km north-east	<p>Conservation Objectives:</p> <p>To maintain or restore the favourable conservation condition of the Annex I habitat(s) and / or the Annex II species for which the SAC has been selected.</p> <p>Features of Interest:</p> <p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1210 Annual vegetation of drift lines</p> <p>1310 <i>Salicornia</i> and other annuals colonising mud and sand</p> <p>1330 Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>)1395 Petalwort (<i>Petalophyllum ralfsii</i>)</p>

		<p>1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</p> <p>2110 Embryonic shifting dunes</p> <p>2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i></p> <p>2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)</p> <p>2190 Humid dune slacks</p>
<p>South Dublin Bay and River Tolka Estuary SPA (004024)</p>	<p>1.2km south-east</p>	<p>Conservation Objectives</p> <p>To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.</p> <p>Features of Interest:</p> <p>A046 Light-bellied Brent Goose (<i>Branta bernicla hrota</i>)</p> <p>A130 Oystercatcher (<i>Haematopus ostralegus</i>)</p> <p>A137 Ringed Plover (<i>Charadrius hiaticula</i>)</p> <p>A141 Grey Plover (<i>Pluvialis squatarola</i>)</p> <p>A143 Knot (<i>Calidris canutus</i>)</p> <p>A144 Sanderling (<i>Calidris alba</i>)</p> <p>A149 Dunlin (<i>Calidris alpina</i>)</p> <p>A157 Bar-tailed Godwit (<i>Limosa lapponica</i>)</p> <p>A162 Redshank (<i>Tringa totanus</i>)</p>

		<p>A179 Black-headed Gull (<i>Chroicocephalus ridibundus</i>)</p> <p>A192 Roseate Tern (<i>Sterna dougallii</i>)</p> <p>A193 Common Tern (<i>Sterna hirundo</i>)</p> <p>A194 Arctic Tern (<i>Sterna paradisaea</i>)</p>
North Bull Island SPA	3.6km north-east	<p>Conservation Objective:</p> <p>The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level.</p> <p>Features of Interest:</p> <p>A999 Wetlands</p> <p>A046 Light-bellied Brent Goose (<i>Branta bernicla hrota</i>)</p> <p>A048 Shelduck (<i>Tadorna tadorna</i>)</p> <p>A052 Teal (<i>Anas crecca</i>)</p> <p>A054 Pintail (<i>Anas acuta</i>)</p> <p>A056 Shoveler (<i>Anas clypeata</i>)</p> <p>A130 Oystercatcher (<i>Haematopus ostralegus</i>)</p> <p>A140 Golden Plover (<i>Pluvialis apricaria</i>)</p> <p>A141 Grey Plover (<i>Pluvialis squatarola</i>)</p> <p>A143 Knot (<i>Calidris canutus</i>)</p>

		A144 Sanderling ( <i>Calidris alba</i> ) A149 Dunlin ( <i>Calidris alpina alpina</i> ) A156 Black-tailed Godwit ( <i>Limosa limosa</i> ) A157 Bar-tailed Godwit ( <i>Limosa lapponica</i> ) A160 Curlew ( <i>Numenius arquata</i> ) A162 Redshank ( <i>Tringa tetanus</i> ) A169 Turnstone ( <i>Arenaria interpres</i> ) A179 Black-headed Gull ( <i>Chroicocephalus ridibundus</i> )
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11.1.17. Table 6.1 sets out an Assessment of Likely Significant Effects. Given contamination has been recorded on site, and there is an indirect connection to the River Liffey via surface water drainage into the Ringsend Waste Water Treatment Plant during construction. Under the precautionary principle there is potential for impact on features of interest without the use of additional measures. These impacts relate to 'potential degradation to aquatic habitat due to accidental pollution and/or siltation' (in relation to South Dublin Bay SAC and North Dublin Bay SAC, and North Bull Island SPA) and are also related to potential 'modification of habitats due to hydrological change' (in relation to South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA).

11.1.18. The report concludes that, in the absence of additional measures as set out in the report, there will be likely significant effects (LSE) on the South Dublin Bay SAC (000210), North Dublin Bay SAC (000206), South Dublin Bay and River Tolka Estuary SPA (004024) and North Bull Island SPA (004006) as a result.

11.1.19. The report does not consider the potential likelihood or otherwise of bird mortality due to bird strike at operational stage, and this has been raised as a concern by both the DAU (NPWS) and by a number of observers on the application. This is listed as a potential impact in Section 5.2 of the report (accidental mortality due to collision

with project infrastructure) but there is little discussion of same within Table 6.1 or in any other sections of the report. There is some discussion of 'potential barrier effects as a result of the presence of infrastructure' but impacts are ruled out as the proposed development was not considered to be a significant barrier to the movement of bird species of qualifying interest associated with South Dublin Bay and River Tolka Estuary SPA (004024) and North Bull Island SPA (004006). 'Accidental mortality due to construction works and operation' is highlighted a potential impact but is ruled out as the proposed development does not physically overlap the SPAs (South Dublin Bay and River Tolka Estuary SPA (004024) and North Bull Island SPA) and no construction activity is proposed within their boundaries.

11.1.20. As noted in Section 10 of this report, the submission of the DAU (NPWS) also raises the issue of potential bird strike at operational stage, and the lack of consideration of same within the NIS. The use of the River Liffey as a wildlife corridor, as referenced within the EIAR, and reports of bird strikes on the Samuel Beckett Bridge, as referred to by the DAU (NPWS), means that likely significant effects on the bird species of qualifying interests associated with the South Dublin Bay and River Tolka Estuary SPA (004024), located 1.2km south-east of this site, and with the North Bull Island SPA (004006) SPA, located 3.6km north-east of this site, cannot be ruled out. As such this issue requires further consideration at Stage 2 - Appropriate Assessment stage.

Cumulative impacts with other proposed/existing developments

11.1.21. Section 6.3 considers 'In-Combination' impacts and refers to projects that are adjacent to the development and are listed in Table 6.2. It is stated that the developments in Table 6.2 have undergone an AA screening and it was concluded that the development was not likely to have significant effects either alone or in combination with other plans. Cumulative impacts as a result of foul water discharges are ruled out for a number of reasons including the lack of proven link between WWTP discharges and nutrient enrichments of sediments in Dublin Bay, that enriched water entering Dublin Bay has been shown to rapidly mix and become diluted such that the plume is often indistinguishable from the rest of bay water, that marine modelling for Ringsend WWTP indicates that discharged effluent is rapidly mixed and dispersed to low levels via tidal mixing within a short distance of the



outfall pipe and recent modelling of water quality in Dublin Bay for the Ringsend WWTP Upgrade Project demonstrates that the effects of nutrients from Ringsend WWTP are largely confined to the area between the South Wall and the Tolka Estuary. Various scientific studies are referenced in support of these conclusions.

#### AA Screening Conclusion

11.1.22. In terms of the sites with the potential to be impacted, I generally concur with the conclusions of the Screening Report, in that the only Natura 2000 sites where there is potential for likely significant effects are the South Dublin Bay SAC, the North Dublin Bay SAC, the South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA for the reasons set out above.

#### **Stage 2 – Appropriate Assessment**

11.1.23. Section 8 of the report contains the Natural Impact Statement (NIS). Section 8.2 sets out a detailed description of the South Dublin Bay SAC, the North Dublin Bay SAC the South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA is set out, including a description of the qualifying habitats and species of same, with reference to the detailed information on same as found on the DAU (NPWS) website, including the site synopsis for each site.

11.1.24. The Qualifying Interests/Special Conservation Interests of the South Dublin Bay SAC, the North Dublin Bay SAC the South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA are outlined in Table 1 above.

11.1.25. Site specific conservation objectives (SSCOs) for the QIs of South Dublin Bay SAC and North Dublin Bay SAC or the special conservation interests (SCIs) of South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA are as set out in Table 1 above. The current conservation status of the qualifying interests are summarised in Table 8.1 of the NIS.

11.1.26. A detailed consideration of the potential effects on the above Natura 2000 sites is set out in Section 8.4 of the NIS. These include the following:

- clearance of contaminated materials from during the construction of the basement levels/from contaminated surface water runoff from the site during clearance, that may contain mobilised contamination, pollution or silt;

- pollution on site or in adjacent surface water networks and the River Liffey due to the use of plant and machinery/storage of fuel/oils and chemicals
- storage of topsoil or works on onsite, in the vicinity of the River Liffey, could lead to dust, contamination, soil or silt laden runoff entering the adjacent watercourse; surface water runoff on site during construction or operation may lead to silt or contaminated materials from site entering the River Liffey;
- concrete, silt or pollution could enter watercourses during dewatering of foundations or drainage trenches, if required during construction;
- breaking of concrete (associated with hardstanding demolition) with the potential to emit noise and alkaline dust into the receiving environment; and
- if on-site concrete production is required or cement works are carried out in the vicinity of watercourses there is potential for contamination of watercourses.

11.1.27. As noted above there is no discussion of potential birdstrike, at both construction and operational stages, and associated bird mortality. I have considered this issue in detail below. A number of the potential effects identified in Section 8.4 are not specifically related to the identified contamination on the site, i.e. breaking of concrete and on site concrete production, and I consider that such potential effects could be dealt with utilising best practice construction measures, which are not designed to ameliorate effects on any European Sites. In any case I note that these impacts are not highlighted as a concern at screening stage and in my view should not be included at Stage 2.

11.1.28. Table 8.2 'Assessment of effects on the Integrity of the European Sites' considers potential effects in the context of the conservation objectives' attributes "population trend" and "distribution" and their specific targets for each QI and SCI of the relevant European sites.

11.1.29. In relation to the South Dublin Bay SAC, it is noted that the proposed development is approximately 1.8km north-west of the SAC. It is generally concluded that that due to the distance of the site from the relevant habitats of conservation interest, and due to the implementation of the Construction Management Plan (CMP), the level of sediments, dust and pollution will be low. These factors, combined with the highly mixed estuarine environment, and the dilution and dispersal of any pollution, results

in no likely significant effects on each of the relevant conservation objectives for this SAC, and hence no likely significant effect on the integrity of this SAC. There is some discussion of the potential for invasive species within Table 8.2 which was not discussed at the Screening Stage of the report. For example, reference is made to the presence of 'Butterfly Bush' (also known as Buddleja) on the site and it is stated that this will be removed according to relevant guidelines. In this regard, I note that commencement works appear to have begun in relation to basement works on site, and conditions in relation to same are required to have been adhered to, including any conditions relating to invasive species. The Environment Division of Dublin City Council have also suggested a condition in relation to the requirement for an invasive species survey to be carried out. If the Board is minded to grant, such a condition would provide sufficient reassurance in relation to any impacts of invasive species on any natural 2000 sites, including the South Dublin Bay SAC.

11.1.30. In relation to North Dublin Bay SAC, again is generally concluded that due to the distance of the site from the relevant habitats of conservation interest, and due to the implementation of the Construction Management Plan (CMP), the level of sediments, dust and pollution will be low. These factors, combined with the highly mixed estuarine environment, and the dilution and dispersal of any pollution, results in no likely significant effects on each of the relevant conservation objectives for this SAC, and hence no likely significant effect on the integrity of this SAC. In considering impacts on 'Annual Vegetation of drift lines [1210]' and 'Embryonic shifting dunes' [2110]', 'Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]', no reference is made to the non-native species on site referred to in other section of the table, although the distance from the site to these community complexes is referred to (c5km). However, with standard conditions, were there to be any potential impacts, these can avoided in my view.

11.1.31. In relation to the South Dublin Bay and River Tolka Estuary SPA, it is noted that the proposed development is located 1.2km north of this SPA, and that construction works are over 500m from Sandymount Strand where the majority of the bird species of special conservation interest are recorded. I note that the reference to 500m is an error and the site is in fact approximately 1.6km from closest point on Sandymount Strand. It is generally concluded that there would be no effects on the relevant attributes of each bird species due to the distance from the proposed development to

the SPA, and due to the likely dilution and dispersal of any pollution emanating from the site. Impacts due to disturbance are ruled out having regard to the distance from the site to the SPA and that intervening landscape is urban and commercial in nature.

11.1.32. In relation to the North Bull Island SPA, it is noted that the proposed development is approximately 3.6km away from this SPA. Again it is concluded that there would be no effects on the relevant attributes of each bird species due to the distance from the proposed development to the SPA and due to the likely dilution and dispersal of any pollution emanating from the site. Impacts due to disturbance are ruled out having regard to the distance from the site to the SPA and that intervening landscape is urban and commercial in nature.

11.1.33. Section 8.5 sets out the additional measures to ensure no adverse effects on the integrity of European Sites and include measures relating the hydrogeology of the site, including proposals for dewatering, measures to reduce impacts on groundwater resulting from contamination, measures to reduce impacts on the River Liffey, including silt fences and dust barriers, and to reduce potential oil, fuel and chemical contamination.

11.1.34. Section 8.6 concludes that following the implementation of these measures, no significant impact on the conservation objectives or qualifying interests of Natura 2000 sites are likely. Section 8.7 sets out proposals for monitoring, as treated water during enabling and construction works will require such monitoring to ensure that the relevant water quality standards are achieved. Monitoring also includes measures to provide information on any potential groundwater mounding or lowering, although it is stated that it is unlikely that significant diversion of groundwater flow paths will occur, given that the main groundwater body for this area is within the underlying limestone bedrock aquifer which will not be impacted by the development. Section 8.8 of the NIS rules out in combination effects, and notes that other projects in the vicinity have undergone either an AA screening and/or NIS which have concluded that the development was not likely to have significant effects either alone or in-combination with other plans at the time of submission.

