



An
Bord
Pleanála

Inspector's Report

ABP-309511-21

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| Development | Partial demolition and alterations to existing buildings and construction of new 94-bedroom hotel development up to seven storeys. |
| Location | No. 3 (a protected structure), 4, 5 & 6 Parnell Street and Nos. 58 & 59 Capel Street, Dublin 1. |
| Planning Authority | Dublin City Council |
| Planning Authority Reg. Ref. | 3281/20 |
| Applicant(s) | Vision Wave Limited |
| Type of Application | Permission |
| Planning Authority Decision | Grant Permission with conditions |
| Type of Appeal | First Party vs. Condition Third Parties vs. Grant |
| Appellant(s) | Vision Wave Limited (First Party) Caitriona Craddock Maurice McGrath |

Observer(s)

Peter Keenahan

Date of Site Inspection

11th May 2021

Inspector

Stephen Ward

1.0 Site Location and Description

- 1.1. The site is located in the north inner city and bounds onto both Capel Street (to the west) and Parnell Street (to the north), with a stated area of 895m². It comprises six plots and wraps around the rear of the buildings at the junction of these streets to the northwest (i.e. No. 60 Capel St. and 1-2A Parnell St.). The site also bounds onto Jervis Lane Upper to the east and No. 57/57A Capel St. to the south.
- 1.2. No.'s 58 & 59 Capel Street are mid-terrace four-storey over basement 18th century buildings which were substantially rebuilt in 1914 with later annexes. They are recorded as being of regional architectural interest on the NIAH and, according to a Dublin Civic Trust survey, the Victorian appearance of the buildings conceal substantial former townhouses of the early 18th century. Both buildings have a commercial use at ground level and residential use overhead. Single storey and two-storey annexes to the rear effectively cover the entire plots.
- 1.3. No. 3 Parnell Street is a mid-terrace two-bay, three-storey over basement late 18th Century/early nineteenth century building. It is a Protected Structure and is also rated in the NIAH as being of regional architectural and artistic interest. It is unoccupied and in very poor condition with steel supports stabilising the building.
- 1.4. No. 4 Parnell St was built around 1900 and has the remains of a mid-18th century chimney, while No. 5 was built in the late 18th / early 19th century. Both buildings were formerly three-storey over basement and formed a terrace with no. 3. However, only the ground and basement levels survive following the removal of the upper floors on foot of a dangerous building notice being served in 2010. No. 6 is a single storey 20th century concrete and brick structure with no architectural features of merit.
- 1.5. Capel Street is one of the most historically significant streets in Dublin City and it largely forms the western fringe of the city centre retail and commercial core. It is a long narrow street with narrow terraced buildings of varying architectural styles, period and uses.

- 1.6. Parnell Street is also a prominent thoroughfare of historical significance. The immediate vicinity of the site has suffered from dereliction in recent decades, while large sections further to the east of the site have been comprehensively redeveloped e.g. The Parnell Centre and The Ilac Centre.

2.0 Proposed Development

- 2.1. It is proposed to demolish the premises at No.'s 4 to 6 Parnell St and the modern low-rise annex extensions to the rear of the site. No. 58 Capel St will also be substantially demolished except for the front façade, while No. 59 will largely retain both front and the rear façades along with the shared party wall and the internal structure. No. 3 Parnell St will be repaired and refurbished and will be integrated into the redevelopment of the remainder of the site to provide a new hotel development of 94 bedrooms in a part-5, part-6, and part-7 storey over basement building (maximum height of c. 25m).
- 2.2. In response to the Planning Authority's request for further information, the applicant proposed two options. Option B represents the application as originally submitted and described above. Option A omits the 4th floor in its entirety, as well as proposed extensions above 58 & 59 Capel St, resulting in a part-4, part-5, part-6 storey building with 76 bedrooms and a maximum height of c. 22m.
- 2.3. The works associated with the proposed development comprise the following:
- No. 3 Parnell St - internal and external alterations with original brickwork to be cleaned and repointed and new traditional style timber windows to be provided in existing opes on front facade, existing chimney stack to be retained and refurbished; part-removal of internal partitions/walls to facilitate reconfiguration/refurbishment of ground floor, first floor and second floor levels and connection to new hotel development; provision of replacement shop front.
 - No. 58 & 59 Capel St - alteration of fenestration, refurbishment and extension by 1 no. storey of rear facade at no. 58, refurbishment of front facade at Nos. 58 & 59 to original state with existing brickwork and cleaned and repointed along with the installation of new traditional-style timber windows; provision of replacement shopfronts;

- Hotel basement – Containing whiskey lounge, wine cellar, Spa, toilets, changing rooms, plant, storage, and ancillary facilities.
- Ground floor - Entrance foyer and lobby etc off Parnell St, restaurant (162 sq.m.) accessible via Parnell Street and Jervis Lane Upper, lounge/bar/coffee area (148 sq.m.) off Capel St, external courtyard/seating area (64 sq.m.), cocktail/wine bar (46 sq.m)
- Hotel rooms – Option B proposes 94 bedrooms over ground to sixth floor levels. Option A proposes 76 bedrooms from ground to fifth floor level.
- Residents private lounge/bar – Both options include this 66 sq.m. space at the respective top floors, as well as a balcony area (36 sq.m.) to the northern & eastern elevations.
- Other works – To include roof plant; facade treatments of brick, glazing and metal cladding; SuDs drainage; and all associated site works

2.4. As well as the normal planning application drawings, the application is accompanied by:

- Flood Risk Assessment
- Daylight / Sunlight Assessment
- Archaeological Desk Study
- Architectural Heritage Impact Assessment
- Photomontage Images & Visual Impact Assessment
- Sustainability & Energy Report
- Planning Report
- Traffic / Transport Assessment
- Preliminary Mobility Management Plan
- Preliminary Construction / Traffic Management Plan
- Structural Report

3.0 Planning Authority Decision

3.1. Decision

Following a request for further information, DCC issued a decision to grant permission subject to 21 conditions (by Order dated 27th January 2021). The following conditions of the decision are notable:

5 – The development shall be constructed as shown as Option A on the drawings submitted as further information.

6 – The development shall be revised by omitting the following:

- (a) The courtyard retractable roof
- (b) Projecting sign at the upper levels of the north elevation
- (c) The glass canopy proposed for No. 3 Parnell Street
- (d) The stair enclosure, No. 2 to the rear of No. 59 Capel St on the 4th floor

7 – The courtyard area shall not be open between the hours 2200 and 0700

17 - Requires revised drawings addressing the Conservation requirements of the planning authority.

18 – Refers to the Archaeological requirements of the planning authority.

3.2. Planning Authority Reports

Initial Assessment

3.2.1. The *Conservation Officer's* assessment can be summarised as follows:

- Long term residential use of existing buildings would be preferred.
- Further Information is required on the retention of historic fabric in No. 58 & 59 Capel Street and the implications of services installation.
- Concerns are raised about the height, scale and design of the proposal and its impact on architectural heritage.
- Further information is required in relation to historic boundaries.

- 3.2.2. The *City Archaeologist's* report highlighted the archaeological significance of the area and the possibility that 17th/18th Century fabric may survive within the site. It recommended that further archaeological assessment be submitted.
- 3.2.3. The *Transportation Planning Division* report had no objection to the absence of car-parking and concluded that there will be no significant impacts on the road network. There were no objections to the development subject to conditions.
- 3.2.4. The *Drainage Division* requested a flood risk assessment for the development and a surface water management plan.
- 3.2.5. The *Planner's Report* can be summarised as follows:
- The proposed uses are consistent with the 'Z5' zoning for the site.
 - Given the city centre location of the site, the proposed site coverage (89.7%) and plot ratio (4.52) is considered acceptable.
 - The proposed height (25.3m) is below the maximum height allowable for a commercial building in this area (up to 28m).
 - There will be a number of positive interventions with the upgrading of existing buildings and the use of modern materials. However, the scale and height of the scheme is a cause for concern, and it is considered that it should be reduced by the omission of the 4th floor and omission of room no's 512 & 513 on the replacement 4th floor.
 - A full sunlight/daylight assessment is required in relation to the residential windows serving No. 57 Capel St. Further Information is also required regarding noise impacts from the courtyard.
 - The report refers to the further information requests of the Conservation Officer, the City Archaeologist and the Drainage Division.
 - The report concluded that there was no objection to the development in principle. However, a Further Information request was recommended to address the matters outlined above.

3.2.6. In accordance with the Planner's recommendation, a Further Information Request was issued on 28th October 2020. The applicant responded to this request on 22nd December 2020.

Further Information Response

3.2.7. Following assessment of the response, the *Drainage Division* report of 18th January 2021 had no objections subject to conditions. Although there is no copy of a report on file, the Planner's report states that the *City Archaeologist* also had no objections subject to conditions.

3.2.8. The *Conservation Officer's* comments (25th January 2021) on the response can be summarised as follows:

- Option B is not supported due to concerns about excessive height and scale and the impacts on the ACA and Protected Structures. The report therefore assesses the impact of Option A as the preferred option.
- Since the granting of the previous permission (P.A. Ref. 4311/18), DCC has agreed a methodology to review the RPS and prioritise buildings of the early 1700's. No.'s 58 & 59 fall into this category and therefore it was requested that additional historic fabric be retained.
- Revised arrangements for staircases in No.'s 58 & 59 are welcomed subject to further clarification by condition.
- Concerns are raised about the extent of demolition to the rear of facades. Primary structural fabric in No.'s 58 & 59 shall be retained, including chimney breasts, floors and walls.
- There is an opportunity to improve the reading of historic floor plans.
- Additional information is required in relation to the impact of services; historic stonework, repointing and cleaning; the detail of replacement windows; and damp proofing proposals.
- The height of stair enclosure no. 2, to the rear of No. 59, is excessive and should be omitted to provide 'breathing space to the historic buildings'.
- A grant of permission was recommended, subject to conditions addressing the outstanding concerns as outlined above.

