

**Statement of Material Contravention of the
DLR County Development Plan 2016-2022
and the Blackrock Local Area Plan 2015-2021**

In respect of

**Proposed Strategic Housing Development
(Alterations to Phase 1 Residential and
Proposed Phase 2 Residential Development)**

At

**Frascati Centre, Frascati Road, Blackrock, Co. Dublin
(formerly known as Frascati Shopping Centre).**

Prepared by

John Spain Associates

On behalf of

**IMRF II Frascati Limited Partnership acting through its
general partner Davy IMRF II GP Limited**

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1.0 INTRODUCTION / EXECUTIVE SUMMARY

- 1.1 On behalf of the applicant, IMRF II Frascati Limited Partnership acting through its general partner Davy IMRF II GP Limited, we hereby submit this Material Contravention Statement in respect of a proposed Strategic Housing Development at the Frascati Centre, Frascati Road, Blackrock, Co. Dublin (formerly known as Frascati Shopping Centre).
- 1.2 This statement provides a justification for a material contravention of the Blackrock LAP should the Board be of the opinion that the proposed building heights contravenes Objective FR7 which provides for heights of up to 5 storeys on the majority of the Frascati Centre site, graduating down to 2 storeys in proximity to neighbouring properties. This statement also provides a justification for a material contravention of the Dun Laoghaire Rathdown County Development Plan 2016-2022 should the Board be of the view that the proposed unit mix contravenes Section 8.2.3.3 (iii) of the Development Plan.
- 1.3 The proposed development relates to alterations to the Phase 1 permission for 45 no. apartments (Reg. Ref.: D17A/0950 & ABP Ref.: 300745-18), from second to fourth floor level of the rejuvenated Frascati Centre. The proposed development also includes the provision of 57 no. additional apartments, as an extension of the Phase 1 permission, located above the permitted podium car park to the north west of the centre, as a Phase 2 residential development. The subject application therefore relates to a total of 102 no. residential units. The detailed elevation / section drawings prepared by RA+U illustrate the height of the proposed in the context of the existing Centre, the permitted Phase 1 residential development (which alterations are proposed), and in the context of neighbouring land uses / properties.
- 1.4 The permitted Phase 1 development provides for 3 no. storeys of residential development above 2 no. storeys of retail. The proposed alterations do not seek to alter the height or overall massing of this element of the overall development, as the alterations are primarily internal or external treatment changes, which will allow the construction of the residential units to commence in the interim period. In respect to the permitted building heights, the Inspector's Report stated the following in the assessment of the permitted Phase 1 residential development- *"I would consider that in general the proposed development would be consistent with Map 12 of the Blackrock Local Area Plan"*. The Inspector also states that *"I would consider that the design and scale of the proposed development is acceptable having regard to the strategic location of the subject site and national and local policy objectives."*
- 1.5 The proposed Phase 2 residential scheme, which is proposed as an extension to the Phase 1 residential scheme, is located within the north west of the centre above the existing and permitted podium car park (additional podium car park deck permitted under the Phase 1 permission). The Phase 2 proposal consists of 20 no. studios, 22 no. 1 beds and 15 no. 2 beds (57 no. apartments) in three no. blocks (Block D, E & F), arranged around a central communal courtyard space, above the existing and permitted podium car park to the north west of the centre. Block D is a five storey block, Block E is a part two to part four storey block and Block F is a part two to part three storey block, all above three levels of podium / basement car park (lower ground, ground and first floor podium levels). Therefore, in terms of building heights the Phase 2 proposal could be considered to range from 5 to 7 storeys, including the car park decks below, with a maximum height of 25 metres. The proposed building heights seek to respond to recent Government policy supporting increased building heights in urban

locations, particularly where well served by public transport, and has been designed to have regard to the surrounding context of the site.