- 11.1.35. The NIS concludes that, with the implementation of the detailed additional measures identified within the NIS, the integrity of the European sites will not be adversely affected.
- 11.1.36. As highlighted by the DAU (NPWS), and by observers on the application, the issue of bird strike has not been considered in the NIS. As noted in Section 10 of this report, there is potential for bird strike at operational stage, given the location of the site relative to the South Dublin Bay and River Tolka Estuary SPA (004024) and the North Bull Island SPA (004006), and as reported within the EIAR, the use of the River Liffey as a wildlife corridor. The DAU (NPWS) make reference to recent reports of swans and cormorants striking the Samuel Beckett Bridge. While these are not necessarily species that are associated with the two SPAs referred to above, the potential for bird strike at operation stage, in the absence of mitigation, remains, given the height of the proposal and the large expanses of glazing. The DAU (NPWS) also refer to potential of the living wall panels to disguise the glazing, with a subsequent increase in the risk of collision. However, and as noted in Section 10 of this report, the DAU (NPWS) have considered that such impacts can be adequately dealt with by way of condition, the wording of which relates to the type of glazing and balcony treatment used in the development, including the treatment of glazing immediately surrounding the proposed living wall panels. The condition does not suggest a reduction in the extent of the living wall panels. I am satisfied the detailed condition suggested by the DAU (NPWS) will be sufficient to minimise the potential for bird strike.
- 11.1.37. I generally concur with the conclusions in the NIS, and there is no scientific evidence either on file, or within the public domain, that would warrant different conclusions. While the issue of bird strike was not considered within the NIS, the submission from the DAU (NPWS) suggest that this issue can be overcome by way of condition. Given the statutory role of the DAU (NPWS), to advise on the protection of the habitats and species identified for nature conservation, I have given their submission significant weight. As such it is my view that the omission of this issue does not fundamentally undermine the NIS and a condition in line with that suggested by the DAU (NPWS) is sufficient in this regard. In relation to the other issues identified above, including that of potential impacts from invasive species, this can again be overcome by way of relevant conditions.

## **AA determination – Conclusion**

- 11.1.38. The proposed residential development at has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.
- 11.1.39. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on European Site No. 000210 South Dublin Bay SAC; European Site No. 000206 North Dublin Bay SAC; European Site No. 004024 South Dublin Bay and River Tolka Estuary SPA; and European Site No. 000406 North Bull Island SPA.
- 11.1.40. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.
- 11.1.41. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European Site No. 000210 South Dublin Bay SAC; European Site No. 000206 North Dublin Bay SAC; European Site No. 004024 South Dublin Bay and River Tolka Estuary SPA; and European Site No. 000406 North Bull Island SPA, or any other European site, in view of the sites Conservation Objectives.

This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures and ecological monitoring in relation to the Conservation Objectives of European Site No. 000210 South Dublin Bay SAC; European Site No. 000206 North Dublin Bay SAC; European Site No. 004024 South Dublin Bay and River Tolka Estuary SPA; and European Site No. 000406 North Bull Island SPA,.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of European Site No. 000210 South Dublin Bay SAC; European Site No.

000206 North Dublin Bay SAC; European Site No. 004024 South Dublin Bay and River Tolka Estuary SPA; and European Site No. 000406 North Bull Island SPA.

## 12.0 Assessment

12.1.1. The main planning issues arising from the proposed development not already dealt with in the EIAR can be addressed under the following headings-

- Principle of Development
- Nature of the SHD Application
- Material Contravention
- Design and Layout including Density, Height and Public Realm/Visual Impact
- Residential Amenities/Residential Standards
- Surrounding Residential Amenity
- Oral hearing
- Flood Risk
- Other Issues
- Planning Authority's Recommended Reasons for Refusal

### 12.2. Principle of Development

12.2.1. The subject site is located within the North Lotts and Grand Canal Strategic Development Zone (SDZ), zoned Z14 in the City Development Plan and is located within a Strategic Development and Regeneration Area (SDRA 6 – Spencer Dock, Poolbeg and Grand Canal Dock).

12.2.2. The overarching planning policy document for the site is the North Lotts & Grand Canal Dock SDZ Planning Scheme 2014 (hereafter referred to as the Planning Scheme or scheme). In this context, I note that application to amend the current Planning Scheme was refused by the Board on 21<sup>st</sup> March 2021 (Reference: ABP-304604-19). As such the current Planning Scheme applies until such time as an amended scheme is approved by An Bord Pleanála.

12.2.3. The Planning Scheme sets out a detailed framework for the development of the SDZ and provides a development code to guide the nature and extent of development in the scheme area with both fixed and flexible elements. The scheme calculates,

based on the overall framework plan and development code (Fig. 30 & Fig. 33) that c. 1800 residential units and 200,000m<sup>2</sup> of commercial space can be accommodated on the North Lotts and c. 830 residential units plus 105,000m<sup>2</sup> commercial floor-space on the southside. The scheme states that the Development Code Map (Fig. 35 refers) provides for a range of typologies which will provide for sustainable residential densities in the range of 100-247 units per hectare (S 5.4.7 refers). The subject site is in the Point Village Hub Area (Fig. 30 refers). This site, and the adjacent site (for which there is current planning application with Dublin City Council for a predominately commercial scheme) are defined as 'City Block 9' (Fig. 30A refers). Specific Objectives for City Block 9 are set out in Section 5.5.9 and relate to the overall mix of commercial and residential uses, the provision of active ground uses, the urban form and height of development, the provision of public realm and the provision of infrastructure.

12.2.4. The Planning Authority have set out that the proposed development would not be in compliance with a number of fundamental objectives of the scheme, including, but not limited to, those relating to height, density and plot ratio. The Planning Authority's Recommended Refusal No. 1 refers to Section 5.5.9(b) of the Planning Scheme, which sets out specific height limits for the application site, and states the proposal would materially contravene the scheme. Observer submissions have stated that the proposed scheme materially contravenes the Planning Scheme having regard to the height, density and plot ratio.

12.2.5. I have assessed the overall principle of development with reference to the objectives of the Development Plan, or the Planning Scheme, where relevant below, or within the relevant sections of this report.

#### Zoning/SDRA 6

12.2.6. Under the current Dublin City Development Plan, the site has zoning objective Z14 - 'to seek the social, economic and physical development and/or rejuvenation of an area with mixed-use, of which residential and Z6 would be the predominant uses'. The proposal provides for residential uses with a creche, office and commercial uses and residential support amenities. The proposed uses are all permissible within the zoning.



12.2.7. The site is also located within an area designated as a Strategic Development and Regeneration Area (SDRA 6 – Spencer Dock, Poolbeg and Grand Canal Dock). Guiding principles for this area are set out in Section 15.1.1.6 of the Development Plan and include references to social sustainability, placemaking, integration of development, public realm and creation of community, protection of amenity and encouragement of local employment, provision of cultural spaces, tourist and retail facilities tourism provision, promotion of sustainable transport. I have considered how the proposal complies with the above within relevant sections of this report, including Sections 10 (as relates to transport and employment), 12.5 (as relates to placemaking, integration of development, public realm and provision of cultural, tourist and retail provision) and Sections 12.6 and 12.7 (as relates to protection of amenities and mix of units proposed).

#### Height

12.2.8. Figure 35 of the Planning Scheme sets out indicative heights. Accordingly the subject site (which lies within City Block 9) is restricted to a maximum of 10 storeys for residential and 8 storeys for commercial development. These heights apply only to those buildings fronting onto North Wall Quay. The remainder of City Block 9 limits building heights to 7 storeys for residential development and 6 storeys for commercial development.

12.2.9. The current proposal is for 3 no. Blocks A, B and C. The proposed heights are a stepped arrangement, with the larger of the towers reaching a height of 166.95m. The smaller of the towers reaches 146.45m. In of heights these are set out below:

- Block A: 8 to 14 Storeys
- Block B: 8 to 41 Storeys
- Block C: 11 to 45 Storeys

12.2.10. The heights are therefore not in accordance with the adopted Planning Scheme and in my view, the proposal would materially contravene same. I have considered the issue of material contravention in Section 12.4 below. I have considered the merits, or otherwise, of the height proposed in Section 12.5 below.

#### Use Mix

12.2.11. In terms of the use mix (i.e. the ration of residential/commercial), a specific objective for City Block 9 (this subject site and the adjacent site) is to secure a 50:50 residential: commercial use mix, as relates to land area (Section 4.10.5 and section 5.5.9 of the Planning Scheme refers). However Section 4.13.4 of the Planning Scheme allows for flexibility, whereby ratios allowing a minimum 30% commercial or 30% residential may be considered. In relation to the mix of uses proposed here I have made reference to Section 6.2 of the Applicant's Statement of Consistency, which sets out how the proposal complies with the relevant policies and objectives of the Planning Scheme (2014). In this regard, it is noted that the application is an SHD application, which refers primarily to a residential development, with an element of commercial. This is the nature of SHD applications, as defined by the 2016 Act. The applicant also refers to the concurrent application for a commercial development in the remaining areas of City Block 9 with the form guided by the content of the Planning Scheme. This is currently with Dublin City Council (PA Reg Ref DSDZ2103/21). It is set out that the prescribed mix will broadly be achieved at City Block 9 through the provision of a commercial development on the western portion and an SHD primarily residential development on the eastern portion of the site. It is stated that, excluding the common pocket park area of 0.071 Ha (a portion of which proposed under this application and under the adjacent commercial application), a site area ratio of 1.0:0.84 or 50:41.5 (residential / commercial) is achieved, and therefore both the commercial and residential use elements proposed at City Block 9 exceed the 30% minimum indicated in the Planning Scheme. I have calculated that the ratio of residential to commercial uses, in terms of land area, is 55:45 (rounding up). Notwithstanding the inconsistencies in the calculation of the ratio, I accept that the minimum of 30% has been met for both uses, over the two sites comprising City Block 9. The Planning Authority have also accepted that the 30% minimum is met for both uses, although it is stated that this must be viewed in the context that the proposed heights are excessive. My view is that the Planning Scheme has allowed for flexibility within the use mix, and the overall use mix of 55 (residential) to 45 (commercial) is appropriate. While I am cognisant that the adjacent commercial scheme has not been approved to date, should this SHD be approved, any revised proposal on the adjacent site would need to take account of the proportion of uses approved under this scheme.

## Density

12.2.12. Section 4.10.8 of the Planning Scheme considers the Density and Plot Ratio of Development. Section 5.4.7 of the Planning Scheme refers to the Development Code Map (Fig. 35) provides for a range of typologies which will provide for sustainable residential densities in the range of 100-247 units/ha. This map indicates, amongst other elements, specifies heights, but does not specify this density range. However the heights specified in Fig 35 have an intrinsic relationship the density ranges referred to in the scheme. Objective US4 of the Planning Scheme refers to the need to fix crucial aspects of building line, density, height and new public space, but there is no specific objective in the Scheme that refers to this range of densities. Objective US13 seeks to achieve higher densities, not as a stand-alone objective, but in conjunction with other safeguarding criteria, such as indicative plot ratio, together with other criteria in the City Development Plan, e.g. daylight, open space, amenity space, privacy areas and play space in order to achieve a high-quality living and working environment.

12.2.13. The current proposal has a density of c917 unit/ha, as referred to the applicant's Statement of Consistency. While there are specific objectives in the Planning Scheme in relation to height, use mix and ground floor active uses (as set out in Section 5.5.10b of the scheme) there is no specific objective in relation to density. However, given the density proposed here, which is significantly greater than the maximum density envisaged under the Planning Scheme, I am of the view that the proposal would materially contravene the scheme, having regard to the range of densities set out therein. The Planning Authority has not stated that the proposal is a material contravention of the Scheme, as relates to density, but note that the proposed density is significantly in excess of both the target densities and the prevailing densities within the area. I have consider the merits or otherwise of the proposed density in Section 12.5 below. Observers on this application have stated that the proposal constitutes a material contravention of the scheme, as related to density.

## Plot Ratio

12.2.14. The Planning Scheme does not have a specific objective that numerically defines acceptable plot ratios but reference is made to the Dublin City Development Plan

which sets out indicative plot ratios of 1.0 to 3.0 for Z14 Regeneration Areas, such as the one within this subject site sits. Higher plot ratios may be permitted in certain circumstances, including, but not limited to, adjacent to major public transport termini and corridors, and to facilitate comprehensive redevelopment in areas in need of urban renewal (Section 16.5 refers).

12.2.15. The current proposal has a plot ratio of 8.5:1. The Planning Authority state that the current proposal would not be in compliance with a number of fundamental objectives of the adopted Planning Scheme, including that of Plot Ratio. It is further stated that, while S16.5 of the Development Plan allows for higher plot ratios in certain circumstances, the PA raise serious concerns in relation to the ability of the proposal to deliver high quality urban environment and high quality residential amenity.

12.2.16. In relation to the specific issue of whether the proposal materially contravenes the Planning Scheme (or indeed the Development Plan) in relation to plot ratio, I am of the opinion that it does not. There is sufficient flexibility set out in Section 16.5 of the Development Plan for the Planning Authority, or the Board, to consider a higher plot ratio where particular circumstances apply. In this instance the site sits adjacent to the termini of the Luas Red Line, which is a major public transport corridor, and the proposal is also achieving redevelopment of an area in need of urban renewal. As such the criteria set out in Section 16.5 apply have been met in this instance. The merits, or otherwise, of the plot ratio proposed, and the resultant quality of design achieved is discussed in the relevant sections of this report.