3.2.9. In addition to reflecting the contents of the above technical reports, the *Planner's Report* of 27th January 2021 can be summarised as follows:

- Subject to the amendments as per Option A, the proposal will not cause serious additional overshadowing of adjoining properties.
- It is not considered that there will be significant overlooking from the development.
- A condition should be attached to limit the use of the courtyard at night, thereby negating the need for a retractable roof.
- Option A is more suitable in height, scale and massing, and will not be seriously injurious to the visual amenities or architectural heritage of the area.
- A grant of permission was recommended, which forms the basis of the DCC decision and conditions.

3.3. **Prescribed Bodies**

One submission was received from Transport Infrastructure Ireland, which suggests that a Section 49 contribution would apply in relation to the Luas Cross City Scheme.

3.4. **Third Party Observations to the Planning Authority**

3.4.1. Submissions were received from Maurice McGrath (owner of No. 57 and the rear of No. 56 Capel St), Peter Keenahan (Architect), and Caitriona Craddock (resident and proprietor of 2 Parnell St). In summary, the submissions objected to the development on the grounds of impacts relating to:

- The heritage of the site and surrounding area
- Site ownership, boundary and structural issues
- Noise and disturbances at construction and operational stage
- Overlooking of adjoining properties and privacy
- Inaccuracies and the validity of the application
- Sunlight and Daylight impacts on adjoining properties

- Excessive height and overbearing impacts
- Concentration of hotels in the area
- Visual impacts on the character of the area
- Overdevelopment of the site
- Traffic congestion and access limitations
- Flooding

3.4.2. All the above individuals are parties to this appeal and further details of their concerns are outlined in section 6 of this report.

4.0 Planning History

P.A. Ref. 4747/19: Permission refused (21st February 2020) on the subject site (but also including No. 57A Capel St) for a hotel development of up to 7-storey height (max. 25.36m) with 121 bedrooms. The DCC refusal of permission was for the following reasons:

1. Having regard to the prominent and sensitive location of the subject site, adjoining Protected Structures and its setting within the Capel St Architectural Conservation Area and having regard to Policy SC7 & SC17 of the Dublin City Development Plan 2016-2022, which seeks to protect and enhance the skyline of the inner city, and to ensure that all proposals for mid-rise and taller buildings make a positive contribution to the urban character of the inner city, the proposed development will, by reason of visual intrusion, have a significant and detrimental impact on a number of important views and vistas in the city and will constitute a visually obtrusive and insensitive form of development. The proposal would perch excessively above the established historic roofscapes, would create a precedent for similar type undesirable development, would represent an overdevelopment of the subject site and is not considered to be of adequate architectural quality to justify a building of this scale within this Architectural Conservation Area. The proposal would be contrary to the provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

2. The proposed works which comprise the demolition of all historic structures along Jervis Lane, the amalgamation of historic building plots and the construction of a 7-storey over basement hotel across 7 separate building plots would cause serious injury to the legibility of the historic urban grain of the site, would constitute an unacceptable loss of historic fabric and architectural character and is in contravention of the policies set out in Sections 11.1.5.1 [CHC2 (a),(b),(c),(d)], 16.10.16, 16.10.17 and 16.2.2.3 of the Dublin City Council Development Plan 2016-2022 and Section 8.2.2 and 8.2.1.1 and 8.2.8 of the Capel Street and Environs Architectural Conservation Area Plan. The proposal would seriously injure the settings of the adjoining protected structures and, as a consequence, set an undesirable precedent for similar type development and would be incompatible with the established character of the subject site and the local area. The proposal would be contrary to the provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

ABP Ref. 304881: Permission granted (7th May 2020) on the subject site (but excluding No. 58 Capel St) for a hotel development of up to 7-storey height (max. 25.17m) with 65 bedrooms.

Condition No. 2 (a) of the decision required the omission of the 4th floor level in its entirety.

P.A. Ref. 2423/11: Permission granted for a smaller hotel of 5 storeys over basement and 18 double bedrooms on a site comprising nos. 3, 4, 5 and 6 Parnell St. The duration of this permission was extended until February 2022.

Under **P.A. Ref. 3257/21**, I note that the applicant (Vision Wave Ltd) has a current application for 57A Capel St to the south of the appeal site. In summary, the application consists of alterations, increased height, and change of use of existing commercial building to provide 4 no. apartments.

5.0 Policy Context

5.1. National and Regional Policy / Guidance

5.1.1. The **National Planning Framework (NPF)** is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains a number of policy objectives that articulate the delivery of compact urban growth, including the following:

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints
- NPO 6 aims to regenerate cities with increased housing and employment
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking

5.1.2 The primary statutory objective of the **Regional Spatial and Economic Strategy for the Eastern and Midland Regional Authority 2019-2031 (RSES)** is to support the implementation of the NPF. The RSES identifies regional assets, opportunities and pressures and provides policy responses in the form of Regional Policy Objectives. The spatial strategy and the Dublin Metropolitan Area Strategic Plan support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin City.

5.1.3 Following the theme of 'compact urban growth' and NPO 13 of the NPF, **Urban Development and Building Heights, Guidelines for Planning Authorities (2018)**, hereafter referred to as the 'Building Height Guidelines', outlines the wider strategic policy considerations and a performance-driven approach to secure the strategic objectives of the NPF. Section 3 provides guidance on 'Building Height and the Development Management' relating to planning applications. Section 3.2 outlines the criteria that should be demonstrated to the satisfaction of the Planning Authority / An Bord Pleanála at the scale of the

relevant city/town; the district / neighbourhood street; the site / building; as well as specific assessments that may be needed to support proposals.

- 5.1.4 **Architectural Heritage Protection Guidelines for Planning Authorities**, hereafter referred to as the 'Architectural Heritage Guidelines', sets out detailed guidance to support planning authorities in their role to protect architectural heritage when a protected structure, a proposed protected structure or the exterior of a building within an ACA is the subject of development proposals. It also guides those carrying out works that would impact on such structures.

5.2. **Dublin City Development Plan 2016-2022**

Zoning

- 5.2.1. The site is zoned as 'Z5', the objective for which is '*To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity*'. The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development. The strategy is to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night. Hotel, restaurant and public houses are 'Permissible Uses' on Z5 lands.

Retail

- 5.2.2. The Retail Strategy outlines that Capel Street and Parnell St are 'Category 2' shopping streets within the city centre retail core. Streets in this category already have a mix of retail and non-retail uses and further development of retail frontages will be encouraged. Complementary non-retail uses such as a café and restaurants that add to the vibrancy of the street and create a mixed use environment to provide for a more integrated shopping and leisure experience, will be considered favourably but with regard also to the primary retail function of the street.

Shape and Structure

5.2.3. Chapter 4 outlines the shape and structure of the City and provides for taller buildings in designated areas. Outside these designated areas and SDRAs it is otherwise policy to retain the remaining areas of the city to a maximum height of between 16m and 28m depending on location. Section 4.5.4.1 (Approach to Taller Buildings) outlines that 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, while also recognising the potential and the need for taller buildings to deliver the core strategy.

5.2.4. Relevant policies in the Plan include the following (summarised):

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.

SC17: To protect and enhance the skyline of the inner city, and to ensure that all proposals for mid-rise and taller buildings make a positive contribution to the urban character of the city, including the demonstration of sensitivity to the historic city centre.

SC28: To promote understanding of the city's historical architectural character to facilitate new development which is in harmony with the city's historical spaces and structures.

SC29: To discourage dereliction and to promote the appropriate sustainable re-development of vacant and brownfield lands.

Housing

5.2.5. Chapter 5 outlines the Council's approach to the provision of quality housing and encourages a good mix of house types and sizes with a satisfactory level of residential amenity. Relevant policies can be summarised as follows:

QH23: Discourage the demolition of habitable housing unless other considerations are satisfied.

QH24: Support proposals that retain or bring upper floors into residential use in order to revitalise the social and physical fabric of the city.

QH25 - Encourage re-introduction of residential use in historic areas of the city.

Heritage

- 5.2.6. The site is located within the Capel Street and Environs ACA and No.3 Parnell Street is included on the Record of Protected Structures. The site is within a Zone of Archaeological /constraint for the recorded Monument DU018-020 Dublin City which is listed in the RMP and is within the zone of Archaeological Interest in the development plan.
- 5.2.7. Chapter 11 of the Plan deals with Built Heritage and Culture and section 11.1.4 outlines a strategic approach to protecting and enhancing built heritage based on the existing and ongoing review of Protected Structures, ACA's, Conservation Areas and Conservation Zoning Objective Areas. In summary, relevant policies include:

CHC1 Seek the preservation of the built heritage of the city.

CHC2 Ensure that protected structures and their curtilage is protected.

CHC4 To protect the special interest and character of all Conservation Areas

CHC5 Protect protected structures and preserve the character of ACAs. It will resist substantial loss of fabric of building (either protected or not) within such areas unless public benefits outweigh the case for retention.

Tourism

- 5.2.8. Section 6.4 refers to the promotion of tourism as a key driver for the city's economy, particularly through making the city attractive for visitors, international education, business tourism and conventions. Section 6.5.3 states that it is important to continue to develop tourism infrastructure such as visitor accommodation of various types and a range of cafés and restaurants.
- 5.2.9. In summary, relevant policies include the following:

CEE12: Promote and facilitate tourism, including the necessary significant increase in hotels, cafes, restaurants etc.

CEE13: Work with stakeholders to deliver the ambitious targets set out in 'Destination Dublin – A collective Strategy for Growth to 2020', including aims to

double the number of visitors by 2020 and to promote and support the development of additional tourism accommodation at appropriate locations throughout the city.

Development Standards

- 5.2.10. Chapter 16 sets out detailed policies and standards in respect of development proposals within the city. Section 16.2 “Design, Principles & Standards” provides design principles outlining that development should respect and enhance its context. Section 16.2.2.2 discusses ‘Infill Development’ i.e. gap sites within existing areas of established urban form. It is particularly important that such development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape. Sections 16.2.2.3 provides guidance for alterations and extensions
- 5.2.11. Section 16.7.2 includes height limits for development, including a 28m restriction for commercial development in the Inner City.
- 5.2.12. Section 16.10.17 deals with buildings of significance which are not protected and states that the planning authority will actively seek the retention and re-use of such buildings which make a positive contribution to the streetscape
- 5.2.13. Section 16.32 provides assessment criteria for Licensed Premises among other late-night uses. It highlights the need facilitate the concept of the 24-hour city, particularly in the city centre by encouraging entertainment/ cultural/ music uses which help create an exciting city for residents and tourists alike, while also protecting the amenities of residents and maintaining high-quality retail functions and a balanced mix of uses. The Plan highlights the need to avoid excessive noise levels and the over-concentration of certain uses that may be detrimental to the character or function of an area.