### 12.3. **Nature of the SHD Application**

12.3.1. The applicant has submitted a commentary clarifying the nature of the application (as outlined in Section 2.1 of the Response to ABP Opinion). It is noted that two concurrent applications are being submitted to An Bord Pleanála and to Dublin City Council, respectively: the former an SHD; the latter an SDZ-compliant commercial scheme. It is stated that neither the residential nor the commercial schemes rely on each other, and that while the current scheme abuts the subject lands of a concurrent Commercial Application, both schemes are independent of each other, and both or one of each could be built independently. No car parking is allocated to office or other uses. Reference is made to the relevant provisions of the Planning

and Development (Housing) and Residential Tenancies Act 2016. It is stated that a total of 4307 sq. m. of other uses are proposed. It is stated that this is within the limit of 4,500 sq. m of other uses as set out in the Act.

12.3.2. The application is accompanied by two legal opinions, both of which state the current application can be defined as an SHD application, having regard to the mix of uses proposed.

12.3.3. I have no evidence before me to dispute the assertions of the applicant that the application is a valid standalone SHD application and the application is assessed on this basis, with references to a possible future permission on the adjacent site, where relevant.

#### 12.4. **Material Contravention**

12.4.1. The applicants have submitted a Material Contravention Statement (dated 28<sup>th</sup> January 2021). In summary it is stated the proposed development would contravene the provisions of the Planning Scheme with regards to building heights at City Block 9. Section 1. 3.1 of the statement of the erroneously refers to a maximum height of 46 storeys (whereas the statutory notices refer to a maximum height of 45 no. storeys). It is further stated that the existing height limitation of the Planning Scheme, as adopted in May 2014, is not in accordance with strategic planning policy at National level, particularly with the National Planning Framework, Project Ireland 2040 (2018) (NPF) and of the S.28 Urban Development and Building Height Guidelines (December 2018) and it is contended that the proposed development, is compliant with both the NPF and the Urban Development and Building Height Guidelines, and is compliance with other relevant Section 28 Guidelines, including the Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities.

12.4.2. I would draw the Board's attention to the fact that the Material Contravention Statement, as submitted by the applicants, does not make any reference to a possible material contravention of the planning scheme, as relates to density, although I do note that the prescribed notices, including the site notice and newspaper notice, make reference to the fact a Material Contravention Statement was submitted with the application. My view is that the increase in height as proposed here would *de facto* materially increase the density, over and above what

is set out in the Planning Scheme, given the inter-relationship of the two measures, and the justification as set out in the applicant's Material Contravention Statement, as relates to the height of scheme, equally applies to the proposed density. In particular, the Material Contravention Statement makes reference to the 'Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities', which seek to promote high density residential development in appropriate locations. As such I am of the view that no parties have been disadvantaged by the lack of an explicit reference within the Material Contravention Statement to a possible material contravention of the Planning Scheme, as relates to density.

12.4.3. As noted above, I am of the view that any material contraventions raised by the proposal relate to the issue of height and density specifically those height limitations as set out in Section 5.5.10b of the Planning Scheme and the range of densities as set out in Section 5.4.7 of the scheme. Should the Board be minded to materially contravene the Planning Scheme, the following considerations are relevant.

12.4.4. Section 9(6)(a) of the Planning and Development (Housing) and Residential Tenancies Act 2016 states that Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 even where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned. Paragraph (c) of same states 'Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development'. The Planning and Development Act 2000 (as amended) provides that the Board 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 as follows: (i) the proposed development is of strategic or national importance, (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the

area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or (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.

- 12.4.5. In relation to Section 28 Guidelines, of particular relevance is the Urban Development and Building Height Guidelines (December 2018) which sets out a number of set out a number of specific planning policy requirements (SPPRs) which must be complied with, section 28 (1C) of the PDA 2000 Act refers. Of particular relevance to this current application, given that the subject site lies within an area governed by an adopted planning scheme, is SPPR 3(B) of the these Guidelines which state:

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

- 12.4.6. In this context I note that application to amend the current Planning Scheme was refused by the Board on 21<sup>st</sup> March 2021 (Reference: ABP-304604-19). As such the current Planning Scheme applies (as adopted in 2014), until such time as an amended scheme is approved by An Bord Pleanála.
- 12.4.7. A number of observer submissions have contended that the Board does not have the authority to materially contravene an adopted Planning Scheme, and make reference to a previous High Court Judgement in this regard (JR 2020 IEHC 557). The Planning Authority also make reference also to previous High Court Judgements. I draw the Board's attention in particular to the Judgement of Mr. Justice Richard Humphreys, delivered 12th November 2020, in which it was found that the Board does not have jurisdiction to materially contravene an adopted Planning Scheme (JR

2020 IEHC 557 refers). This is now the subject of an appeal by the Notice Party (Spencer Place Development Company Ltd). Given that the matter is somewhat unresolved, I am cognisant of the Board's previous position in relation to this issue i.e. that a materially contravention of the adopted Planning Scheme is permissible, having regard to the relevant provisions of the Planning and Development (Housing) and Residential Tenancies Act 2016 and the Planning and Development Act 2000 (as amended). Should the Board be still of that mind, I have set out my considerations of the proposal, as relates to the relevant criteria of 37(2)(b) of the Planning and Development Act, below.

- 12.4.8. In relation to the matter of strategic or national importance, (criteria 37(2)(b)(i) of the PDA 2000), I note the site lies within an SDZ within the capital city, and contributes to the regeneration of a brownfield city centre site and makes a significant contribution to the housing stock, of some 1,005 units, and therefore seeks to address a fundamental objective of the Housing Action Plan. However it is my view that this, in and of itself, does not provide sufficient justification to materially contravene the Planning Scheme.
- 12.4.9. In relation to the matter of conflicting objectives in the development plan, no parties have raised this as an issue, and I am not aware of any explicitly conflicting objectives, and therefore it is my view that this criteria is not applicable in this instance.
- 12.4.10. In relation to National Policy, Project Ireland 2040: National Planning Framework (NPF) seeks to deliver on compact urban growth. It is set out that general restrictions on building heights should be replaced by performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth (NPO Objectives 13 and 35 refer). Also of relevance, objectives 27, 33 and 35 of the NPF seek to prioritise the provision of new homes at locations that can support sustainable development and seeks to increase densities in settlements, through a range of measures. In relation regional planning guidelines for the area and Section 28 Guidelines, the Eastern & Midland Regional Assembly – Regional Spatial & Economic Strategy 2019-2031 seeks to increase densities on appropriate sites within Dublin City and Suburbs.



12.4.11. In relation to relevant Section 28 Guidelines, given that the material contravention in this instance relates to the matters of height and density, those of most relevance are the Urban Development and Building Height Guidelines (2018), issued under Section 28 of the PDA 2000 (hereafter referred to as the Building Height Guidelines). These guidelines state that increasing prevailing building heights therefore has a critical role to play in addressing the delivery of more compact growth in our urban areas, particularly our cities and large towns through enhancing both the scale and density of development. It is further set out that building heights must be generally increased in appropriate urban locations, subject to the specific criteria as set out in Section 3.2 of the Guidelines. I have assessed the proposal against these criteria in Section 12.5 of this report. While I refer the Board to same, within Section 12.5 I have concluded that there is insufficient information submitted in relation to the level of daylight provision for the proposed residential units, and in relation to the impacts on daylight, sunlight and overshadowing of surrounding residential units and surrounding areas of public and communal amenity spaces, in order to allow the Board to be satisfied that the proposal complies with the relevant criteria as set out in Section 3.2 of said guidelines. There is also no assessment on the impact on telecommunications, which is a specific requirement of Section 3.2 of the Building Height Guidelines. However should the Board be minded to do so, this information could be sought by way of an oral hearing (see further discussion in Section 12.9 of this report in relation to other matters recommended to be heard at an oral hearing). While I also note there is no assessment that relates to the issue of bird strike or a specific assessment considering the impact of artificial lighting on bats, as required by Section 3.2 of the Guidelines, the DAU (NPWS) have suggested conditions are sufficient to overcome potential impacts, and as such I do not consider the lack of such assessment is a fundamental gap in the information provided with the application, and there is sufficient information contained within the EIAR and within the NIS to allow a reasoned conclusion to be made in relation to impacts on bats and birds (See also Sections 10 and 11 of this report).

12.4.12. Other Section 28 Guidelines of relevance include the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2018), and the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009) which support increased densities in appropriate

locations, and I have assessed the proposal in relation to same in Section 12.5 of this report. I have also assessed the proposal against the relevant criteria in the Urban Design Manual associated with the latter document (see Section 12.5).

12.4.13. In relation to the pattern of development/permissions granted in the area since the adoption of the Development Plan, while I note the existence of the Capital Dock Scheme (at 22 storeys), the height of this proposal was in compliance with the Planning Scheme and as such it does not set a precedent for allowing a greater height than set out in the scheme. As such I do not consider that this criterion has been met in this instance.

12.4.14. In conclusion, should the Board be minded to invoke the material contravention procedure, I note that the proposal meets the criteria of 37(2)(b)(i), as relates to the strategic importance of the application, as discussed above. However this does not, in and of itself, justify a material contravention of the Planning Scheme, and regard must be had to the criteria of 37(2)(b)(iii), in particular the relevant provisions of the Urban Development and Building Height, Guidelines for Planning Authorities (2018). In this regard I consider that there is insufficient information on file in order to be able to justify a material contravention of the Planning Scheme, given the need to comply with the criteria of Section 3.2 of the Building Height Guidelines. However, should the Board consider it appropriate this information can be sought by way of a limited agenda oral hearing (see further discussion in Section 12.9 of this report in relation to other matters recommended to be heard at an oral hearing).

## 12.5. **Design and Layout including Density, Height and Public Realm/Visual Impact**

12.5.1. The applicant has submitted a Design Statement which sets a detailed description of the proposal and I refer the Board to same. In summary, the proposal consists of three no. residential blocks A, B and, with a series of open spaces and streets at ground level. In relation to the proposed heights, the proposed heights are a stepped arrangement, with a tower element on Block C reaching a height of 166.95m. There is a lower tower over Block B which has a height of 146.45m. In terms of storey heights these are set out below:

- Block A: 8 to 14 Storeys
- Block B: 8 to 41 Storeys

- Block C: 11 to 45 Storeys.

12.5.2. Non-residential uses are proposed at ground floor level and include a restaurant, market/foodhall, three no. cafes and a childcare facility. A restaurant is proposed at Level 32 of Block C with a viewing deck/public space at Level 44 of Block C, with a roof terrace that is also open to the public on Level 45 of Block C.

12.5.3. In terms of materials, the Design Statement gives a detail breakdown of material used within the development. In relation to the tower elements, the use of graduated glazing, which gets lighter as one moves up the building is designed to reduce the visual impact of the tower elements. Panels of living wall are also proposed. Both of the tower elements utilise unitised curtain wall glazing with living wall panels. Twin skin glazing is proposed for the upper elements of the towers. Lower elements utilise curtain wall glazing with Jura limestone frame. Block A is predominantly unitised curtain wall glazing with Jura Limestone frame and fluted bronzed anodised aluminium panels.

#### Density

12.5.4. The proposed density is 914 units/ha. As noted above, the target densities within the Planning Scheme are between 100 and 247 units/ha. Increasing residential density at appropriate locations is national policy and articulated in section 28 guidelines, as well as within Regional Policy and as a general principle increased density is also supported within the Dublin City Development Plan. Such increases in density are to ensure the efficient use of zoned and serviced land.

12.5.5. In relation to national policy, Project Ireland 2040: National Planning Framework (NPF) seeks to deliver on compact urban growth. Of relevance, objectives 27, 33 and 35 of the NPF seek to prioritise the provision of new homes at locations that can support sustainable development and seeks to increase densities in settlements, through a range of measures.

12.5.6. In relation to regional policy, the site lies within the Dublin Metropolitan Area Strategic Plan (MASP) as defined in the Regional Spatial & Economic Strategy (RSES) 2013-2031 for the Eastern & Midland Region. A key objective of the RSES is to achieve compact growth targets of 50% of all new homes within or contiguous to the built-up area of Dublin city and suburbs. Within Dublin City and Suburbs, the RSES support the consolidation and re-intensification of infill/brownfield sites to

provide high density and people intensive uses within the existing built up area and ensure that the development of future development areas is co-ordinated with the delivery of key water and public transport infrastructure.

- 12.5.7. In relation to Section 28 Guidelines, I note the provisions of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2018) which state, with respect to location, the guidelines note that, in general terms, apartments are most appropriately located within urban areas. As with housing generally, the scale and extent of apartment development should increase in relation to proximity to core urban centres and other relevant factors. Existing public transport nodes or locations where high frequency public transport can be provided, that are close to locations of employment and a range of urban amenities including parks/waterfronts, shopping and other services, are also particularly suited to apartments.
- 12.5.8. In terms of location, I note that the site lies in a central urban quarter of Dublin City with access to a wide variety of services and employment locations. In terms of accessibility, the nearest Luas Stop (The Point) is located 30m from the subject site. Red Line Services from this stop connect the docklands to the city centre, and to Tallaght and Saggart. Services run at intervals of approximately 5 minutes at peak times. This line also connects to the main railway stations at Connolly and Heuston, and to the bus station at Busaras. An interchange also exists with the Luas Green Line at Abbey Street, which in turn connects to the north (as far as Broombridge) and to the south of the county (including Sandyford and Cherrywood). In terms of bus services, there are bus stops on North Wall Quay and East Wall Road, within a 5 minute walk of the subject site, which are served by 20 no. Bus Routes, operated by Dublin Bus, Bus Eireann and other NTA licenced operators. These provide links to the airport and the city centre, as well Sligo, Mayo, Kildare and Wicklow. A number of high frequency routes serve these stops. A shuttle bus service to the East Point Business Park also serves bus stops within a 5 minute walk of the site.
- 12.5.9. The site is also located approximately 550m east of Docklands Rail Station which provides services to Sligo and commuter towns in Meath and Kildare, although I note that services from same are somewhat limited. Services from Connolly, Heuston and Pearse Street are far more frequent and provide connectivity within Dublin and as well as inter-city connections.

- 12.5.10. In terms of cycle infrastructure, there are segregated eastbound and westbound cycle lands along the North Quays in the vicinity of the subject site. These provide connection to cycle lands serving the south side of the docklands, into the city centre and to the Royal Canal greenway, which is partially completed.
- 12.5.11. In terms of future transport proposals, there is proposed Metrolink Station at Tara Street and O'Connell Street, a 25 min and 30 min walk respectively, the latter station will be connected to the site via the Luas line. In terms of proposed Bus connections, Core Bus Corridor No. 16 is proposed to run along North Wall Quay and Sir John Rogerson's Quay.
- 12.5.12. The Greater Dublin Area Cycle Network Plan provides for the consolidation of existing cycling infrastructure in the vicinity of the development site: an east-west primary cycle route (no. 5) is proposed along North Wall Quay, connecting to a north-south primary cycle route (no. NO1) along Guild Street. In addition, new secondary cycle routes are proposed to run along East Wall Road, New Wapping Street, and East Road.
- 12.5.13. In relation to the DART Underground, a station was proposed previously at Spencer Dock. However the entire scheme has been subject to review and the final layout of the scheme is yet to be decided. I noted the applicant's Mobility Management Framework states that funding is in place for same. However, the National Development Plan for the period 2018-2027 proposes that a route for the proposed tunnel and line be established within that period, but does not include any funding for works or other developments. Delivery is expected to be post-2027.
- 12.5.14. Given the above, my view is that the site lies within the category of a Central and/or Accessible Urban Location as defined within the Apartment Guidelines (as amended 2020). The Guidelines note that these locations are generally suitable for small- to large-scale (will vary subject to location) and higher density development (will also vary), that may wholly comprise apartments.
- 12.5.15. In relation to the criteria as set out in the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009), it is my view that the site can be considered under the category of a 'Public Transport Corridor'. The Guidelines set out that land use planning should underpin the efficiency of public transport services by sustainable settlement patterns, including higher density, on

lands within existing or planned public transport corridors. In principle therefore a higher density, such as that proposed here, is supported by these guidelines. The Guidelines also set out general goals of which are to which are inter alia to prioritise walking, cycling and public transport, and minimise the need to use cars and to provide a good range of community and support facilities where and when they are needed and that are easily accessible.

12.5.16. While the density proposed may well be supported by the policy documents above, the acceptability of the density proposed is subject to subject to appropriate design and amenity standards, which are considered in the relevant sections below

#### Height

12.5.17. Volume 2 of the submitted Environmental Impact Assessment is a Heritage, Townscape and Visual Impact Assessment (hereafter referred to as the HTLVIA) and I will make reference to the contents of this volume throughout this section of the report, as well as to the Design Statement and other documentation submitted with the application, where relevant. Chapter 7 of the HTLVIA sets out the rationale for a tall building at this location. Reference is made to the wider scale of the River Liffey at the location of the confluence of the canal, the River Dodder and the Liffey. It is stated that the existing 22 storey Capital Dock building marks this transition of scale, and the development proposal intends to respond on the north side of the River. When considering the appropriate height, it is set out that the height has been derived from the sensitivities of Dublin's historic cores, in particular from those views along Dame Street and over Trinity College.

12.5.18. The Planning Scheme allows for building heights in the range of 5-storey commercial (6-storey residential) to 8-storey commercial (10-storey residential) and the proposal would materially contravene same. Elected Members have objected strongly to the height of the proposed development. The vast majority of observer submissions raise concerns in relation to the height, scale and design of the proposed development and resultant impacts upon adjacent areas, including the conservation area, major landmarks such as the Custom House, Trinity College and Poolbeg Towers, impacts on protected structures and the visual impacts of the proposal. An Taisce also raise similar concerns. In summary, it is stated the height is excessive and the proposal would be an overdevelopment of the site. The visibility of the

proposal from large areas of the city is highlighted, and it is set out that insufficient views have been set out in the Visual Impact Assessment. The lack of a sufficient justification for such a tall building is set out and the quality of public realm is questioned. The contribution of the proposal to the community is also questioned.

12.5.19. The Planning Authority have recommended that the application be refused for 4 no. reasons. Reason for refusal No. 1 states the proposal represents a material contravention of the Planning Scheme as relates to height. Reason for refusal No. 2 raises concern in relation to the height, design, bulk and extent of the development, and the visual prominence of same. It is also set out that the public realm would be narrow and uninviting and would be subject to a significant degree of overshadowing and subject to wind impacts.

12.5.20. Prior to my assessment of the heights proposed here, it is pertinent to set out an overview of current policy on height as set out at national level, and as set out in the Development Plan and the Planning Scheme. Policy on heights as set out in the relevant Section 28 Guidelines are then discussed, and I have utilised the criteria as set out in Section 3.2 of the Building Height Guidelines to form a framework for my assessment.

12.5.21. The National Planning Framework supports increases in densities generally, facilitated in part by increased building heights. It is set out that general restrictions on building heights should be replaced by performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth (NPO Objectives 13 and 35 refer). The principle of increased height, such as that set out here, is supported by the NPF therefore, subject to compliance with the relevant performance criteria.

12.5.22. The Dublin City Development Plan 2016-2022 sets out that Dublin is intrinsically a low-rise city, and save for a limited number of areas, it should remain so. It is set out that the vast majority of the city area is identified as not being suitable for mid-rise or taller buildings and emphasis is placed on the need to protect conservation areas, architectural conservation areas and the historic core of the city. However, the positive contribution of tall buildings to the skyline of a city is recognised. and in this regard a limited number of places where such taller buildings (over 50m) buildings are to be located is set out, such as at major public transport hubs, and some

SDRAs. The plan states that it is policy to provide for taller buildings in those limited locations identified in the 'Building Height in Dublin Map' in order to promote investment, vitality and identity. Four general locations are identified for high rise buildings of 50m+ and one of these locations is 'Docklands Cluster', within which the site lies (Fig. 39 Chapter 16 refers).

12.5.23. The Development Plan states that, *inter alia*, taller buildings must respect their context and address the assessment criteria set out in the development standards section, to ensure that taller buildings achieve high standards in relation to design, sustainability, amenity, impacts on the receiving environment, and the protection or framing of important views. Objectives and policies of particular relevance include Objective SC17 which seeks to protect and enhance the skyline of the inner city and demonstrate sensitivity to the historic city centre and other landmarks and open spaces of importance. Objective SC18 seeks to promote a co-ordinated approach to the provision of tall buildings through local area plans, strategic development zones and the strategic development and regeneration areas principles, in order to prevent visual clutter or cumulative negative visual disruption of the skyline.

12.5.24. In relation to Section 28 Guidelines, is the Building Height Guidelines (2018). Within this document it is set out that that increasing prevailing building heights has a critical role to play in addressing the delivery of more compact growth in our urban areas. (Section 1.21 refers). In reference to the relationship between density and height, it is acknowledged that, while achieving higher density does not imply taller buildings alone, increased building height is a significant component in making optimal use of the capacity of sites in urban locations where transport, employment, services or retail development can achieve a requisite level of intensity for sustainability (Section 2.3 refers). It is further stated that such increased in density and height help to optimise the effectiveness of past and future investment in public transport serves including rail, Metrolink, LUAS, Bus Connects and walking and cycling networks (Section 2.4 refers). The role of tall buildings in place-making is referred to, and it is stated that they can also assist in reinforcing and contributing to a sense of place within a city or town centre, such as indicating the main centres of activity, important street junctions, public spaces and transport interchanges. In this manner, increased building height is a key factor in assisting modern placemaking and improving the overall quality of our urban environments. The Height Guidelines



also note that, Planning Authorities have sometimes set generic maximum height limits across their functional areas. It is noted that such limits, if inflexible or unreasonably applied, can undermine wider national policy objectives to provide more compact forms of urban development as outlined in the National Planning Framework. It is also noted that such limitations can hinder innovation in urban design and architecture leading to poor planning outcomes. Of particular note in the Guidelines is a comparison drawn between the population of the central urban parts of Dublin (approx 500,000 people) with a similarly sized area of central urban Paris (population circa 2.2 million people).

12.5.25. SPPR 3 of the Height Guidelines states that where a planning authority is satisfied that a development complies with the criteria under section 3.2 of the guidelines, then a development may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise (I refer the Board to Section 12.4 'Material Contravention' for further consideration of this issue as it relates to the Planning Scheme). In this regard the criteria under section 3.2 of the Building Height Guidelines, provide a relevant framework within which to assess the merits, or otherwise, of this proposed development.

12.5.26. Section 3.2 sets out detailed development management criteria, which incorporate a hierarchy of scales, (at the scale of the relevant city/town, at the scale of the district/neighbourhood/street; at the scale of the site/building, with reference also made to specific assessments required to be submitted with application for taller buildings. In relation to same I note the following.

#### City Scale

##### *Accessibility*

12.5.27. The first criterion relates to the accessibility of the site by public transport. I have set out a detailed assessment of same above, and I note that the site is extremely well serviced by public transport options and therefore satisfies the first criterion

##### *Impact on architecturally sensitive areas, setting of key landmarks and protection of key views*

12.5.28. The second criterion relates to the character of the area in which the development is located and impacts on architecturally sensitive areas, setting of key landmarks and protection of key views. In terms of the character of the area, this is predominantly

one of a changing urban landscape, although I note that this current site is one of the last to be developed in the North Lotts area. Predominant building heights are generally 8-10 storeys, with taller buildings to the east of the site at the Exo Building (currently under construction) which ranges from 8 to 17 storeys, and Capital Dock (up to 22 storeys) on the opposite side of the river to the site. The subject site is not located in an architectural conservation area or candidate architectural conservation area, although it lies partly within a conservation area (Map E of the Dublin City Development Plan refers).

12.5.29. In relation to impacts on architecturally sensitive areas, on key landmarks and on key views, the applicant's HTLIVA has considered these in detail, including a detailed discussion on any potential impacts from various locations within Georgian Dublin, including Blessington Street (View 24 refers), Eccles Street (View 25), Herbert Street (View 26) and Merrion Square (View 30). The visibility from Dame Street, College Green and Trinity College is highlighted as the main limitation or determination of the appropriate height of the proposal and there is detailed discussion of these views from various vantage points in the HTLIVA. The existing situation is examined, as is the situation should the proposals for the College Green Plaza go ahead. In relation to the existing situation, the proposed development first comes into view near Dame Street's junction with South George's Street (HTLIVA Fig 8.6 refers). As one moves east along Dame Street the degree of visibility diminishes, partly as a result of the large street trees on Dame Street, which serve to obscure views over the Regent House façade of Trinity College (HTLIVA Figs 8.7 and 8.8 refer). The plans to improve the public realm on Dame Street including the planting of trees that serve to obstruct the view of the proposal from the southern pavements. The HTLIVA also carries out a detailed analysis of the effects on Townscape and Landscape Receptors, the Conservation Area, 5 no. Architectural Conservation Areas (ACS) as well as on 11 no. distinct groups of Protected Structures and on 1 no. group of NIAH Structures (Chapter 10 refers). Of particular note, in my view, is that views toward Custom House would not be impacted to a large degree, as the proposal appears as a peripheral element along the River Liffey when viewed in conjunction with same. The impacts on Trinity College are given particular attention and while it is noted that this group of protected structures are of particular significance, no adverse impacts would result on the setting or significance of same. In relation to views, Chapter 12 of

the HTLIVA is a Visual Impact Assessment. This considers 54 no. viewpoints, the locations of which are shown in Fig. 12.1 and 12.2 of the document. Generally speaking, the Visual Impact Assessment (VIA) does not identify any significant adverse impacts on key views, although a minor adverse effect is recorded in relation to the effect on a particular view over Regent's House, Trinity College, where both towers are visible over the currently open skies over Regent's House (view 23e refers). It is of note that the 22 Capital Dock tower is visible over Regent's House from some longer views along Dame Street, and as is stated in the application documentation, the site is on a visual axis with views along Dame Street. From my site visit of 24<sup>th</sup> April, it was apparent that views of the Capital Dock building over Regent's House were possible from near City Hall, where the elevation of the road was higher, allowing for views over Regent's House, but were not possible from viewpoints further east, as the road elevation become lower. In relation to the current proposal, it is of note that the tower elements are not visible in longer views along Dame Street (view 23a), but start to become visible as one move east, and the southern half of the taller element is seen from the south side of Dame Street.

12.5.30. I note the Planning Authority have not raised concerns in relation to impacts on any specific ACA, Conservation Area or Protected Structures, nor have the PA raised a specific concern in relation to impacts on views or on a particular view, although it stated that the conclusions of the HTLVIA are not supported. I note that SC7 of the Development Plan seeks to protect and enhance important views and view corridors into, out of and within the city, and to protect existing landmarks and their prominence (Fig. 4 details 'Key Views and Prospects' refers); Fig. 4 Key Views and Prospects (Indicative) gives an indication of the key view and prospects that are 'to be protected', although there is no descriptive commentary in relation to same. Although this map is only indicative, key views that might be impacted upon (and I refer to the Figure 4 of the Development Plan), include the view eastward along Dame Street towards Trinity College, with the viewpoint appearing to be just north-east of Dublin Castle. Referring to the applicant's view study, the proposal would not be visible from this point. The views from the north and south of the River could possibly encompass the application site. In relation to the view from the south of the River facing east to the north of Trinity College, the applicant's view study indicates that the proposal will not be seen from points proximate to this location due to the

bend in the River, and from my site visit, this is likely to be the case. In relation to the view north of the river (and directly west of the Custom House on the views map Fig 4), the applicants have provided views from locations that are proximate to this view, and it was found no adverse impact resulted. In relation to the Planning Scheme, Fig. 18 of same indicates Views and Vistas. The analysis identifies 16 key views of landmark features that could be affected by potential development within the SDZ. The development site does not appear to be within any of these views.