5.3. Natural Heritage Designations

- 5.3.1. The site is not located within or close to any European site.

5.4. EIA Screening

5.4.1. An Environmental Impact Assessment (EIA) Screening Report was not submitted with the application. With regard to EIA thresholds, Class (10)(b) and 12(c) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- 10(b): Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)
- 12(c): Hotel complexes outside built-up areas which would have an area of 20 hectares or more or an accommodation capacity exceeding 300 bedrooms.

5.4.2. It is proposed to construct a hotel development containing up to 94 bedrooms on a site area of 0.0895 hectares within the ‘business district’ of Dublin City Centre. Therefore, the size of the site is significantly below the threshold area of 2 hectares for ‘business district’ locations. Furthermore, given that it is not located outside a built-up area, the hotel complex provision as per 12(c) above does not apply. Notwithstanding, I note that the development would be significantly below the threshold of 300 bedrooms.

5.4.3. The site is comprised of existing buildings and is largely surrounded by similar city centre development. The introduction of a hotel development will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or natural heritage. I acknowledge that it is located within an Architectural Conservation Area with several Protected Structures and that the site itself it contains a Protected Structure. The implications for this in relation to EIA Screening have been raised in the appeal by Caitriona Craddock. However, while these are salient issues in the process of EIA Screening, I am satisfied that they can be adequately addressed as planning issues in the context of proper planning and sustainable development of the area and without the need for EIA.

5.4.4. The proposed development is not likely to have a significant effect on any European Site (as outlined in Section 7.10 of this Report). There is no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site or other sensitive receptors). The proposed development would not give rise to waste, pollution or nuisances that differ significantly from that arising from other city centre developments. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Dublin City Council, upon which its effects would be minimal.

5.4.5. Having regard to:

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 (b) - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site on lands that are zoned 'Z5 - To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity', which encourages mixed uses, including hotels, under the provisions of the Dublin City Development Plan 2016-2022, and the results of the Strategic Environmental Assessment of the Dublin City Development Plan 2016-2022, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of city centre development in the vicinity,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to avoid significant effects by reason of connectivity to any sensitive location,
- The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003), and

- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a determination in relation to the requirement for an EIAR was not necessary in this case (See Preliminary Examination EIAR Screening Form).

6.0 The Appeal

6.1. Grounds of Appeal

Third-Party appeals

6.1.1. Caitriona Craddock (2 Parnell Street) has appealed the DCC decision to grant permission on the following grounds:

- Overdevelopment of the site having regard to the existing character, pattern of development and uses in the area.
- Excessive height and scale and conflict with the Boards previous decision (ABP Ref. 304881-19) requiring the removal of one storey.
- Impacts on light and the energy efficiency of the appellant's home and surrounding buildings. The sunlight and daylight impacts have not been adequately assessed.
- Visually obstructive impact of the development on the streetscape, ACA and Protected Structures, by reason of height, mass, poor design/materials, and scale.
- Due to impacts on material assets and cultural heritage, the proposal should have been subjected to EIA Screening.
- Adverse impacts associated with demolition works, including the potential destruction / removal of asbestos.
- Objection to the construction impacts including times, duration, crane usage.

- Inaccuracies relating to the occupancy and history of adjoining properties.
- Impacts on the privacy and enjoyment of her property by reason of excessive scale; the extent of the proposed construction at No. 3 Parnell St; excessive scale of restaurant / bar uses etc; noise; and traffic.
- Increased traffic congestion and associated impacts, including emergency access.
- Potential flooding impacts in the vicinity of the property.
- Impact on the valuation of her property and policies to encourage residential development in the city centre.

6.1.2. Maurice McGrath (57 Capel St) has appealed the DCC decision to grant permission on the following grounds:

- The application may be deemed invalid as the works / change of use to the existing dwellings within 58 & 59 Capel St have not been adequately described.
- The drawings submitted by the applicant are confusing and the decision of the Planning Authority has not adequately addressed all matters, including daylight, noise, and smoke impacts on residential amenity.
- There are 10 windows serving residential accommodation within No. 57/57A facing into the subject site. The applicant has not addressed the impact on these windows, including building directly in front of windows 1A and 4A. With reference to guidance set out by the BRE in Figures 14 & 17 of 'Site Layout Planning for Daylight and Sunlight – A guide to good practice', drawings are included to demonstrate the impact of the development on the windows of 57/57A. The appeal also includes a Vertical Sky Component (VSC) test by Chris Shackleton Consulting, which indicates that all windows will fail because of a significant reduction in skylight.
- An Acoustic Assessment has been prepared by Searson Associates Consulting Engineers to compare current and predicted noise levels within 57/57A. The report concludes that the proposed development will result in severe disturbance and that its current residential use will be neither viable

nor possible. The Development Plan aims to protect residential communities from noise impacts and the noise generated from the proposed courtyard will result in a serious loss of residential amenity.

- Inadequate proposals for soundproofing have been submitted to mitigate the impacts from the proposed development at basement level, ground floor level and from the courtyard and balconies. Any mitigation would place an unreasonable burden on the appellant for monitoring and enforcement.
- The applicant has not addressed the fire safety issue associated with the courtyard shaft and protection of 57/57A.
- The potential use of the courtyard as a smoking area will have unacceptable impacts relating to health, amenity and noise.
- The balconies on the top floor will overlook the roof garden and windows of 57/57A. Overlooking will also occur from hotel rooms and 'stair 2 windows'.
- No allowance is made for the disposal of rainwater.
- There are anomalies regarding the drawings of the water attenuation tank in the basement and its location outside the applicant's ownership boundary. The impact of the tank on the Protected Structure has not been considered, including potential flooding impacts.
- A report is attached from Peter Keenahan (Architect) which outlines that No. 58 & 59 Capel St are of first importance and should be afforded better protection, including restoring the original roof profiles and rear gabled elevations. The building should be setback from the side wall of 57/57A and the garden and mews of 58 restored.
- A report is attached from Dr Linda Doran FSA which concludes that the likely depth of habitation material on the non-basement areas of the site could be as deep as 4.8m and may be unstable when excavated. Proposals for stability along 57/57A are unclear and may result in damage to these historic buildings.
- The appellant does not give permission to underpin any part of his buildings. A structural Study by Mr Wale Kadeba (Chartered Engineer) is included and

concludes that the proposed works risk the stability of 57/57A and are contrary to DCC policy to protect the curtilage of protected structures.

First-Party Appeal

- 6.1.3. The applicant has appealed Condition No. 5 of DCC's decision to grant permission. The condition reads as follows:

The proposed development shall be constructed as shown as Option A on the drawings submitted as part of Further Information received on the 22/12/2020.

Reason: To protect (sic) the amenity of the areas and to ensure a satisfactory standard of development.

- 6.1.4. The applicant seeks the removal of the condition and the grounds of the appeal can be summarised as follows:

- Option A does not provide the most efficient use of the site due to its central and highly accessible location.
- Option B provides an appropriate response to the reasons for refusal applied by DCC in Reg. Ref. 4747/19 and responds to the Development Plan as follows:
 - Policy CHC2: Ensures the continued prominence of protected structures, provides a high standard of restoration, and makes a positive contribution to the streetscape.
 - Section 16.10.16: No longer involves the removal of a stone/brick coach house.
 - Section 16.10.17: Allows for the re-use of period buildings and built fabric with a mix of contemporary architecture which will contribute to the visual interest of the area.
 - Section 16.2.2.3: The proposed height is an appropriate response to the underutilised nature of the site and its prominent location. The building setbacks ensure that new development is subordinate to the existing buildings.

- Section 8.2.1.1: Does not detract from the amenity offered by protected structures and does not compromise any sensitive views, including the view of City Hall along Capel St.
- Section 8.2.8: Has regard to the grain and character of adjoining buildings and combines the restoration of the existing facades with contemporary architecture to add visual interest and commercial viability to the area.
- Policies SC 7 & 17: Presents no undue impact on important views or view corridors and allows for restoration of original facades and high-quality contemporary infill development.
- The Planning Authority has not carried out a detailed assessment of Option A in relation to Option B and has had no regard to the wider revisions to the design previously refused (Ref. 4747/19). The Planning Authority has simply reinstated the height previously approved by the Board (Ref. 304881) notwithstanding the revisions and rational for increased height.
- The appeal outlines a number of approved cases which it contends to be precedents for increased height on sites within close proximity to building of heritage value.

6.2. Applicant Response

- 6.2.1. The applicant has submitted a response to the third-party appeals, which can be summarised as follows:

Response to Caitriona Craddock (No. 2 Parnell St)

- The extent of development allows for the efficient use and the economic viability of developing the site, which is both visually obtrusive and detracts from the existing streetscape.
- The applicant welcomes condition no. 6 of the DCC decision regarding the agreement of external finishes.
- The appeal site is not within the threshold for the preparation of an EIA.

- The hours of working specified in the DCC decision are typical of city centre development.
- Statutory Public Notice requirements were complied with.
- The Board will have due regard to the Daylight / Sunlight Assessment submitted in assessing the limited impact on adjoining properties.
- The scale of the development is typical of city centre development and will protect existing amenities.
- A construction traffic management plan will address any outstanding concerns in relation to traffic management.
- The Flood Risk Assessment submitted as further information has concluded that the proposed development will not result in a residual risk to the site or wider area.
- The proposal is compliant with the vision for the Z5 zoning objective and does not compromise the appellant's ability to live in the city at their current residence.

Response to Maurice McGrath (No. 57/57A Capel St)

- The report by Chris Shackleton Consulting is based on a very inaccurate model which makes the proposed building much larger. A letter from the applicant's consultant acknowledges that the VSC values for windows of No. 57 do not meet BRE guidelines levels. However, it also highlights the inherent difficulty of meeting those values in city centre locations and the non-mandatory nature of the guidelines.
- The appeal drawings incorrectly show balconies extended along the western face of the top floor level. The balconies only serve the southern face to the end rooms and screening prevents overlooking of No. 57.
- The bedrooms facing west into the courtyard are setback and the parapet blocks views. The bedrooms at lower levels do not face directly into the side wall of No. 57 and south-facing corridor/stair windows could be suitably screened.