12.5.31. In relation to the impacts on architecturally sensitive areas, setting of key landmarks and protection of key views, I generally concur with the conclusions of the HTLVIA and in my view this is a comprehensive document that set out in significant detail the potential impacts of the proposal, and comes to reasonable conclusions in relation to predicted impacts. While the generally low rise nature of the city, combined with the relatively flat topography results in the structure being visible from numerous vantage points (and as illustrated in the applicant's HTLVIA), the distance of the site from the historic core is a key consideration in my view. Where one minor adverse impact has been determined, that of the view over Regent's House, Trinity College, I am of the view that not all adverse impacts can be avoided if additional height in locations that are found to be otherwise suitable is to be achieved. In relation to this particular view identified (23e) refers, I note that this view is not in itself protected, in as much as other identified views are under the current Development Plan are protected. The closest 'protected view' is that from further west along Dame Street, in proximity to Dublin Castle, and the proposed development will not be seen from this vantage point. Where it can be seen, it will be approximately positioned 1.8 km behind the façade of Regent's House. This distance is significant and will have a considerable impact on diminishing any prospect of the structure appearing as an overbearing feature over Regent's House. I also note that Capital Dock is currently visible over the façade of Regent's House in some views, and while considerably lower than the proposed development (at 22 storeys rather than 45), an appreciation can be gained in relation to the impact of distance on the residual effect of a taller structure at a location in proximity to the development proposed here.

*Place making, detailed design, materials and public realm*

12.5.32. A further criteria set out in Section 3.2 of the Guidelines is the contribution of tall buildings to place-making and the introduction of new streets and public spaces, In

relation to the taller elements proposed, I am of the view that significantly increased height and scale can be supported on the site, and would serve to provide a positive role in terms of place-making and legibility of the city. The site sits at a strategic point into the city, and defines the edge of the city centre, where it meets the boundary with Dublin Port. A landmark building on this side of the river, in conjunction with the Capital Dock building would announce the entrance into Dublin City Centre. As noted in the Building Height Guidelines, while increasing building height has a critical role to play in terms of achieving compact growth, they serve to provide a role in place-making at key urban locations, and this landmark structure will achieve this, in my view. I am aware that the building, should it be approved, would be the tallest residential structure in the country. This site, to my mind, is one of the very few sites within Dublin City that could accommodate such a structure, given its distance from the historic core of Dublin City Centre, yet still within the City Centre itself, and at the key junction of the City Centre and Dublin Port, within a highly accessible location. Situating such taller structures at a remove from historic city centres, yet still within the urban footprint of the city centre, to my mind, is a logical urban design and place-making approach.

12.5.33. While there are two significantly taller buildings proposed, I also note that the variation in height proposed under the proposal provides transitional elements that relate to the scale of surrounding built form, with the two northern blocks at 7 to 14 storeys relating more to the scale of existing commercial and residential elements. The variety in scale also creates visual interest in the streetscape, and avoids the creation of monolithic and uninterrupted walls of building, as required by the Building Height Guidelines.

12.5.34. In relation to the detailed design and materials proposed, I am of the opinion that the towers are of a high quality design with slenderness ratios that result in elegant structures. Visual interest and articulation is achieved through the use of a various elements within the design, including the extended public viewing platform and elements of punctuation within the facades. The variation in height and variation in the orientation of the two towers also add visual interest to the scheme. The use of curtain wall glazing, with jura limestone frames at the lower elements contrast successfully with the heavier materials utilised on the facades of the 22 storey Capital Dock building opposite. However, I do not consider that the living wall panels

are a necessary or a viable addition, and I have set out my concern in relation to same in Section 10 of this report. However, should the Board consider that the living wall panels are an integral part of the scheme, information on the viability and maintenance of same should be sought way of an oral hearing (see further discussion in Section 12.9 of this report in relation to other matters recommended to be heard at an oral hearing).

12.5.35. The role of such taller developments in the creation of streets and public spaces is also a criteria at both the city and neighbourhood scales. In relation to same, the proposal creates defined street edges along the boundaries of the site, as is sought within the Planning Scheme, and take advantage of the flexibility of the inner building lines as allowed for within the scheme. The development also provides for permeability through the site with the creation of a north-south and east west links, as a well as diagonal link through the site.

12.5.36. I have some concerns in relation to the contribution of the proposal to the public realm and the quality of public open space proposed. The Planning Scheme sets out a number of requirements in relation to open spaces and public realm, as set out in Section 6.0 above. The Landscape Access & Design Statement sets out in detail the proposals for the public realm, landscaped areas and residential roof gardens. In relation to the public realm, a north/south laneway or street runs from North Wall Quay, which leads to a central pocket park area, where areas of semi-mature landscape planting is provided. This leads to a further north-south lane where additional planting and informal play areas are provided. Within the courtyard areas of Block B an external market is provided, accessed by way of an undercroft from the central pocket park. While the location and quantum of open space is generally in line with the Planning Scheme, and indeed exceeds same, I am sympathetic to the view of the Planning Authority, which sets out the open space envisaged within the scheme was based on a particular quantum of development which this proposal exceeds by a significant degree. Furthermore, the quantum as quoted by the applicant incorporates much of the laneway and street areas and as such it is questionable whether it can be defined as a 'pocket park'. However the laneways with the associated planting and seating do contribute generally to the public realm. Generally, I consider the overall public realm somewhat unsatisfactory and lacks clear definition in my view. The area of green space that is proposed does will be

significantly overshadowed (see discussion in relation to BRE compliance below) once a commercial scheme comes forward on the adjacent site and will suffer the ill-effects of wind tunnelling as set out in the submitted Wind Study. The internal market courtyard area is likely to be significantly overshadowed also. I am of the view that the scheme would have been significantly improved with the omission of the overcroft area of Block B, which will not necessarily increase the quantum of public realm *per se*, but it will provide improved light penetration to the courtyard area and will also serve to create a more defined and interlinked area of public realm which would be befitting of a scheme of this scale. At the neighbourhood level, this proposal introduces a significant residential population into the area, and it is expected that sufficient areas of high quality public realm should be provided to serve same. At a wider level, this development would be a destination in itself, given its prominence with the City and the strategic importance of the Docklands, and to my mind a more generous, better quality public realm should be provided to serve the wider city as a whole. The omission of the built form at this location would result in the omission of a number of residential units, but would significantly improve the public realm in my view. The omission of these units would not represent a material alteration to the scheme, in terms of the overall quantum of units proposed. I am of the view that the Board should seek information from the applications as to how the quality of the public realm can be improved, in particular focusing on achieving better daylight penetration to the internal courtyard area of Block B, and creating a more defined, interlinked area of public realm. The suggested omission of built form within Block B may also have a beneficial impact in terms of daylight levels received to the units within the lower floors of Block B (see detailed discussion of same in Section 12.6 of this report).

12.5.37. In terms of contribution to the streetscape, including the provision of active frontages, I note that the provision of a retail unit and other amenities, including an art gallery and exhibition space, a childcare facility, restaurant, cafes and landscaped public open space at ground floor level provides such active frontage. These uses are also in line with the guiding principles of development within SDRA 6 (see Section 12.1 above), which include *inter alia* the provision of cultural and retail facilities. The public viewing areas will also provide a welcome tourism facility for the city, also in line with the principles for development within the SDRA 6 area.

12.5.38. Criteria 3.2 sets out that, at the neighbourhood scale, proposals such as these are expected to contribute positively to the mix of use and building dwelling typologies. The mix of uses in the area is generally controlled by the Planning Scheme and the Planning Authority have not set out any fundamental concerns in relation to the mix of uses as set out in this current proposal, and I consider the uses as proposed under this SHD application, insofar as permitted for an application of this type, will make a positive contribution of the neighbourhood. The building dwelling typology is one of apartment units, which is of a type that is generally encouraged by the Planning Scheme. In terms of the mix of units, the proposal is also formed of a mix of 1 (495 no), 2 (507 no) and 3 (3 no) bed apartments units that positively contributes towards the dwelling mix for the area.

12.5.39. At the scale of the site/building, it is expected that the form, massing and height of the proposed development should be carefully modulated so as to maximise access to natural daylight, ventilation and view and minimise overshadowing and loss of light. Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out. I am not convinced that the current proposal has fulfilled this criteria. My concerns in relation to daylight are threefold. Firstly the applicant has not provided a sufficient level of detail in relation to the daylight provision to the proposed units, and I have particular concern in relation to the proposed daylight levels to the lower units of Block B. It is possible the scheme should have been reconsidered in order to improve daylight levels to these units (see detailed discussion of same in Section 12.6 of this report). Secondly, I do not consider that sufficient information has been put forward to assess the impact on daylight and sunlight levels on adjoining residential units, namely those units fronting onto Castleforbes Road, facing towards the development site and on sunlight levels to the Castleforbes Square apartments to the north of the site (see detailed discussion of same in Section 12.7 of this report) and to this end insufficient regard has been had to guidance such as that contained in the Building Research Establishment's 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting', as required by the Building Height Guidelines. Thirdly, I do not consider that the design has maximised the level of sunlight penetration to the proposed public realm, and



has not provided sufficient information in relation to potential overshadowing of adjoining areas of amenity spaces, namely the internal courtyard serving the existing apartment units to the north of the site, or the adjacent public space at Point Square (see detailed discussion of same in Section 12.5 of this report).

12.5.40. In relation to specific assessments, the Guidelines require that such assessments may be required, and refer to an assessment of the micro-climatic effects of the proposed development. In relation to same, the applicants have submitted a wind study which addresses this requirement. In locations in proximity to sensitive bird and / or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight -lines and /or collision. The applicants have not specifically addressed this issue, and I have set out a consideration of same in Sections 10 and 11 above. Of note in this instance is that the DAU (NPWS), who have a statutory role to advise on the protection of the habitats and species identified for nature conservation, are of the opinion that this issue can be dealt with by way of a condition, and I concur with same.

12.5.41. I note also no assessment on the impact on telecommunication channels has been included with the application (generally referred to as a Telecommunications Assessment). I note also that this is a specific requirement of the Building Height Guidelines. However should the Board consider it is appropriate to do so, I consider that this technical information should be sought by way of an oral hearing (see further discussion in Section 12.9 of this report in relation to other matters recommended to be heard at an oral hearing).

12.5.42. While I have considered the proposal within the framework of the Building Height Guidelines, proposals which are of increased densities are also required to comply with the 12 no. criteria in the Urban Design Manual that accompanies the Sustainable Residential Development in Urban Areas (2009), In relation to same, I consider the proposal responds well to its context, while also providing a building of landmark quality. Connections and permeability are discussed above and the proposal complies with this criteria. Inclusivity is considered in the design, including the provision of a range of apartment types providing for different households. A variety of active spaces are provided including the play areas and the internal amenity space. The proposal makes efficient use of land and creates a distinctive

development, as discussed above. I have concerns in relation to the layout and the public realm provision, as set out above and I do not consider that this particular criteria has been achieved. While the proposal meets and exceed apartment standards and provides for a mix of users, I have concerns above the level of daylight provided to the units the resultant standard of accommodation for end users (see relevant discussion below). In terms of the parking proposed, I have considered this issue in Section 10 and I have considered the issue of detailed design above, within this section of the report, and I am have concluded that the tower elements of the proposal of a high quality design, although the overall layout of the proposal has resulted in limitations in daylight penetration and the quality of the public realm, as discussed above.

#### Conclusion

12.5.43. Increased population in the central city serves to support and facilitate, maintain and increase the viability of shops, services, amenities and transport services, and allows for animation and activity throughout the day and into the evening. Policy at national, regional and local level all support such population increases within the City Centre. Additional densities and heights are also supported at a national and regional level, and to a degree within the current Development Plan, albeit at specific locations. In relation to the additional height proposed under this application, it is my view that the Docklands Area is one of the few city centre locations where heights such as that proposed here can be accommodated, without significant effects on the historic core of the City. As such I do not have an issue with the principle of significantly greater height at this location.

12.5.44. However, more prosaic concerns exist in relation to the proposal, as set out above, namely in relation to the layout as proposed and the resultant public realm provided, and the resultant impact on the daylight levels proposed units. There is also insufficient information provided in relation to the impact on surrounding residential daylight and sunlight levels, and in relation to the potential overshadowing of surrounding amenity spaces. As such, having regard to same, I do not consider the criteria as set out in Section 3.2 of the Building Height Guidelines have been met in this instance, as insufficient information in relation to these issues has been submitted with the application. I consider that there is scope to obtain this information from the applicants by way of an oral hearing (see further discussion in

Section 12.9 of this report in relation to other matters recommended to be heard at an oral hearing).

## 12.6. Residential Amenities/Residential Standards

- 12.6.1. The submission from the Planning Authority sets out concerns in relation to the assessment of daylight levels to the proposed units, and states the incorrect standard has been applied for the combined kitchen/living areas, and that a significant number of units have been identified as meeting the required standard. In addition, concern is raised in relation to the level of daylight received to the proposed units, particularly at the lower levels. It is stated that the reported overall compliance rate is misleading, given that the correct standard has been applied. Concerns area also raised in relation to wind impacts on the public realm and on the rooftop communal spaces to Block A. Reference is also made to the number of single aspect north-facing units, approximately 75 in total. It is stated that the proposed Part V units will have a disproportionately lower standard of amenity. Further concerns relate to the provision of communal space to Block C and the limited details provided in relation to the gym and spa facility at the lower ground floor level. Shortfalls in the storage provision is also highlighted. Elected Members have raised concerns in relation to the shortage of amenities and community facilities in the area and lack of provision for same in the proposed development.
- 12.6.2. Observer submissions have raised concerns in relation to the overall standard of amenity to the units, in particular the standard of amenity to the Part V units. The low level of dual aspect units is raised as a concern. The quality of the public realm is questioned as it the overall contribution of the scheme to surrounding areas. The lack of three bed units is highlighted and it is stated that the proposal will not appeal to families.

### Daylight to the proposed units

- 12.6.3. The submitted Daylight, Sunlight and Overshadowing Analysis considers daylight provision in the proposed habitable rooms by way of the average daylight factor (ADF). The BRE Guidance (Site Layout Planning for Daylight and Sunlight) sets out minimum values for ADF that should be achieved and these are 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. Section 2.1.14 of the BRE Guidance notes that non-daylight internal kitchens should be avoided wherever possible,

especially if the kitchen is used as a dining area too. If the layout means that a small internal galley-type kitchen is inevitable, it should be directly linked to a well daylight living room.

12.6.4. The report considers each individual block in turn. For Block A, a selection of units is indicated. No commentary or justification is put forward for the selection of same (i.e. have the worst case units being selected etc). No analysis of kitchens is included in the table. Notwithstanding, for the 18 no. units considered on Level 1 Block A, 16 of 18 of the rooms considered meet the BRE targets, when considering the SHD scheme only. With the proposed commercial scheme in place as well as the SHD scheme, 8 of the 18 rooms meet the targets, with relatively large shortfalls in rooms 1 to 7, 14, 16, and 17 in particular. At Level 3 Block A, 6 of the 18 rooms selected meet BRE targets. With the proposed commercial scheme in place as well as the SHD scheme, 11 of the 18 rooms meet the BRE targets, with relatively large shortfalls in rooms 1, 2, 4 and 5. At Level 5, the rooms are generally compliant, with one room not meeting the BRE targets with the SHD scheme in place only, and 4 no. rooms not meeting the target with the proposed commercial scheme in place as well as the SHD scheme. At levels 9 and 11 there is 100% compliance with BRE Targets, for the rooms selected.

12.6.5. In relation to Block B, the report considers 25 no. rooms at Level 1. It is demonstrated that there is only a relatively minor impact on the proposed units in Block B with the proposed commercial scheme in place. In relation to the proposed SHD scheme solely, 13 of the 25 rooms selected meet the BRE targets. Shortfalls of significance are noted in a number of selected rooms, of particular note is Room No. 18, a living room, which has a predicted ADF value of 0.10 (with a target value of 1.5 - although this unit is not identifiable on any floorplans – see below). Room 11, a living room, achieves a value of 0.15. This unit is a single aspect unit. In relation to Block B Level 3, 16 of the 26 rooms meet BRE targets. There are shortfalls of significance, of particular note being Room 22 (Living Room) which has a predicted ADF of 0.12. Level 5 Block B indicates that the majority of rooms selected meet the BRE targets (19 of 26 rooms selected) with the SHD only in place. However there are still some shortfalls of significance, of note being Room 20 (Living Room) which has a predicted ADF of 0.12. At Level Block B, 12 of the 18 rooms selected meet the BRE targets, with shortfalls still evident (i.e. Room 12 a living room, having a

predicted ADF of 0.54). Rooms above this, at level 11 and 16 as reported, meet BRE targets.

- 12.6.6. In relation to Block C, at Level 1, 15 of the 18 selected rooms meet the BRE Targets, with 10 of the 18 rooms meeting targets with both the commercial and SHD scheme in place. At Levels 3 and 5, 18 of the 20 rooms selected meet the BRE Targets, with the majority of the rooms meeting the targets with both schemes in place. Reported rooms at Levels 9 and above meet targets. At all levels, but most notably at upper levels, targets are exceeded significantly. This is generally positive, although Section 2.1.10 of the BRE Guidance does note that ADF levels of over 6% can give rise to summertime overheating or excessive heat loss in winter. There is no discussion of same within the submitted report.
- 12.6.7. Section 9.6 of the report states that ADF results have been interpolated for the floors and rooms that have not been analysed, and the result of this have been presented in Table 1 'Summary of Average Daylight Factors'. This states that with the SHD scheme only, 90% of all rooms will meet or exceed BRE targets, with 85% of all rooms meeting or exceeding targets with both schemes in place.
- 12.6.8. I have a number of concerns with the submitted report, and some of these concerns have also been raised by observers on the application and by the Planning Authority. There is little justification for the rooms selected on each floor, although it is likely the case the 'worst-case' scenario rooms have been selected. There is no discussion of why kitchens have not been analysed, although BRE does allow for galley kitchens which are linked to well-lit living rooms. It is not demonstrated that these kitchens are in fact linked to well-lit living rooms, and indeed on the lower floors of Block B in particular this does not appear to be the case. Where failure to achieve the targets for all rooms on a particular floor has been demonstrated (for example on Level 5 Block B) it is unclear as to the number of rooms between Levels 5 and Levels 8 which fail to meet the targets. While in Table 1 'Summary of Average Daylight Factors' interpolates the results across all floors, unhelpfully it does not break the compliance rate down by block, rather the percentage of rooms exceeding BRE targets is given for all three blocks. In my view, Block B is of particular concern, and the percentage of rooms meeting BRE standards on each level is not clear. From the report and where results of selected rooms are shown, there are significant shortfalls indicated. This to my mind is partly as a result of the location of this block on the

north-eastern corner of the site, to the north of the higher elements of the scheme, and partly as a result of the closed courtyard arrangement of this block which serves to further limit light penetration to these units. The scheme would be much improved to my mind if this courtyard block were to be opened up to a degree, which would in turn increase light penetration to the units. While the use of galley kitchens can be justified when linked to a well-lit living room, there are numerous instances where the living rooms units of Block B fall significantly short of the BRE targets. I am cognisant of the fact that BRE targets are not mandatory, and in urban areas such as this one, where higher density development is to be achieved, it is rarely possible to achieve the targets across all rooms. However, the targets do give an indication of where the overall design and layout of a proposal should perhaps be reconsidered, and in this case, consideration should have been given to improving light penetration to Block B by the omission of units to the south-western corner of the block or omission of the units that are positioned above the undercroft area. I note the Building Height Guidelines suggest that the form and massing of developments should allow for maximum access to natural daylight, and I do not consider that this has been achieved in this instance.

12.6.9. I note that Criteria 3.2 of the Building Height Guidelines states that appropriate and reasonable regard should be had to the quantitative approaches as set out in guides like the Building Research Establishment's 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. It is acknowledged in these Guidelines that, where a proposal does not fully meet the requirements of the daylight provisions, this must be clearly identified and a rationale for alternative, compensatory design solutions must be set out. The Board can apply discretion in these instances, having regard to local factors including site constraints, and in order to secure wider planning objectives, such as urban regeneration and an effective urban design and streetscape solution.

12.6.10. In relation to same, the report submitted indicates that there are significant shortfalls in daylight provision, on the lower floors of Block B in particular. The full extent of these shortfalls is not clear however, as there are no results set out for the kitchen units, and no justification for the omission of same. There is no justification set out for the selection of rooms that have been analysed, and in the overall summary of ADF values (as set out in Table 1) there is no breakdown of compliance rates per

block, and as such the overall compliance rates for Block B is unknown. To my mind, the overall compliance rate is helped to large degree by the room/units on the upper floors (i.e. those floors which are over the prevailing building height in the area) which do not have significant barriers to daylight penetration. In relation to the lack of analysis of kitchens, I note that, as kitchens in the proposed development form part of living areas, a default ADF of 1.5% is an acceptable target, following BRE recommendations that kitchens are attached to well day-lit living areas. I do not consider the overall compliance rate is impacted by the lack of analysis of kitchens. However, it has not been demonstrated that the living areas are in fact well lit, as set out above.

12.6.11. As such the applicants have not clearly identified shortfalls as required by the Height Guidelines (see also discussion on surrounding residential amenity). There also appears to be some inaccuracies in the Daylight/Sunlight Report. For example Rooms 18 (living room) and 19 (bedroom) on Block B Level 1, as indicated in Section 9.4.1 of the report, does not correspond to any unit on the submitted floorplan (Dwg. No. P1011 Rev 7 First Floor Level 01 refers), with the indicative location of same occupied by either a lobby or core for the block.

12.6.12. I note that the Building Height Guidelines acknowledge that the daylight provisions may not always be fully met, and regard must be had to other factors. Fundamentally, in my view, an alternative design solution is possible on this site for those units with very poor daylight levels in Block B, while still achieving higher level goals such as urban regeneration and higher density, more compact development. While it could be contended that compensatory design features have been provided such as roof terraces and roof gardens, I am not of the view that these are sufficient to overcome the poor amenity of these units I also note that a number of the rooms that have poor daylight values are living rooms and are single aspect, facing out onto a courtyard that has poor daylight and sunlight penetration. Nor is the proposed public realm a sufficient compensatory feature, the limitations of which I have considered above. While the proposal serves to achieve the regeneration of the site, such a regeneration could also be achieved in my view, by a design that provides a better level of amenity to proposed units. In terms of provided an effective urban design and streetscape solution, and in relation to Block B in particular, I do not consider that is desirable nor does it produce a desirable outcome to slavishly follow

the block from as set out in the indicative scheme for City Block 9. Indeed, the Planning Scheme allows for a flexible internal building line within any proposed scheme, which the applicant has taken advantage of in relation to other elements of the scheme.

12.6.13. The report does indicate that a relatively high proportion of rooms within Block B may not meet BRE standards, particularly at the lower levels of this block. Poor daylight levels are indicated for Block A with the proposed commercial scheme in place, again more so at the lower levels of this block. The report sets out that almost 50% of the rooms analysed on Level 1 of Block B would not meet BRE standards, with significant shortfalls reported, as noted above. While daylight levels are seen to improve on the upper floors, I am of the view that, overall, there is insufficient information set out in relation to the overall daylight provision to the proposed units, and the full extent of any shortfalls has not been demonstrated. While compensatory measures are provided, without a clear indication of the magnitude of any shortfalls, it is not possible in my view to demonstrate compliance with Criteria 3.2 of the Building Height Guidelines. While the proposal serves to achieve the regeneration of the site, it has not been demonstrated that the layout as shown, in particular the closed courtyard arrangement of Block B, provides the maximum level of daylight, while still achieving wider planning aims. It may well have been possible to achieve a better level of amenity through a revised block arrangement for Block B.

#### Proposed Outdoor Amenity Areas

12.6.14. The BRE Guidelines recommend that for a garden or amenity area to appear adequately sunlit throughout the year, at least half of it should receive at least two hours of sunlight on March 21st. Section 7 of the report 'Annual Probable Sunlight Hours of Proposed Building Amenity Spaces' considers the sunlight levels to the proposed amenity areas. In relation to the proposed pocket park, centrally located within the scheme, this does not receive two hours of sunlight on March 21<sup>st</sup> (although when considering the SHD development on its own it would appear to). The applicants state that the pocket park as identified in the SHD scheme did not achieve this BRE target either. It is unclear what alternatives were considered to improve this situation and whether such alternatives were warranted as they may result in the significant and unsustainable reduction in scale and development the site could otherwise take. Such analysis or consideration would assist in determining



the merits of the scheme. There is no discussion of the internal market courtyard area within Block B. It is likely that there is poor sunlighting to this area. As noted in Section 3.3.2 of the BRE Guidelines, special care needs to be taken in the design of courtyards, as they can often turn out to be sunless and appealing. As referred to above, there is the possibility of design amendments, through the omission of units to Block B, to improve sunlight penetration to the courtyard area, and improving the overall amenity value of this area

12.6.15. In relation to the proposed shared private amenity spaces (roof gardens and terraces) it is stated that these areas achieve BRE standards.

#### Communal Open Space

12.6.16. Details of the proposed terrace/amenity space areas are set out in the Landscape Access & Design Statement and the Design Statement. The quantum of the residential terrace area for each Block is set out below:

- Block A 1444 sq. m.
- Block B 2285 sq. m.
- Block C 1102 sq. m.
- Total provision is 4,831 sq. m.

12.6.17. Having regard to the standards set out in Appendix 1 of the Design Standards for New Apartments (updated December 2020), the overall communal space provision required is 6,051 sq. m. While there is a shortfall identified, I note that there are also communal facilities provided within the development which include a 1,529 sq m gym and health centre for the residents at lower ground floor and 4,919 sq m of residential support facilities and residential amenities mainly in the lower ground floor including laundry rooms, drying rooms and screen/cinema rooms. I am cognisant of the result of the Wind Study, which indicates that the rooftop terraces of Blocks B and C may not achieve the 'sitting comfort criterion', but may achieve the 'standard comfort criterion', having regard to predicted wind impacts (Figs 2 and 3 of the Waterfront – Wind Study refers). However, as noted in the report, those areas at a higher levels will be subjected to greater wind impacts, and the provision of the roof parapets, and a canopy on the 32nd floor of Block C, to mitigate against wind impacts has served to improve the overall impact of greater wind speeds. Overall, it

is my view that the level of communal space and communal facilities provided by the scheme is sufficient, in particular having regard to the location of the site within a well serviced inner urban area where increased residential densities are sought.

#### Private Open Space

12.6.18. All private amenity spaces in the development comply with or exceed the minimum required floor areas for private amenity spaces.