- A letter from project engineers (Magahy Broderick Associates) contends that the 1.5m construction zone between the basement and the appellant's property is more than adequate for secant piling and a retaining wall, which obviates the need for any underpinning. It states that there are multiple basements in the area which are not tanked, thereby indicating that the water table is lower and that concerns regarding impacts on groundwater are entirely unfounded.
- The basement cellars (where the attenuation tank is to be positioned) are directly connected to the basement level and are in the applicant's ownership. Magahy Broderick Associates also confirm that the tank is of an appropriate size and design.
- A letter from Amplitude Acoustics concludes that mitigation measures can and will be put in place based on a comprehensive noise impact assessment for operation, construction and sound insulation.
- The applicant requests that the Board has regard to the Archaeological Desk Study submitted as further information and to the contents of condition no. 18 of the DCC decision. Condition no. 18 illustrates the comprehensive manner in which the archaeological value of the site will be determined prior to commencement of development and represents an appropriate response to the location of the site.
- The applicant requests that the Board has regard to the Conservation Report and Supplementary Architectural Heritage Impact Assessment submitted with the application. It is submitted that the proposal provides an appropriate balance between the efficient development of the site and the protection of the architectural heritage of the area.

6.3. Observations

- 6.3.1. Peter Keenahan (Architect) has made a submission raising concerns relating to the impact of the development on 58 & 59 Capel St., which can be summarised as follows:

- They are amongst the best surviving examples of the ‘Dutch Billy’ tradition and were originally gable-fronted in line with the prevailing tradition.
- The submission provides information on the evolving history of the buildings/street and other similar examples in Dublin.
- The developers have not understood the significance and value of the houses, which are over 300 years old. While c. 80% of their original fabric survives, almost the sole focus has been on retaining their facades, which are later replacements and arguably the least valuable features.
- A detailed examination of the houses is required, and he ‘would not rule out being able to conjecture a restoration of the street elevation of no. 59 to a very high degree of probability’. No. 58 is a more conventional conservation challenge where the subsequent alterations have a value, and the existing façade is as worthy of retention as the interior of this important house.
- Both houses should have their individual cruciform roof profile reinstated as a consolidation of their original Dutch Billy heritage. Any proposals for extra stories that merge and blur their individual identity should be rejected on principal.

6.3.2. Maurice McGrath has submitted an observation on the first-party appeal, which requests that the appeal relating to condition no. 5 and the entire development be refused for the following reasons:

- Reference to the previous permission (P.A. Ref. 4311/18 and ABP Ref. 304881-19) is not relevant to the current application. The previous grant of permission does not impart a right to develop as it will severely reduce light to the windows on the northern boundary of No. 57 Capel St and it will be open to Mr McGrath to take all action necessary to prevent the development.
- The submission refers to the assessment previously submitted by Chris Shackleton Consulting and states that any proposal that infringes on the ‘established easement of light’ to No. 57 is moot.
- The applicant’s submission of 2 options to the planning authority was disingenuous given that the permitted option has now been appealed.
- Jervis Lane Upper is unique in the context of inner-city mews lanes and Peter Keenahan’s report has highlighted this importance.

- The vacant nature of the site is not a justification to permit tall structures which are overbearing and impact on light and architectural heritage.

6.4. **Planning Authority Response**

None.

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. This case relates to both first-party and third-party appeals against the decision of DCC to grant permission subject to conditions. While the first party appeal relates to condition no. 5 only and the third-party appeals seek the refusal of the entire development, I propose to carry out a *de novo* assessment of the entire scheme on a themed basis.
- 7.1.2. I note that one of the third-party appeals contends that the existing permission (ABP Ref. 304881-19) is not relevant, and I acknowledge that the current application is a standalone proposal that is not dependent upon the previous permission. However, given the recency of the previous decision (7th May, 2020) and the similarities with the current case, I consider that the permitted development is a material consideration and I will refer to it throughout this assessment in the interest of consistency.
- 7.1.3. Third-party concerns have also been raised about the applicant's submission of 2 options (i.e. Option A and Option B) as part of the application. This is not an uncommon practice and the Planning Authority accepted both proposals for consideration in the application. Similarly, I propose to consider both options on their merits in the assessment of this case.
- 7.1.4. Having inspected the site and examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, and having regard to relevant local/national policies and guidance, I consider that the main issues in this appeal are as follows:
 - The principle of development
 - Height and Visual Impact

- Built Heritage
- Impacts on surrounding properties
- Traffic and Transport
- Flooding and Drainage

7.2. The Principle of Development

- 7.2.1. The site is zoned as 'Z5', the objective for which is '*To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity*'. Section 14.8.5 of the Development Plan outlines that the primary purpose of this use zone is to sustain life within the centre of the city through a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night. It is stated that, ideally, this mix should occur both vertically and horizontally, and that while a general mix of uses (e.g. retail, commercial, residential etc.) will be encouraged throughout the area, retail will be the predominant use at ground floor on the principal shopping streets.
- 7.2.2. In accordance with the Development Plan, the proposed hotel, restaurant and associated bars would all be classified as 'permissible uses', which is explained as being generally acceptable in principle subject to normal planning consideration, including policies and objectives outlined in the plan. I note that Capel Street and Parnell Street are both classified as a 'Category 2 Shopping Street' in the Plan and there is a strong retail presence at street level in the surrounding area. I consider that the proposed ground floor uses would provide an active street frontage of attractive uses. Apart from the proposed restaurant, the proposed ground floor uses will be contained within existing plots (i.e. 58 & 59 Capel St, and 3 Parnell St) which ensures that an appropriate scale and spatial distribution of uses is maintained.
- 7.2.3. With regard to the proposed hotel use, I note that there is currently a low incidence of hotels along Capel St and Parnell St. I acknowledge that there has been a significant recent trend of permitted hotel developments in the wider area, mainly concentrated in the fruit and vegetable markets area to the southwest of

the appeal site and in the Abbey Street retail area to the southeast. I would contend that these concentrations are significantly distanced from the appeal site and are in areas of a different character, and, when taken in conjunction with the proposed development, there would not be a significant in-combination impact on the mix of uses in the area. The recent increase in hotel proposals should also be viewed in the context of a historically low base for this particular area, as well as the wider Development Plan objectives to increase tourism accommodation capacity, which has been estimated in 'Destination Dublin – A collective Strategy for Growth to 2020' as a potential requirement for a 25-30% increase in hotel rooms.

- 7.2.4. In conclusion, I consider that the proposed uses are acceptable at this location and would not lead to an over-concentration or excessive scale of any particular use that would undermine the Development Plan objectives to maintain a dynamic mix of uses in the area. The proposed development will support the retail primacy of Capel Street and Parnell Street and will provide complimentary uses which will improve tourism infrastructure and add to the vitality and vibrancy of the area by day and by night. Consistent with the planning history of the site, I have no objection to the proposed development in principle.

7.3. Height and Visual Impact

- 7.3.1. The appeal relates to the redevelopment of a partly derelict site which has been the subject of a dangerous building notice in 2010. The derelict portions of the site along Parnell St / Jervis Lane have continued to deteriorate, becoming increasingly overgrown and hosting extensive and unsightly advertising hoardings at street level. Therefore, subject to appropriate height and visual impact, the principle of the redevelopment of the site would be welcomed in terms of the removal of dereliction.
- 7.3.2. I am conscious of the status of No. 3 Parnell St as a protected structure and the presence of other protected structures in the immediate surrounding area, as well as the location of the site within the Capel Street and Environs Architectural Conservation Area. I have reviewed the ACA document adopted by DCC and I note the concerns raised therein about proposals to increase the established heights and the need to respect the existing massing and scale of the street. The

ACA policies also encourage excellence in contemporary architecture in the case of new development and pastiche proposals are discouraged, with suitable materials to include stone, brick, render, steel, glass and timber. The challenge of integrating new development within existing neighbourhoods is acknowledged, particularly in the present case which involves an ACA and several Protected Structures in the surrounding area. In this regard section 13.8.3 of the 'Architectural Heritage Guidelines' outlines that the impact of proposals will depend on location; the character and quality of the protected structure / ACA; its designed landscape and its setting

- 7.3.3. As previously outlined, the proposal includes 2 options that are largely differentiated in terms of building height. Option B (as originally submitted to the planning authority) comprises a part-5, part-6, and part-7 storey over basement building with a maximum height of c. 25m. Option A, which was submitted as further information and subsequently approved by DCC, omits the 4th floor in its entirety, as well as originally proposed extensions above 58 & 59 Capel St, resulting in a part-4, part-5, part-6 storey building with a maximum height of c.22m.
- 7.3.4. It should be noted that 'Option A' generally reflects the design and building height of the hotel development previously permitted by the Board on this site (ABP Ref. 309881-19), including the Board's requirement for the removal of one storey as per condition no. 2(a). On the other hand, 'Option B' generally reflects that previously proposed and subsequently rejected by the Board, apart from the increased setback of the extension above 59 Capel St by c. 4m. Obviously the current appeal site has also been enlarged to include 58 Capel St and the proposal also now includes additional extensions above and to the rear of 58 Capel St and along Jervis Lane Upper.
- 7.3.5. I note that the application as originally submitted includes a 'Visual Impact Assessment' (VIA) report and photomontage images prepared by 'Arch FX', which are obviously based on 'Option B'. The VIA concentrates on 13 viewpoints and compares the existing views and predicted visual impacts. It concludes that the proposed development would be only partially visible at intermittent locations and that it would not have an unacceptable impact on the surrounding skyline or streetscape.