#### Dual Aspect

12.6.19. I note Specific Planning Policy Requirement 4 (SPPR4) of the aforementioned Apartment Guidelines, which state that:

‘In relation to the minimum number of dual aspect apartments that may be provided in any single apartment scheme, the following shall apply

(i) A minimum of 33% of dual aspect units will be required in more central and accessible urban locations, where it is necessary to achieve a quality design in response to the subject site characteristics and ensure good street frontage where appropriate.

(ii) In suburban or intermediate locations it is an objective that there shall generally be a minimum of 50% dual aspect apartments in a single scheme.

(iii) For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha , planning authorities may exercise further discretion to consider dual aspect unit provision at a level lower than the 33% minimum outlined above on a case-by-case basis, but subject to the achievement of overall high design quality in other aspects’.

12.6.20. It is stated within the Statement of Consistency that the number of dual aspect units is 431 units, which equates to 43.4% of the overall number of units. I have concern in relation to the dual aspect type located on the south-eastern corner of Block A (7 no. units in total on Floors 1 to 7 inclusive). A smaller window, of some 1.2m in width, is provided by virtue of a staggered arrangement of the elevations. This unit is given specific consideration in the Housing Quality Assessment and a comparison is made to a dual aspect type granted in the Spencer North scheme (DCC Reg Ref 4279/18). I do not consider the two units are comparable in my view, and in any case the Board was not the adjudicator in that instance. I am of the view that the unit type

should be omitted from the dual aspect calculations. This would result in a total dual aspect provision of 42.2%.

12.6.21. I am also of the opinion that given the locational context of the site, close to existing high frequency transport links, the existence of a high quality cycle network linking to the city centre and other locations, and within walking distance of the City Centre, the 33% requirement for dual aspect units applies in this instance and am satisfied with the quantum of dual aspect units provided. While there are some 75 north-facing single aspect units, the total number such units accounts for approximately 7.3% of the overall provision. I am of the opinion that given the need to develop this inner urban site at an appropriate density, and the need to comply with the external building lines, it is inevitable that north-facing single aspect units will form part of the scheme. I do have concerns however, in relation to the overall provision of daylight to the proposed units, in particular where daylight levels are significantly below BRE targets, and the unit in question is single aspect.

#### Mix

12.6.22. The Subject Proposal includes 495 No. 1-bed units, accounting for some 49% of the proposed units. 2-bed units account for 50% of the proposed units. No studio-type units are proposed. 3 No. 3-bed units are proposed. I note the provisions of SPPR 1 of the Apartment Guidelines (2018) which state that Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms.

12.6.23. I consider the mix to be acceptable in this instance and is compliant with SPPR 1 as outlined above.

#### Floor Area

12.6.24. The apartments are designed to exceed minimum standards with the majority of units sized to be at least 10% larger than the minimum space standards. Of the 1,005 No. residential units proposed, 588 No. (58%) exceed the minimum floor area standard by a minimum of 10%. As such the proposal is in compliance with SPPR 3.

#### Floor to Ceiling Heights

12.6.25. The minimum floor-to-ceiling height provided throughout the Subject Proposal is 2.7 m, and range to 3.75 m. Ground floor clear floor-to-ceiling heights extend to 4 m. As such it is in compliance with SPPR 5.

#### Apartments Per Core

12.6.26. A maximum of 9 No. apartment units per floor per core are provided throughout and I am satisfied that the proposal in compliance with SPP6.

### **12.7. Surrounding Residential Amenity**

12.7.1. The nearest residential dwellings are located to the north of the site, at Mayor Street Upper, within the Castleforbes Square development. There is also substantially completed residential development at Castleforbes Road to the west of the development site (City Block 8 as defined in the Planning Scheme) although those units that are facing the development site appear to be unoccupied at present. There are also a number of two-storey unoccupied residential units on Mayor Street Upper, adjacent to the Castleforbes Square development, which are within the ownership of the applicant.

12.7.2. The submission of the Planning Authority raises concerns with the submitted daylight, sunlight and overshadowing report and states that insufficient assessment has been carried out on surrounding developments. In particular it is stated that no sunlight assessment has been carried out, in relation to impacts on Annual Probable Sunlight Hours (ASPH) and no assessment of overshadowing of surrounding amenities spaces has been set out. In additional, it is noted that the assessment of the units to the west of the site, on City Block 8, is inaccurate and does not represent the developments as consented.

12.7.3. Observer submissions have also raised concerns in relation to impacts on daylight, sunlight and overshadowing, with knock-on impacts on increased heating and daylight costs. In particular, the submission from Castleforbes Square Management Company also state that the impacts on daylight to the units facing towards the site will be substantial, and it is also noted that no skylight analysis was carried out. It is further stated that the overshadowing study is inadequate. Right to light issues have also been raised. A non-specialised CAD shadow study has been submitted with the Castleforbes Square submission, on digital files, which indicate shadow impact. I have viewed these files, although as highlighted by the applicant, I am cognisant that

these have not been produced by technical specialists, and as such I have had only limited regard to same. Impacts of overlooking and visual dominance have also been raised. Elected Members have raised serious concerns in relation to the impact of overshadowing and overlooking of adjoining properties.

#### Daylight and Sunlight

- 12.7.4. I note that the criteria under section 3.2 of the Building Height Guidelines include reference to minimising overshadowing and loss of light. The Building Height Guidelines refer to the Building Research Establishments (BRE) 'Site Layout Planning for Daylight and Sunlight – A guide to good practice' and ask that '*appropriate and reasonable regard*' is had to the BRE guidelines. However, it should be noted that the standards described in the BRE guidelines are discretionary and are not mandatory policy/criteria and this is reiterated in Paragraph 1.6 of the BRE Guidelines.
- 12.7.5. The applicant has submitted a Daylight, Sunlight and Overshadowing Analysis. In relation to surrounding residential amenity this considers the impacts on daylight to existing adjacent buildings, in terms of Vertical Sky Component (VSC). It also comprises of a shadow analysis.
- 12.7.6. Paragraph 2.2.7 of the BRE Guidance (Site Layout Planning for Daylight and Sunlight - 2011) notes that, for existing windows, if the VSC is greater than 27% then enough skylight should still be reaching the window of the existing building. Any reduction below this would be kept to a minimum. If the VSC, with the new development in place, is both less than 27% and less than 0.8 times its former value, occupants of the existing building will notice the reduction in daylight.
- 12.7.7. Section 8.1.2 'Schemes Considered for the Analysis' outlines that both the proposed SHD Scheme and the Proposed SHD Scheme with the Proposed Commercial Scheme have been considered for analysis. Section 8.2 sets out the results of the analysis. The SDZ indicative scheme is used as the baseline for the analysis and as such the VSC values for surrounding windows are given as if this indicative development is in place. I have some concerns in relation to same, as while such a indicative proposed block arrangement is set out within the Planning Scheme, there is no permission for same. A more appropriate benchmark may have been the existing extant permission on the site, enabling a comparison of this proposal over

and above the extant scheme Appendix F of the BRE Guidelines sets out guidance on setting alternative target values for Skylight and Sunlight Access. Paragraph F2 of same notes that an extant permission on site can be used as an alternative benchmark. However it is stated that, since the permitted scheme only exists on paper, it would be inappropriate for it to be treated in the same way as an existing building, and for the developer to set 0.8 times the values for the permitted scheme as benchmarks.

- 12.7.8. As such, even if the Board were to accept the indicative SDZ scheme as an appropriate benchmark, then any reduction from this baseline is not in line with BRE Guidelines (and not any reduction over 0.8 times its former value). This would also be true of the extant scheme. However, I do note that site is within an inner urban location, and is earmarked for development of scale, and therefore it is unlikely that BRE standards will be met at all windows of adjacent residential blocks, irrelevant of whatever benchmark is proposed.
- 12.7.9. From my site visit, it is apparent that the residential development at Castleforbes Road is substantially complete (on City Block 8 as defined in the Planning Scheme). The indicative window diagram as shown in Section 8.2.1 of the report does not necessarily tally with what has been constructed and does not indicate the various rooftop setbacks or windows that are inset behind balconies etc. It also does not encompass all of the windows that may be impacted upon in this scheme, and there is no justification provided for the windows that have been chosen i.e. do they represent the worst case scenario.
- 12.7.10. Notwithstanding, the table indicates that, with the proposed SHD scheme in place, that 6 of the 27 windows the Castleforbes Road development fall below the 27% value and also fall below 0.8 times the baseline value. With only the proposed SHD development in place, an improvement is seen over the baseline value for some of the windows. With both the SHD scheme and the proposed commercial scheme in place, all of the windows fall below the 27% value and also fall below 0.8 times the baseline value. The window most impacted upon is Window 9 which would have a VSC of 8.81 with both schemes in place (although this window would see an improvement over the 'baseline' value with just the SHD scheme in place).

- 12.7.11. There is no analysis of the 8 storey apartment development (also on Castleforbes Road) immediately to the south of the Castleforbes Road development considered above, which appears to be entirely complete and which has windows and balconies facing towards the development site, albeit at a greater distance from the Castleforbes Road block referred to above.
- 12.7.12. In relation to the Castleforbes Square Development, which partly fronts onto Mayor Street Upper, the analysis considers 36 no. windows on the south facing elevation of this property and this appears to have encompassed all of the windows that may be impacted upon. The baseline value assumed is again the indicative SDZ Scheme. I note the baseline value is below 27% in a number of these windows. With the proposed scheme in place, VSC levels are below 27% and below 0.8 times their former value, with VSC values being reduced by up to 57% of the baseline value. There is little impact when considered with the commercial scheme, given the location of the proposed commercial development element relative to the properties at Castleforbes Square Development which are face towards the application site. I am of the view that the analysis should have utilised the extant scheme as a benchmark for the analysis, and should have highlighted clearly where VSC values fall below the benchmark value, with no consideration of the 20% reduction, as per Appendix F of the BRE Guidelines. This would give a clearer picture of the impact of the proposal, over and above what has been consented on site. As such, I do not consider that the Board has sufficient information in order to come to a conclusion on the magnitude of impacts on the Castleforbes Square development, having regard to loss of daylight. I do reiterate however that some impacts on Castleforbes Square are likely, given that development of scale is expected on this application site.
- 12.7.13. No analysis of the two storey dwelling units on Mayor Street Upper was carried out as it is stated that this property is under the ownership of the applicant and is under review for a future planning application. Notwithstanding, I concur with the view of the Planning Authority and of observers on the application, that an analysis of these properties should have been carried out, given that there is no extent permission in place to redevelop same, if this is to happen at a future date.
- 12.7.14. No analysis of the two storey dwelling units on Mayor Street Upper was carried out as it is stated that this property is under the ownership of the applicant and is under review for a future planning application.

12.7.15. In considering the acceptability or otherwise of the impacts, and in relation to the combined impact of the development on the adjacent site, I note that some form of commercial development will be on site, and will most likely be of a scale similar to that proposed (as the scheme proposed is in compliance with the SDZ). However, while it is worth noting the impact of this scheme, it is not a matter for consideration for the Board, and the assessment undertaken here is limited to the merits or otherwise of the proposed SHD scheme.

#### Sunlight

12.7.16. The proposal does not set out the impact on sunlight levels to surrounding properties and no justification for this has been provided. The impact on sunlight to neighbouring windows is generally assessed by way of assessing the effect of the development on Annual Probable Sunlight Hours (APSH). The BRE Guidelines suggest that windows with an orientation within 90 degrees of due south should be assessed. While I am cognisant that the permitted development on site would have an impact on sunlight levels to surrounding properties, there is insufficient information on file to determine the additional impact on sunlight levels as a result of this proposal. It is likely that sunlight levels to the Castleforbes Square Apartments located to the immediate north of the site would be impacted upon, as well as the recently completed developments on Castleforbes Road, as well as the two-storey dwellings on Mayor Street. The lack of an analysis of impacts on sunlight is a significant omission, in my view, and does not allow for a complete consideration of the impacts of the development on the amenity of surrounding properties.

#### Shadow Analysis

12.7.17. The report includes a shadow analysis which considers the 'SDZ Indicative Scheme', the proposed SHD Scheme, and the 'Proposed Scheme plus the Proposed Commercial Scheme'. As per above, notwithstanding that the applicant has submitted an analysis of the combined schemes, the appropriate analysis is the SHD Scheme solely, although it is likely that some form of commercial development will come forward on the site, of a scale that is set out in the Planning Scheme.

12.7.18. In relation to overshadowing, the BRE guidelines state that an acceptable condition is where external amenity areas retain a minimum of 2 hours of sunlight over 50% of the area on the 21<sup>st</sup> March. The submitted Sunlight, Daylight and Shadow



Assessment includes shadow diagrams to illustrate the predicted impact of the proposed development in relation to overshadowing. While a general analysis is provided in Section 6.3 of the document, this does not refer to external amenity areas of neighbouring properties, or if they comply with the above. I note that from the street an external courtyard are serving residential units within the apartment development to the north of the site is evident (Castleforbes Square). The report concludes that when compared to the SDZ indicative scheme there is minor additional shading noted throughout the periods considered and as such the impact of the proposed development can be classified as a minor adverse impact.

12.7.19. In relation to impacts on March 21<sup>st</sup>, the shadow study indicates that there is some additional impact on this courtyard, over and above the baseline indicative SHD scheme, as a result of this SHD scheme only, most notably at midday and at 2pm. Impacts are considerably less during the summer months, as indicated by the June 21<sup>st</sup> shadow analysis.

A commentary should have also been provided in relation to the public amenity space at Point Square given the shadow analysis indicates impacts on same, especially during the afternoon and evening. Section 3.3.3 of the BRE Guidelines notes that the availability of sunlight to all open spaces should be checked where it would be required and this includes *inter alia* public squares.

#### Overlooking/Loss of Privacy

12.7.20. In relation to overlooking/loss of privacy, I note that this site has been earmarked for a development of up to 7 storeys (residential) on the northern edge of the site, and along the boundaries of the site on Castleforbes Road and North Wall Avenue, with relatively defined external building lines. In terms of impacts on surrounding properties, as noted above the Castleforbes Square development is located to the north of the site, with existing residential windows facing towards the application site. Buildings of up to 14 storeys in height are proposed on the north-eastern boundary of the site, directly opposite the Castleforbes Square, with a window-to-window separation distance of between 24.5m and 25.6m. This is a sufficient separation distance in my view to ensure that any overlooking or loss of privacy will be minimal. In relation to the impact on the existing two-storey properties on Mayor Street, I note that these are unoccupied and within the applicant's ownership. Notwithstanding,

given the separation distance of 20.2m from the proposed development to same, I consider that any overlooking or loss of privacy will be minimal. There is a 40.3m separation distance from the built form of the proposed residential development to the recently completed units on Castleforbes Road and I note there is no windows on the western flank elevation (in expectation of the adjacent commercial scheme coming forward for development). Any windows that do face towards Castleforbes Road have a separation distance greater than 40m and as such no material overlooking of the recently completed developments on Castleforbes Road will result.

#### Conclusion on Surrounding Amenity Impacts

12.7.21. I am of the view that due to the deficiencies and omissions in the Daylight, Sunlight and Overshadowing Assessment, impacts on surrounding amenity cannot be determined with a required degree of reassurance. I consider that the applicants should be requested to provide clarification by way of an oral hearing, in relation to the impacts on surrounding amenities, having regard to daylight, sunlight and overshadowing.

#### **12.8. Flood Risk**

12.8.1. Section 9.3 of the National Planning Framework (NPF) includes guidance for water resource management and flooding with emphasis on avoiding inappropriate development in areas at risk of flooding. National Policy Objective 57 requires resource management by “ensuring flood risk management informs place-making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities”.

12.8.2. The Drainage Division of the Planning Authority have raised concerns in relation to details relate to surface water management strategy and the proposed location of surface water outfall, highlighting discrepancies within the application documentation. Retention storage in the event of tidal locking is also required as well as a comprehensive SUDS masterplan layout. Additional detail on how an exceedance storm event (in excess of the 1% AEP + 20% Climate Change) is also required. I have considered this submission below.

- 12.8.3. The applicants have submitted a Site Specific Flood Risk Assessment. This notes that the site lies within Flood Risk C and that a Justification Test is not required. In terms of fluvial flood risk, it is noted that the site is located 30m north of the River Liffey but lies outside the 0.1% AEP floodplain, based on recent modelling of the area as part of the Eastern Catchment Flood Risk Assessment Mapping (CFRAM) project. In terms of tidal flooding, the SSFRA considers the impact of climate change on sea level rises and consider the effect of a 'mid-range' sea level rise and a 'high-end' sea level rise. The results indicate the site would be outside the flooded area. CFRAM mapping also indicates that the site is outside the 0.1% AEP tidal floodplain. In terms of pluvial flood risk, the historic mapping does not indicate flood events in the area. The risk from groundwater flooding is considered in Section 4.6 of the SSFRA and is considered acceptable.
- 12.8.4. The SSFA considers the potential of the site to contribute to off-site flooding and reference is made to the Planning Scheme requirements that stormwater runoff be limited to 2/l/s/Ha and to provide sufficient on site storage to accommodate the storm water for a 1 in 100 year storm event, including a 20% allowance for climate change. It is stated that storm water drainage will be released into the storm water sewer flowing north to south in North Wall Avenue, which in turn flows into the storm water sewer on Mayor Street Upper.
- 12.8.5. Section 4.7 sets out Mitigation Flood Defence measures, notwithstanding the low risk of flooding associated with the development. It is proposed to locate all buildings above the 4.00m AOD datum and to include flood defences to a level of 4.00m AOD to ensure that the development is future proofed against extreme storm water events. These flood defences are to be placed at vulnerable locations including basement entrance locations. I note that significant basement works are proposed (although basements have been permitted previously). Notwithstanding the previous consents, I consider that additional detail of any emergency management plans, including escape routes from basement levels, should be provided by way of condition.
- 12.8.6. In addition to the above, additional detail should be provided, by way of condition, in relation to the potential failure of the stormwater management system, and the potential for same to impact on surrounding sites, as required by the Drainage Division. Such detail should consider the potential flowpaths in the event of a failure

and mitigation measures to deal with same. Measures to deal with additional attenuation requirements in the event of tidal locking should also be requested by way of condition. As noted in other sections of this report, there is some discrepancy in the documentation in relation to the location of the proposed surface water connection and this has been raised as a concern by the Drainage Division of DCC. However, I am satisfied that this discrepancy is not fundamental, and it accepted that surface water will be discharged to the existing combined sewer system and details of the final connection point, including details of agreement with Irish Water and the Planning Authority, where appropriate, can be achieved by way of condition, should the Board be minded to grant permission. A comprehensive SUDS masterplan can also be required by way of condition.

- 12.8.7. The conditions as suggested above are in line with Section 5.20 of the Flood Risk Management Guidelines which state that conditions should deal with any residual risk and should be guided by the development management objectives set out in the development plan. Section 5.22 of the Guidelines state that in most cases, conditions will be required to amend, clarify or further detail flood mitigation measures.
- 12.8.8. In conclusion, having regard to the fact that the site lies within Flood Zone C, the lack of history of flooding on the site itself, the surface water management proposals as set out in the application documents, I do not consider that the proposal will increase flood risk on this site or on surrounding sites, subject to conditions.

### 12.9. **Oral hearing Request**

- 12.9.1. Section 18 of the Planning and Development (Housing) and Residential Tenancies Act 2016 provides that An Bord Pleanála may in its absolute discretion hold an oral hearing, and in making its decision, shall have regard to the exceptional circumstances requiring the urgent delivery of housing, as set out in the Action Plan for Housing and Homelessness and shall only hold an oral hearing if there is a compelling case for such a hearing.
- 12.9.2. The submission made on behalf of Castleforbes Square OMC CLG makes a request for an oral hearing. The submission raises a significant number of issues which I have summarised within Section 7 of this report, and have referred to in the relevant

sections of the assessment. The conclusion of the submission sets out the request for the oral hearing on the following grounds:

*‘Lack of consideration for the residents and businesses in the urban block containing Castleforbes Square in particular the misuse of the EIA process and the failure to address issues such as sunlight within the proposed development or on Castleforbes Square.*

12.9.3. I have considered the submitted EIAR, and in general, there is sufficient information on file in order to carry out an EIA. However, I have set out a number of concerns in relation to the information submitted with the proposal and I consider that these concerns may well be addressed by way of an oral hearing. In my view the oral hearing should seek to provide clarification on the following matters:

- Daylight Levels to all Proposed Units and clear identification and justification, where levels achieved are below BRE/BS standards. In this regard, the full extent of any shortfalls within each individual block should be explicitly demonstrated.
- Impacts on Daylight, Sunlight and Overshadowing on adjacent residential developments (in particular on the Castleforbes Square Development and on the recently completed residential blocks on Castleforbes Street) and on adjacent communal and public amenity spaces.
- Proposals to improve overall quality of the public realm, in particular proposals to address the poor levels of sunlight to the courtyard of Block B, and consideration of the removal of built form associated with this block.
- Technical Information in relation to the viability and maintenance of the proposed living wall panel, and where this can not be achieved, proposals for an alternative elevation including any relevant CGIs/Visual Assessment documentation.
- Technical Information in relation to the impacts on Telecommunications having regard to the height and scale of development.

## 12.10. Other Issues

### Aviation

12.10.1. In terms of airport operations the IAA and DAA have both made submissions on the application with conditions in relation to noise and crane operations recommended.

## Fire Safety/Cladding

12.10.2. This is a not a matter that should be considered as part of this application and it pertains to Building Control issues.

### **12.11. Planning Authority's Submission including Recommended Reasons for Refusal**

*1. Having regard to the nature and extent of development permitted on City Block 9 by the North Lotts and Grand Canal Dock SDZ Planning Scheme, it is considered that the proposed development would not be consistent with Section 5.5.9(b) of the adopted scheme, which sets out specific height limits for the application site. Accordingly, it is considered that the proposed development would materially contravene the North Lotts and Grand Canal Dock SDZ Planning Scheme and would be contrary to the proper planning and sustainable development of the area.*

12.11.1. I have considered these issues in Sections 12.2, 12.4 and 12.5 above. In summary, I am satisfied that subject to the matters of detail being resolved, in principle given the site's location, I do not consider the proposal to constitute over development, and do not consider the height, density, or plot ratio or visual impact to be such as would warrant a refusal or material alteration. I am satisfied, having considered the proposed development in the context of the SDZ and Development Plan objectives that relate to the site, that section 37(2)(b) would apply in principle.

12.11.2. I do, however, consider that the quality of the public realm, and further analysis of the proposed living wall or an alternative where its viability can not be proven, to require further consideration by the applicant.

*2. It is considered that the proposed development, by virtue of the height, design, bulk and extent would be out of character with the context of the site, would represent a visually prominent form of development relative to its immediate environment and, in particular, the wider cityscape. Furthermore, it is considered that the proposed development would constitute overdevelopment of a tightly constrained site, which would be exacerbated by the proposed block layout and associated provision of narrow and uninviting areas of public realm, which would experience a significant degree of overshadowing and associated discomfort as a result of the impact of wind. It is therefore considered that the subject site would be contrary to the provisions of the North Lotts and Grand Canal Dock SDZ Planning Scheme, the*

*Dublin City Development Plan and the Urban Development and Building Heights Guidelines for Planning Authorities (2018) in terms of standards of urban design, architectural quality and place-making outcomes and the proper planning and sustainable development of the area.*

12.11.3. In summary, and as stated above I am satisfied that subject to the matters of detail being resolved, in principle given the site's location, I do not consider the proposal to constitute over development, and do not consider the height, density, or plot ratio or visual impact to be such as would warrant a refusal or material alteration. I am satisfied, having considered the proposed development in the context of the SDZ and Development Plan objectives that relate to the site, that section 37(2)(b) would apply in principle.

12.11.4. I do, however, consider that the quality of the public realm, the further analysis of the proposed living wall or an alternative where its viability can not be proven to be require further consideration by the applicant. I have considered these issues in Sections 12.2, 12.4 and 12.5 above.

*3. On the basis of the Sunlight/Daylight and Overshadowing analysis submitted, the Planning Authority maintains serious concerns in respect of potential detrimental impact on the amenities of the surrounding residential developments and public realm. Furthermore, the submitted report demonstrates that a significant quantum of the proposed residential units would fail to meet the recommended Average Daylight Factor requirements, thereby resulting in a poor standard of residential amenity.*

I have considered these issues in Sections 12.6 and 12.7 above. In summary, I consider that further analysis in respect of Sunlight/Daylight and Overshadowing is required, as outlined in detail in my report.

*4. By virtue of the impact of the operational servicing requirements of a development of this scale generated on the local road network, the proposed development would be injurious to the safe and convenient movement of people, would result in potential vehicular and pedestrian conflict along the road and would, therefore, endanger public safety by reason of a traffic hazard and obstruction of road users. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area*

12.11.5. I have considered these issues in Section 10 of this report. In general, and to conclude, I am satisfied that the operational requirements can be met in respect of the development, subject to minor amendments which could be dealt with by way of condition.

### 13.0 Conclusion and Recommendation

The proposed development materially contravenes the North Lotts & Grand Canal Dock SDZ Planning Scheme - 2014 in respect of height and density. However, having regard to the strategic and national importance of the development of this site for housing within an area earmarked for urban regeneration, as well as national policy contained in the NPF and Housing Action Plan, and section 28 Ministerial Guidelines, I am satisfied that in principle the proposed development would satisfy the requirements and criteria outlined in section 37(2)(b) of the PDA (as outlined in detail in my assessment). If the Board considers the current judgement to preclude them from granting the proposed scheme, by reason of legislative constraints, this is the only reason for refusal that I consider the Board unable to address by way of condition or oral hearing.

Subject to the Board being satisfied that section 37(2)(b) applies in respect of the proposed development, which is governed by both the requirements and objectives of the City Development Plan and SDZ, **I recommend that outstanding issues should be addressed by way of clarification and elaboration of the issues through the oral hearing process**, in order to ensure adequate information is available to meet the Board's obligations in respect of the SPPR3 of the Urban Development and Building Height, Guidelines for Planning Authorities, 2018.

The outstanding issues of potential concern, which require further elaboration relate to:

1. Daylight Levels to all Proposed Units and clear identification and justification, where levels achieved are below BRE/BS standards. In this regard, the full extent of any shortfalls within each individual block should be explicitly demonstrated.
2. Impacts on Daylight, Sunlight and Overshadowing on adjacent residential developments (in particular on the Castleforbes Square Development and on the



recently completed residential blocks on Castleforbes Street) and on adjacent communal and public amenity spaces.

3. Proposals to improve overall quality of the public realm, in particular proposals to address the poor levels of sunlight to the courtyard of Block B, and consideration of the removal of built form associated with this block.
4. Technical Information in relation to the viability and maintenance of the proposed living wall panel, and where this can not be achieved, proposals for an alternative elevation including any relevant CGIs/Visual Assessment documentation. The applicant may wish to have regard to the views of the DAU (NPWS) in their consideration of the proposed living wall (including in respect of potential for bird strikes) noting their observations in this respect.
5. Technical Information in relation to the impacts on Telecommunications having regard to the height and scale of development.

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Rónán O'Connor  
Senior Planning Inspector

10<sup>th</sup> May 2021