- 7.3.6. Having reviewed the VIA, I consider that views 1 to 3 and 9 to 13 demonstrate an abrupt and significant transition in height from the protected structure (no. 3 Parnell St) and the remainder of the streetscape along Parnell St to the junction with Capel St. Notwithstanding the proposals to maintain plot width and reduce the overall scale through a variation in materials and colours, I consider that this significant height increase would create a prominent and discordant feature which would detract from the setting of the adjoining protected structure and the wider streetscape. This would be contrary to Development Plan policies which seek to protect the integrity and character of protected structures and the Capel Street ACA.
- 7.3.7. Along Capel Street, I note that the proposed extension above no.'s 58 and 59 will exceed the existing street parapet from 'view 4', but that the development would not be visible further south along the street (from views 7 & 8). However, on the approach to Capel Street from the west (Little Britain St) the full height of the development is more apparent and significantly exceeds the existing parapet height of the street. Similar to my concerns in relation to the impact along Parnell St, I consider that this detracts from the architectural heritage of the area by reason of its excessive height.
- 7.3.8. I acknowledge that height variations have occurred along the street and in the wider city centre. However, I consider that the proposed height would be excessively prominent in relation to existing development when viewed from viewpoints to the north, east and west of the site as described above, and that the upper extremity of the development would result in an incongruous feature that would detract from the setting and character of protected structures (including no. 3 Parnell St) and the wider streetscape along Parnell St and Capel St (an ACA).
- 7.3.9. Consistent with the Planning Authority decision and the Board's previous permission, I consider that the building height concerns can be satisfactorily resolved through the omission of the 4th floor as proposed under 'Option A'. This would ensure a much more appropriate height transition between existing and proposed development and would maintain an appropriate scale and massing for the surrounding context. Otherwise, I consider that the scheme proposes an appropriate variety of finishes and colours which respect the traditional plot

widths and streetscape rhythm along Parnell St. Accordingly, subject to compliance with 'Option A', I would have no objection in relation to building height and the overall scale and massing of the development in the context of its location along both Parnell St and Capel St.

7.4. Built Heritage

- 7.4.1. I note that the appeal includes reports from Peter Keenahan (Architect) which contend that No. 58 & 59 Capel St are of first importance and should be afforded better protection, including restoring the original roof profiles and rear gabled elevations in accordance with their original 'Dutch Billy' heritage. I also note the Planning Authority's reports from the Conservation Officer which refer to intentions to prioritise buildings of this vintage in a review of the Record of Protected Structures. However, the Draft Dublin City Development Plan 2022-2028 has not yet been published and, accordingly, the existing RPS has not been formally reviewed. Therefore, the status of no.'s 58 and 59 has not changed and they are still not included on the RPS or a Draft RPS. Nonetheless, I acknowledge their location within the Capel St ACA and their inclusion on the NIAH, as well as the policies of the Development Plan which seek to protect the built heritage of the city, whether included on the RPS or not.
- 7.4.2. The application includes an Architectural Heritage Impact Assessment, which was supplemented as part of the response to the Planning Authority's further information request. In summary, the reports outlined the following in relation to the existing buildings:

No. 58 Capel St

- Although first developed in the 18th century, according to the *Dictionary of Irish Architects* it was partially rebuilt in 1914 (along with no. 59) and contains various modern features and warehouse/garage extensions to the rear of the plot.
- The building has undergone substantial modernisation, but it is proposed to retain and refurbish fireplaces in the basement and 1st floor, as well as chimney breasts on the 2nd and 3rd floors. The design proposal was amended to retain historic floor plans and staircase, with only limited demolition of internal walls.

- It is proposed to clean/repoint the front façade brickwork and to replace the existing shopfront and PVC windows, which will have positive impacts. The open courtyard to the rear will also improve the legibility of upper floors.
- A floor will be added to the flat roof of the closet return at 3rd floor level, which will result in a slight negative impact.
- The existing replacement flat roof will be raised slightly but will be sloped to the front to minimise visual impacts.

No. 59 Capel St

- While the street was originally laid out in the 17th century, records indicate that the building was substantially rebuilt in 1914 and internally modified in the late 20th century. It has been much altered internally and the staircase appears to be a replacement.
- The Board has already granted permission for comprehensive redevelopment.
- The front elevation does contribute to the character and appearance of the street. This will be retained, and traditional windows and a shopfront will be installed.

No. 3 Parnell St

- In very poor condition and the proposed development is an opportunity to conserve and restore the building.
- A structural assessment has been prepared and this will be complimented by the measures outlined in the applicant's conservation methodology and schedule of works.
- The existing footprint will be retained, and new openings are minimal.
- Upgrades to brickwork and the installation of timber sash windows will add positively to the streetscape.

- The proposed atrium to the rear separates the old and new and allows the protected structure to be appreciated from within the hotel.

No.'s 4 – 6 Parnell St

- Only the basement and ground floor levels remain in this terrace and they are in very poor condition. The impact of the demolition of these buildings would be imperceptible.

- 7.4.3. In response to the above I note that the proposed treatment of No. 59 Capel St and No.'s 3 to 6 Parnell St is effectively the same as that previously permitted by the Board. I note the Planning Authority's condition no. 6 (d) would require the removal of the 4th floor level of Stair Core 2 to the rear 'in order to provide breathing space to the historic buildings'. I would concur that this reduced height would provide an improved interface with the adjoining buildings and I note that the applicant has not raised any objection to this condition in the 1st party appeal.
- 7.4.4. No. 58 Capel St has been added in the current application and the applicant has submitted a comprehensive assessment of this property in response to the planning authority's further information request. The proposals were amended accordingly to retain the historic floor plan and staircase and detailed methodologies were included for the proposed works.
- 7.4.5. I would concur that No.'s 4 to 6 are of no architectural heritage value and I have no objection to their demolition. The applicant has proposed an appropriate approach to the restoration of No. 3 in that there is minimal interconnection with adjoining plots and the upper floor rooms will remain largely intact. The protection and restoration of the building would be a significant and positive intervention at this location.
- 7.4.6. While the third-party submissions in relation to the historic importance of 58 & 59n Capel St are acknowledged, as is the NIAH description of historic fabric, I consider that the applicant has presented a comprehensive assessment and convincing argument in relation to the significant extent of alteration and rebuilding that has occurred. In that context I do not consider it reasonable to

expect a restoration of the building to its original design and I consider that the proposed level of intervention and restoration is acceptable. I note the conditions of the DCC decision which require some amendments to the proposed design (condition no. 6) and agreement on several issues relating to the retention of historic fabric and conservation methodologies. I am satisfied that these matters can be dealt with by conditions in the event that the Board is minded to grant permission.

- 7.4.7. As previously outlined, I consider that the height and scale of the proposed development (as per 'Option A' and subject to the height reduction to Stair Core 2) will not detract from the setting or character of these structures. And while the proposed development is certainly of a contemporary character, I consider that this will appropriately distinguish the original buildings from new development in accordance with best practice and the Architectural Heritage Protection Guidelines. The improvement works to the brick facades, together with the installation of sash windows and new shopfronts to reinforce the traditional plot widths, will also result in significant streetscape improvements. The proposed development will ensure the improvement and ongoing protection of the buildings and I have no objection regarding the impact of the proposed development on built heritage.

7.5. Impacts on surrounding properties

- 7.5.1. I acknowledge that the Development Plan outlines the need to create and maintain a good quality of residential amenity for housing in the city centre, an approach which is also relevant to aims to encourage upper-floor residential use and housing units within historic areas of the city. Furthermore, while recognising the importance of Dublin as a thriving and multi-dimensional capital city, it also highlights the need to strike an appropriate balance between entertainment uses and protecting the amenities of residents. The third-party appeals have raised various concerns in this regard, which are discussed in the following sections.

Daylight / Sunlight

- 7.5.2. Section 16.10 of the Development Plan outlines that the protection of residential amenities is a primary concern. While it states that new residential development proposals shall be guided by the principles of 'Site Layout Planning for Daylight

and Sunlight, A Guide to Good Practice (BRE 2011)', it does not confirm that the guidance applies to the assessment of the impacts of commercial developments on existing properties. However, I acknowledge that Development Plan policies generally seek to provide/protect a good quality of residential amenity and to encourage the retention of residential use in city centre locations.

- 7.5.3. Section 3.2 of the *Building Height Guidelines (2018)* highlights the need to minimise overshadowing and loss of light and states that appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like 'Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report (BRE), 2011)' or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. It states that, where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the PA or ABP should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and / or an effective urban design and streetscape solution.
- 7.5.4. I have considered the reports submitted by the applicant and have had regard to the BRE and BS (2008) documents referenced in Section 28 Ministerial Guidelines (i.e. the Building Height Guidelines). I note that the BS (2008) document has been replaced by the updated British Standard (BS EN 17037:2018 'Daylight in buildings') and I consider that the updated version would have no material bearing on the outcome of my assessment. I would highlight at the outset that the standards described in the BRE guidelines are discretionary and not mandatory policy/criteria. The BRE guidelines also state in paragraph 1.6 that '*Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design*'. The BRE Guide notes that other factors that influence layout include considerations of privacy, security, access, enclosure, microclimate etc. In addition, industry professionals would need to consider various factors in determining an acceptable layout, including orientation, efficient use of land and

arrangement of open space, and these factors will vary from urban locations to more suburban ones. I have carried out a site inspection and had regard to the interface between the proposed development and its surroundings, as well as the third-party submissions which have raised concerns in relation to daylight and sunlight.

- 7.5.5. In response to the Planning Authority's further information request, the applicant submitted a Daylight / Sunlight Assessment report, prepared by Heffernan 3D. The report comprises a general overshadowing study based on 3 times of the day (10am, 12pm & 2pm) on 4 days of the year (21st of March, June, September & December) and compares the existing scenario to both Option A and Option B. The report concludes, without reference to any particular standard, that the revised design (i.e. Option A) illustrates a sizeable reduction in the overshadowing experienced by the surrounding streetscape. In assessment of this response, the DCC Planning Report considered that, given the city centre location, Option A would not cause serious additional overshadowing of the adjoining properties.
- 7.5.6. I note that both 3rd Party appeals have raised concerns regarding the daylight/sunlight impacts on their respective properties. The McGrath appeal includes a section drawing showing that the proposed link corridor opposite windows in the side of No. 57 Capel St will subtend an angle of more than 25° measured from the existing windows. Section 2.2.5 of the BRE guide advises that a more detailed skylight assessment should be completed in such cases and states that in section 2.2.7 that if VSC (Vertical Sky Component) is both less than 27% and less than 0.8 times its former value, occupants of the building will notice the reduction in the amount of skylight and electric lighting will be needed more of the time.
- 7.5.7. As previously outlined, the McGrath appeal is accompanied by a report by Chris Shackleton Consulting on the impact of the development on the 10 existing windows. It is stated that the report has been carried out in accordance with the recommendations of the 2011 BRE Guide and BS 8206 (2008) and is based on a simplified 3D model of existing and proposed development. The results indicate that the existing VSC values for 6 of the 10 windows are currently below the 27% value, with the maximum being 33.3%. As a result of the proposed development,

the report states that all 10 windows would be below 27% VSC (with the maximum being 13.2%) and less than 0.8 times their former value (with the maximum being 0.41 times and an average of 0.27 times). Notably, it is stated that the VSC for window no. 1a will be 0 as a result of the proposed development blocking it entirely. The report concludes that the proposed development does not comply with the requirements of the BRE guidelines in relation to maintaining skylight availability for neighbours.

- 7.5.8. The applicant's response to the 3rd Party appeals contends that the 3D model used in the Shackleton report is not an accurate representation of the proposed development. I would concur that it is not a detailed model, and this is effectively confirmed by the reference in the report itself to a 'simplified' model. Ultimately however, the applicant accepts that the VSC values for the windows in No. 57 will not meet the BRE guideline levels but highlights the non-mandatory nature of the BRE guidance and the need to accommodate lower VSC levels in densely developed central urban locations.
- 7.5.9. In assessing the daylight/sunlight impacts on surrounding properties, I am conscious that, apart from the addition of plot no. 58 Capel St at the southern end of the site, the height and scale of Option A is generally consistent with that previously permitted under ABP Ref. 304881-19. Therefore, I consider that the impacts of the development on the properties to the northwest (i.e. 60 Capel St and 1 - 2A Parnell St), north and east of the site will not be significantly different to that recently permitted. And while the applicant's assessment of impacts on those properties under the current application is limited to a shadow study, I note that the previous appeal case included a Sunlight and Daylight Access Impact Analysis by ARC consultants which considered the Annual Probable Sunlight Hours (APSH) and Average Daylight Factors (ADF) for selected windows. Given the consistency of the previous and current appeal cases, I consider it appropriate to refer to results of the previous case analysis in the assessment of the current case.
- 7.5.10. In light of the 3rd Party appeal from Caitriona Craddock (2 Parnell St), I note that the ARC consultants analysis included a selection of windows to the rear of the adjoining buildings on Capel St / Parnell St (identified as Zones 5 – 8). In relation to sunlight, it should be noted that the BRE Guide advises that a dwelling may be

adversely affected if the centre of the window receives less than 25% of annual probable sunlight hours (APSH), or less than 5% between 21 September and 21 March; and receives less than 0.8 times its former sunlight hours during either period; and has a reduction in sunlight received over the whole year greater than 4%. The analysis of the previous proposal found that existing windows to the rear of Capel St and the lower floors to the rear of Parnell St already experienced substandard levels of sunlight (i.e. less than 25% APSH). It also predicted that sunlight levels to the upper floors of Parnell St would be significantly reduced as a result of the previous proposal (i.e. from 63% (Annual), 42% (Summer) and 21% (Winter), to 11%, 10% and 1% respectively).

- 7.5.11. With regard to daylight levels, and while I am conscious that ADF assessments are generally not recommended by the BRE guide for use in relation to existing buildings, I note that the report on the previous proposal concluded that the lower floor windows to the rear of Capel St / Parnell St would experience imperceptible change from their existing ADF levels (i.e. 1.99% and 2.2%) to the predicted levels (i.e. 1.86% and 1.99%). However, the report predicted that the upper floors would experience a significant change from their existing values of 2.68 and 2.84 to 1.9% and 2.21% (decreases to 0.71 and 0.78 of their former values respectively).
- 7.5.12. The Board Inspector's report in the previous case acknowledged how the enclosed nature of the existing yard to the rear of the Capel St / Parnell St properties (i.e. to the NW of the proposed development) restricted light to the lower levels and raised concerns about the proposed 4th and 5th levels to the south of 2/2A Parnell St. The Inspector concluded that the omission of the 4th floor level and other amendments including alterations to the adjoining stair core and atrium, would reasonably protect existing residential amenities and this was ultimately accepted by the Board.
- 7.5.13. In conclusion regarding the properties to the NW, north and east of the site, I consider that the current and previous applications contain sufficient information to conclude that sunlight/daylight impacts will not differ significantly to that recently permitted under ABP Ref. 304881-19. I consider that the APSH values for existing northeast-facing windows to the rear of the Capel St (maximum 5%) are already significantly below the recommended 25% standard as per BRE

guidance, and that any additional reduction in sunlight levels will result in imperceptible impacts compared to this low existing baseline. And while the upper floor south-facing windows to the rear of Parnell St would experience a significant decrease in sunlight levels as a result of the Option B design, I consider that consistent with the Board's previous decision, the removal of an entire floor level (as per Option A), together with the removal of the 4th floor of Stair Core 2 to the south as previously discussed, will significantly reduce the predicted impacts to an acceptable level. I would also highlight that the extent of south-facing glazing to the rear of the Parnell St properties is quite limited and that the magnitude of the impacts should be considered proportionately. Having regard to the above and the development previously permitted on site, as well as the adoption of Option A and the further amendments discussed, I have no objection in relation to the daylight/sunlight impacts of the development on the existing properties to the NW, north and east of the site.

- 7.5.14. In relation to impacts to the south of the site, I am conscious of the objections of Maurice McGrath as previously outlined in this report. I acknowledge that the height and proximity of the stair core and link corridor opposing the north-facing side windows of 57/57A subtends above the 25° measurement and that the impact warrants further assessment in accordance with BRE guidance. The appellant's analysis (i.e. the Shackleton report) has demonstrated that the existing windows will not comply with VSC values as recommended in BRE guidance. And while I accept the applicant's concerns about the accuracy of the 3D model used by the appellant, I consider that this simplified model allows for a reasonable analysis and I note that the applicant accepts that the windows will not comply with the VSC standards.
- 7.5.15. Again, I feel it is important to compare the proposed development with that recently permitted by the Board (ABP Ref. 304881-19). In this respect I consider that, subject to the adoption of Option A, the height and proximity of development opposite the windows in 57/57A Capel St (i.e. the link corridor and stair core 2) will be generally consistent with that previously permitted. I acknowledge that the outlook from the existing windows would become further restricted because of the additional development to the rear of plot no. 58 (i.e. along Jervis Lane Upper and directly north of 57A). Although this portion of the development will be

perpendicular to the existing windows in No. 57 and would not have as much impact as development directly opposite, I nonetheless consider that it contributes to the low VSC value predictions. However, I consider that this could be satisfactorily resolved by setting back to the upper floors of the eastern courtyard elevation to provide an improved outlook from the existing windows. The removal of the 4th floor level of Stair Core 2 and the adjoining link corridor would also significantly improve the VSC values for the existing windows.

7.5.16. I note the appellant's concerns in relation to 'window no. 1A', which would appear to be entirely covered by the proposed development. This would not appear to be a window serving a habitable room as it is referred to in the appellant's drawings as a light tunnel and maintenance access. In any case, I consider that the matter would be satisfactorily resolved by the setback of the eastern courtyard building line as discussed in section 7.5.15 above. I also note the concerns in relation to the existing corner window no. 4A and I consider that covering of this window can be satisfactorily addressed by a reduction in the size of the proposed en-suite extension to the third-floor rear of no. 58 (i.e. serving Room 316).

7.5.17. Notwithstanding the alterations suggested above, I accept that the existing windows will be affected by the proposed development and that the VSC values may not comply with BRE guidance standards. However, it must be acknowledged that 6 of the 10 existing windows are already below the recommended 27% VSC value and that the windows are quite limited in size. Furthermore, I note that section 2.2.3 of the BRE Guide states that an important issue is whether the existing building itself is a good neighbour, standing a reasonable distance from the boundary and taking no more than its fair share of light. In such cases, Appendix F suggests that amended VSC targets can be used, including an increased obstruction angle of 40° and a reduced VSC of 18%. Given that the windows in No. 57 have been installed on the boundary line I do not consider it reasonable to expect a 27% VSC value and I estimate that the adoption of Option A and the removal of the 4th floor stair core and corridor would achieve an obstruction angle of c. 40° as per Appendix F of the BRE Guide. Therefore, subject to the amendments already discussed, the proposed development will achieve a reasonable balance between the appropriate

development of the site and the protection of daylight to the windows in the adjoining property to the south.

- 7.5.18. In conclusion regarding the daylight/sunlight impacts of the development, I would highlight that Option A will be largely consistent with that previously permitted by the Board and that the impacts will be similarly acceptable. And while the current proposal includes additional development within plot no. 58 Capel St, which will have additional implications for No. 57/57A to the south, I am satisfied that the impacts will be acceptable subject to design amendments as previously discussed. I acknowledge that the amended development may not comply with BRE guidance, but I would highlight that the BRE guidelines are discretionary and should be interpreted flexibly having regard to the site context and the desirability of the regeneration of this derelict city centre site. I consider that the existing daylight / sunlight standards for surrounding properties are quite limited, which is consistent with the existing limited extent of glazing and standards that would be expected in a city centre location, and that the proposed development (subject to amendments) would not have any further unacceptable impacts in this regard.

Noise

- 7.5.19. I note the concerns raised by the appellants about the noise impacts associated with the proposed development at construction and operational stage. The McGrath appeal includes an Acoustic Assessment by Searson Associates Consulting Engineers. The assessment was carried out in relation to a 2nd floor apartment to the rear of 57 Capel St and found that the apartment is currently well suited for daytime resting or focussed intellectual work and is also likely to experience appropriate night-time noise levels. Without reference to any particular predicted noise levels or standards, the report concludes that the construction and operational noise impacts associated with the construction of a hotel will mean that normal living and/or sleeping in No. 57 will not be possible. Particular concerns are raised in relation to noise from the construction phase activities; hotel functions and amplified music; the smoking area; deliveries and bottle/glass movement; as well as fans, extractors and similar plant. Mr McGrath's appeal also raises further concerns about the sound insulation and potential noise impacts at basement level and along the party wall boundary.

- 7.5.20. The applicant's response to the appeal includes a report from Amplitude Acoustics. The report outlines that sound proofing through an appropriate party wall construction can easily mitigate impacts on adjoining properties and commits to undertaking a sound insulation test of the existing wall and the provision of suitable upgrade design details where necessary. In relation to the operational impacts identified by the appellant, the applicant proposes to undertake a comprehensive survey to establish background noise levels. Following the survey, the potential noise sources would be modelled and appropriate mitigation measures would be incorporated to ensure compliance with the Dublin Agglomeration Noise Action Plan and BS 8233:2014. A construction noise and vibration assessment would also be completed in accordance with BS 5228-1:2009+A1:2014 and BS 5228-2:2009+A1:2014 and appropriate mitigation measures would be incorporated.
- 7.5.21. In relation to the construction phase, I consider it is likely that elevated noise levels will emanate from the from the proposed works. However, any such impact would be short-term and would not in itself constitute reasonable grounds for refusal as all construction activity results in noise levels above the ambient baseline environment. Consistent with the applicant's proposals, I consider that this matter can be appropriately controlled via conditions relating to noise assessment and construction management.
- 7.5.22. I acknowledge the potential noise sources identified during the operational phase and the location of the proposed hotel within a city centre area where more elevated noise levels can be expected from the surrounding uses both during daytime and evening time. In accordance with the applicant's proposals, I am satisfied that the noise impact from the proposed facilities can be controlled in accordance with the relevant guidelines and that the matter can be satisfactorily assessed and mitigated by the inclusion of appropriate conditions. I acknowledge the appellant's concerns in relation to the proposed open courtyard and its relationship with the adjoining residential uses in No. 57. However, I consider that this relatively small area of 52m² is unlikely to be subject to over-intensive use or to become a source of excessive noise. The principle of residential units overlooking an outdoor sitting/dining area is not fundamentally problematic in my

opinion and I consider that the proposed space is acceptable subject to conditions limiting the hours of use.

- 7.5.23. As well as the impacts on No. 57 to the south, I have considered the potential noise impacts on the properties to the NW along Capel St / Parnell St and the wider area to the north and east. I would highlight that the proposed arrangements on this northern end of the site are generally consistent with that previously permitted by the Board and that the northern end of the development does not include the majority of the sources of noise concerns (i.e. bars, outdoor areas etc.). Consistent with the Board's previous decision and subject to compliance with conditions, I do not consider that there will be any unacceptable noise impacts in this regard.
- 7.5.24. On the basis of the analysis undertaken and having regard to the site's location within the city centre and the surrounding land uses, I am satisfied that the proposed development would not give rise to noise generation that would render it incompatible with surrounding land uses and I therefore consider the impact to be acceptable subject to conditions.

Overlooking

- 7.5.25. In relation to the properties to the NW of the site along Capel St and Parnell St, I note that the proposed development has generally avoided the use of glazing or balconies that would directly overlook these properties. I note that the link corridor to the south of No. 3 Parnell St incorporates north-facing glazing, but I consider that this would have an oblique relationship with the limited extent of south-facing windows in the adjoining Parnell St properties and would not result in significant overlooking. Similarly, the north-facing outdoor sitting area on the top floor level would not have the potential for significant overlooking impacts due to its elevated level and position relative to these properties. The removal of the 4th floor level of Stair Core 2 and the adjoining link corridor will also significantly improve the interface between the proposed development and the existing buildings to the north and west of the site.
- 7.5.26. To the south of the proposed development, I note the appeal concerns regarding overlooking impacts on No. 57 Capel St and that the proposed development includes west-facing bedroom windows in the eastern courtyard elevation.

However, given that these windows are perpendicular to the north-facing windows in No. 57, I consider that any overlooking will be at an acute angle and would have minimal effects given the limited width of the windows in No. 57.

7.5.27. The appeal also raises concerns about the overlooking impacts on the roof terrace to the rear of No. 57. Again, I consider that the viewing angle from any of the proposed bedroom windows would restrict any significant overlooking impacts on this space. I also accept the applicant's point that the top floor level does not include a west-facing balcony area. The top floor plans indicate that the balconies are restricted to the southern side and that 1.8m high opaque screening will be erected at the western end of the balconies to prevent any overlooking of No. 57.

7.5.28. Having regard to the above, I consider that any potential for overlooking impacts will be to a limited extent and will not seriously detract from the privacy and amenities of surrounding properties. Potential impacts would be further mitigated by the adoption of Option A; the setback of the eastern courtyard elevation as previously discussed; the removal of the 4th floor stair core and corridor; and through the incorporation of other suitable conditions to ensure that screening is incorporated.

Other disturbances

7.5.29. The 3rd party appeals raise various concerns relating to the construction stage of the development, including issues relating to the removal of demolition material (including asbestos); construction times and methodologies; and potential structural impacts on adjoining properties.

7.5.30. I consider that the issues relating to construction waste and construction times / methodologies are common to any city centre development of this nature and scale and I acknowledge that such projects cause temporary disturbance. However, I do not consider that a refusal is warranted on these grounds alone and, consistent with established practice, I consider that these matters can be satisfactorily agreed by condition and the agreement of a Construction Management Plan and Construction and Demolition Waste Management Plan. Regarding the disposal of asbestos, I would highlight that this is a notifiable substance and is therefore the subject of a separate legal code.

- 7.5.31. Regarding structural stability, I note that the McGrath appeal raises concerns about the stability of material to be excavated and includes a structural impact assessment by Infinite-focus Engineers and Project Managers. The report outlines that the proposed structure would have a significant negative structural impact due to age of the building and the absence of supporting foundations and structural frame; the instability of the ground; and changes in groundwater flows during and after construction.
- 7.5.32. The response to structural concerns, the applicant has included a letter from Magahy Broderick Associated Chartered Structural Civil and Environmental Engineers. The letter confirms that a c. 1.5m wide construction zone has been left between the proposed basement and the appellant's property and contends that this is more than adequate for the insertion of secant piling and a retaining wall, which obviates the need to underpin the adjoining property. I note that this is demonstrated in the Magahy Broderick Associates drawing no. ST01 as submitted with the application to DCC. The letter also contends that the presence of multiple basements in the area confirms that the groundwater concerns are unfounded and that the construction of basements near protected structures is a common occurrence in the city.
- 7.5.33. I acknowledge the importance of maintaining the structural integrity of No. 57, particularly given its status as a Protected Structure. However, I would concur that basement construction is common in city centre situations like this, and the appeal has not presented any compelling evidence that the proposed development would endanger the adjoining structure. Ultimately, I consider that structural impacts are largely dependent on construction management practices and there is an onus on the developer to protect adjoining properties as a matter of civil law. While these issues are largely outside the scope of the planning process, I am satisfied at this stage that the applicant has demonstrated that adequate space and construction techniques can be employed along the boundary to ensure that there will be no significant structural impacts.
- 7.5.34. I note the concerns raised in the appeal regarding the effects on No. 57 as a result of smoking activity in the courtyard sitting area. However, given that this is an open-air environment I do not consider that any emanating smoke would

significantly impact on the residential amenity or health circumstances of the residents.

7.6. Traffic and Transport

- 7.6.1. The application includes a Traffic/Transport Assessment, which is supported by a Preliminary Mobility Management Plan and a Preliminary Construction Management Plan. The proposal does not include any on-site parking and predicts that the vast majority of guests are expected to arrive by public transport. Servicing is proposed via existing loading bays on Capel and Parnell St and large HGV's are not expected to be used. The report highlights the accessibility of the location with reference to private and public bus routes, taxi ranks, bike stations and rail facilities including the LUAS, DART and mainline train services.
- 7.6.2. A TRICS analysis has been completed and predicts that the peak period for all people arriving and departing (17.00 to 18.00) would see 56 two-way trips, the majority of which will be by pedestrians. The peak period for 'taxi' vehicular traffic (18.00 to 19.00) would see only 3 two-way trips and the peak period for total vehicular traffic (08.00 to 09.00) would see 24 two-way trips, but less in this case given that no parking is provided. The report concludes that the proposal would result in a negligible change in traffic conditions and would encourage the use of more sustainable transport options.
- 7.6.3. With regard to parking requirements, the absence of any car-parking in the proposed development obviously complies with the 'maximum' car-parking allowances for hotels developments in Zone 1 (i.e. 1 space per bedroom). The development also complies with the minimum cycle parking standards (1 per 10 bedrooms and a minimum of 10 spaces) through the provision of 12 cycle spaces at basement level.
- 7.6.4. Having regard to the above, I consider that the omission of car-parking is appropriate in this case given that the proposed development will be adequately served by existing parking facilities and sustainable transport options. I would concur that the development will have a negligible impact on existing traffic conditions, and I consider that any temporary construction-related traffic impacts

can be satisfactorily addressed through the agreement of a management plan as a condition of any permission.

7.7. Flooding and Drainage

- 7.7.1. The application includes a Flood Risk Assessment which has reviewed the available flooding information from relevant sources including the OPW, CFRAM and GSI. The report outlines that there are no indications that the site location is subject to groundwater or pluvial derived flooding and that a more detailed 'Stage 3 FRA' is not required. It concludes that the site will not be at risk of flooding, will not exacerbate flooding in the immediate vicinity or wider area, will not obstruct or impede important flow paths, and will not result in residual risk to the area. I have reviewed the CFRAM flooding data and I would concur that there is no evidence of past flooding events or predicted flood extents on the subject site or in the surrounding area.
- 7.7.2. I note that the Craddock appeal raises flooding concerns based on an alleged substandard quality of sewerage system and pipes at this location. However, I consider that any such deficiency is out of the control of the applicant and I am satisfied that the applicant's proposals to connect to the existing water services and the need to protect the existing water/drainage assets at this location will be satisfactorily controlled through a connection agreement with Irish Water.
- 7.7.3. The McGrath appeal raises concerns about the future disposal of rainwater and the proposed water attenuation tank in the basement. I note that the application proposes to divert all surface water internally through the building to the attenuation tank in the basement, details of which were demonstrated in drawing no. DR01 submitted in response to the Planning Authority's further information request. The Planning Authority subsequently confirmed that there was no objection to the drainage proposals subject to conditions. In response to the issues raised in the appeal regarding the attenuation tank, the applicant has confirmed that it is within the applicant's property; that minor alterations to the tank size can be easily accommodated; and that there is no necessity for bunding of the tank. I consider that proposals in this regard are satisfactory subject to conditions and compliance with the requirements of the Planning Authority.

7.7.4. Having regard to the above, I have no objection in relation to any flooding and drainage impacts associated with the proposed development.

7.8. Other Matters

7.8.1. I note that an Archaeological Desk Study of the site has been submitted with the application. It notes that test excavations in adjacent developments have not identified the enclosing wall of St Mary's Abbey at this location and that cellars on the site appear to be confined to the street frontages of Capel St and Parnell St. The study recommends a detailed recording of all cellars and sub-structures prior to removal, as well as archaeological excavation and full recording of early post-medieval structures and soils elsewhere on the site. The DCC City Archaeologist subsequently concurred with this assessment and had no objections subject to conditions. Similarly, I am satisfied that the inclusion of appropriate conditions will ensure that the archaeological value of the site will be appropriately protected.

7.8.2. The 3rd party appeals raise concerns in relation to the drawings and documentation submitted, and particularly inaccuracies in relation to the history and occupation of adjoining properties; the description of the nature and extent of the proposed development; and the clarity of the drawings. Having reviewed the drawings and documentation submitted with the application and the appeal, I consider that there is sufficient and clear information available to determine this case. Furthermore, I do not consider that the application includes inaccurate or misleading information such that would prevent concerned parties from making representations in relation to the case as appropriate. Accordingly, I have no objection in this regard.

7.8.3. I note that the 3rd party appeals raise concerns in relation to the fire safety implications of the proposed development. However, the issue of compliance with fire regulations will be evaluated under a separate legal code and thus need not concern the Board for the purposes of this appeal.

7.9. Appropriate Assessment

7.9.1. The applicant's 'Planning Report' includes a section on 'Appropriate Assessment Screening'. It concludes that Appropriate Assessment is not required due to the separation distance from Natura 2000 sites and the measures that will be in

place to manage the indirect hydrological connection between the proposed development and Natura 2000 sites.

- 7.9.2. The proposed development involves the construction of a 94-bedroom hotel development on a brownfield city centre site of c. 895m². It is proposed to connect to the existing surface water and wastewater network serving the area. The surrounding area is predominantly composed of artificial surfaces and is characterised by a mix of commercial and residential development of varying scale.
- 7.9.3. None of the submissions or observations received in connection with the application and appeal have raised the issue of Appropriate Assessment.
- 7.9.4. The nearest Natura 2000 sites are in the Dublin Bay area and include the South Dublin Bay and River Tolka Estuary SPA (c. 3km to the northeast) and the South Dublin Bay SAC (c. 4km to the southeast). Having carried out AA screening for other developments in the city centre area I am conscious that the development is indirectly connected to the Natura 2000 sites within Dublin Bay via the surface water and foul water networks. However, the existence of these potential pathways does not necessarily mean that potential significant impacts will arise.
- 7.9.5. With regard to surface water, the development incorporates appropriate management measures to regulate discharge flows in terms of quantity and quality. There is also limited potential for surface water contamination during construction works but I am satisfied that best-practice construction management will satisfactorily address this matter. There would be significant dilution capacity in the existing drainage network and receiving water environment and there is known potential for the waters in Dublin Bay to rapidly mix and assimilate pollutants. Accordingly, I am satisfied that there is no possibility of significant impacts on European sites within Dublin Bay from surface water pressures from the development.
- 7.9.6. The wastewater emissions from the development will result in an increased loading on the Ringsend WWTP. However, having regard to the limited scale of the development and the associated discharges; the 'unpolluted' EPA classification of the coastal waters in Dublin Bay and the dilution capacity of these waters; and the likely completion of the Ringsend WWTP extension in the

short term, I am satisfied that there is no possibility that the additional foul water loading resulting from the development will result in significant effects on European sites within Dublin Bay.

- 7.9.7. Having regard to the above preliminary examination, it is concluded that no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site. No mitigation measures have been relied upon in reaching this conclusion.

8.0 Recommendation

I recommend that planning permission for the proposed development should be granted, subject to conditions, for the reason and considerations set out below.

9.0 Reasons and Considerations

Having regard to the city-centre location of the site in close proximity to a wide range of public transport options and facilities, and to the provisions of the Dublin City Council Development Plan 2016-2022; the Urban Development and Building Heights, Guidelines for Planning Authorities (2018); and the National Planning Framework, which seeks to direct new development in cities into built-up serviced areas, and having regard to the pattern and character of development in the area and the design and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum of development in this accessible urban location and would not detract from the mixed-use character of the area or seriously injure the amenities of surrounding properties or the visual amenities of the area, and would be acceptable in terms of pedestrian and traffic safety. Furthermore, the proposed development would not seriously detract from the character or setting of the Protected Structure on site (No. 3 Parnell Street) or other Protected Structures in the vicinity of the site and would not detract from the character of the Capel Street and Environs Architectural Conservation Area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 22nd day of December 2020, and more particularly the proposals therein for 'Option A' (Option B is hereby not permitted), except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) The fourth-floor level of Stair Core 2 shall be omitted.
 - (b) The western elevation walls of bedroom no.'s 111, 112, 211, 212, 311, 312, 408, & 409 shall be setback a distance of 1 metre to the east.
 - (c) The eastern elevation wall of the proposed en-suite extension to the rear of no. 58 Capel Street shall be set back a distance of 1 metre to the west.
 - (d) The projecting sign on the upper levels of Parnell Street shall be omitted.
 - (e) The glass canopy proposed for No. 3 Parnell Street shall be omitted.
 - (f) New blue Bangor/Welsh slates shall be used in the reroofing works of the existing buildings.
 - (g) The proposed retractable roof for the courtyard shall be omitted.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of protecting the integrity of historic fabric including a protected structure as well as the streetscape character in an Architectural Conservation Area and to protect visual and residential amenity.

3. Water supply and drainage arrangements, including the disposal of surface water from the site, shall be in accordance with the detailed requirements of the Planning Authority.

Reason: In the interests of public health.

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

Reason: In the interests of public health.

5. The proposed shopfronts shall be in accordance with the following requirements:-
 - (a) Lighting shall be by means of concealed neon tubing or by rear illumination.
 - (b) External roller shutters shall not be erected. Any internal shutter shall be only of the perforated type, coloured to match the shopfront colour.
 - (c) No adhesive material shall be affixed to the windows or the shopfront.
 - (d) No other signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

6. Details which shall include samples, of the materials, colours and textures of all the external finishes to the proposed development including the screening to the proposed balconies shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity and streetscape

7. (a) The restaurant shall not be open to the public and patrons between the hours of 2330 and 0700 on any day.
(b) The external courtyard sitting area shall not be open to the public and patrons between the hours of 2200 and 0700 on any day.

Reason: in the interest of residential amenity.

8. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

9. (a) All proposed works to the protected structure (No. 3 Parnell Street) and No.'s 58 & 59 Capel Street shall be carried out under the supervision of a qualified professional with specialised conservation expertise.
(b) The works shall be carried out in accordance with best conservation practice as detailed in the application (including the supplemented Architectural Heritage Impact Assessment) and the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts, Heritage and the Gaeltacht in 2011.
(c) A detailed survey of the basement of Numbers 4, 5 and 6 Parnell Street shall be carried out. The planning authority's conservation section shall be

given an opportunity to inspect the site in the course of fabric removal and should any structural element of interest be found within the site these should be incorporated as part of the revised proposal.

Reason: To secure the authentic preservation of a protected structure and significant historic fabric within the site and to ensure that the proposed works are carried out in accordance with best conservation practice.

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

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

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

11. The premises shall be soundproofed and managed such that:
- (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 08.00 to 2300 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L_{90} and the specific noise shall be measured at $L_{Aeq,T}$.
- (b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be the subject to the same locational and decibel exceedance criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at $L_{Aeq,T}$.

- (c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either
 - (i) during a temporary shutdown of the specific noise source, or
 - (ii) during a period immediately before or after the specific noise source operates.
- (d) When measuring the specific noise, the time (T) shall be any 5-minute period during which the sound emission from the premises is at its maximum level.
- (e) Any measuring instrument shall be precision grade.
- (f) Soundproofing shall be provided along the boundaries with adjoining properties where necessary.

Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to use of the premises. An acoustical analysis shall be included with this submission to the planning authority and shall include a comprehensive survey of baseline noise levels and predicted noise levels associated with the proposed development.

Reason: In order to protect the amenities of property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.

12. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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

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

13. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

14. No additional development shall take place above roof parapet levels, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, machinery or telecommunications aerial, antennas or equipment unless authorised by a further grant of planning permission.

Reason: In the interest of residential and visual amenity.

15. Prior to the opening of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by staff employed in the development and to reduce and regulate the extent of staff car parking. The mobility strategy shall be prepared and implemented by the management company for all units within the development. Details to be agreed with the planning authority shall include the provision of adequate facilities within the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.

Reason: In the interest of encouraging the use of sustainable modes of transport

16. Any alterations to the public road or footpath shall be in accordance with the requirements of the planning authority and where required, all repairs to the public road and services shall be carried out to the satisfaction of the planning authority at the applicant's expense.

Reason: In the interests of clarity, public safety and amenity.

17. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

18. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

19. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;
- (d) Details of car parking facilities for site workers during the course of construction;
- (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (f) Measures to obviate queuing of construction traffic on the adjoining road network;

- (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (i) Provision of parking/vehicular access for existing properties during the construction period;
- (j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

20. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

21. Public access to and from the street shall be maintained to the ground floor bars and restaurants at all times during opening hours.

Reason: To promote active uses at street level.

22. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

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

23. The developer shall pay to the planning authority a financial contribution in respect of LUAS Cross City in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer

or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

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

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

Stephen Ward
Senior Planning Inspector

20th August 2021