- 1.6 In particular SPPR3 of the 2018 Urban Development and Building Height Guidelines, provides for the granting of permission for development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise, when such development complies with site specific criteria outlined under SPPR3. This Statement seeks to demonstrate how the proposals comply with these criteria with reference to accompanying application documentation. Thus, the Guidelines include a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility in order to meet the ongoing housing crisis and residential demand, subject to a performance-based criteria assessment.
- 1.7 In this regard, we note the following section (section 9(3)) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended in 2018):
- “(3) (a) When making its decision in relation to an application under this section, the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000.*
- (b) Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.” (Emphasis Added)*
- 1.8 Having regard to the above, it is considered that if the height of a proposed development is considered to breach the height limits / specific height objectives set out within a Development Plan or LAP, if a justification is provided and accepted under SPPR 3 of the Building Height Guidelines (which were issued under section 28 of the 2000 Act), the development will not materially contravene the Dún Laoghaire Rathdown County Development Plan or the Blackrock LAP (as the conflicting policy provisions will be disapplied). The consequence of complying with SPPR3 is that the question of material contravention does not arise and the Board does not need to determine whether the proposed development contravenes materially the development plan or local area plan relating to the area concerned. However, if the Board grants permission in accordance with s.9(6)(a) of the 2016 Act, it should specify the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be, and by reference to s.37(2)(b) of the Planning and Development Act 2000.
- 1.9 Similarly, in respect to unit mix, even where the proposed unit mix is contrary to a policy or objective set out within the development plan, if the proposed unit mix accords with SPPR1 of the Apartment Guidelines 2018 (which were issued under Section 28 of the 2000 Act), the SPPR supersedes the Development Plan and therefore a material contravention of the local policy does not apply, as the conflicting policy provisions are superseded.
- 1.10 Notwithstanding the provisions of section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, as amended, and having regard to the requirement relating to mix of units as set out in Section 8.2.3.3 (iii) DLR County Development Plan 2016 to 2022 and the Blackrock LAP Objective FR7 for heights of up to 5 storeys on the majority of the Frascati Centre site, graduating down to 2 storeys in proximity to neighbouring properties, the Board may consider that the proposed mix of units / building heights to contravene the Development Plan/Blackrock LAP.

However, as set out in this Statement, should this be the case An Bord Pleanála can grant permission under SPPR1 of the Apartment Guidelines 2018 in respect to unit mix and SPPR3 of the Building Height Guidelines.

- 1.11 Section 3 of the Building Height Guidelines 2018, 'Building Height and the Development Management Process', outlines that it is Government policy to increase building heights in appropriate urban locations. As elaborated upon in Section 3, and considering the subject site's location within Blackrock District Centre and proximity to good public transport facilities (DART and Quality Bus Corridor), it is submitted that the development meets the relevant development management criteria, and therefore the Board can approve the proposed development, notwithstanding the specific height recommendations in the Blackrock LAP, which was prepared prior to the Building Height Guidelines being published in 2018. In this respect, this Material Contravention Statement provides in Section 3 a demonstration of consistency of the proposed building heights with the criteria under SPPR3 of the Building Height Guidelines.
- 1.12 The Statement of Consistency / Planning Report accompanying this planning application demonstrates compliance with all other relevant policies and objectives of the County Development Plan / LAP, apart from where they are superseded by SPPR's, and it is considered that the proposed heights and unit mix are the only potential material contraventions associated with the application.
- 1.13 It is respectfully submitted that the proposed development is in accordance with recent National Planning Framework and Government policy, as set out in the Statement of Consistency / Planning Report, which seek to provide for increased residential densities and building heights on appropriately zoned and serviced lands within / adjacent to city centre / town centres and high quality public transport corridors (subject site is located within 500 metres of a DART station and adjacent to a Quality Bus Corridor) and therefore classifies the subject site as an 'Accessible' location under the Apartment Guidelines 2018). It is therefore submitted that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development notwithstanding the potential material contravention of the building height policies in the Blackrock Local Area Plan and unit mix requirements of the County Development Plan, as set out herein.

Legislative Context

- 1.14 The Planning and Development (Housing) and Residential Tenancies Act, 2016, states the way in which An Bord Pleanála may grant permission for a development which materially contravenes policies and objectives of a Development Plan or Local Area Plan, other than in relation to the zoning of land, is as follows:

“(6) (a) Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under Section 4 even where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned.

(b) The Board shall not grant permission under paragraph (a) where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of land.

(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with

paragraph (a) where it considers that, if Section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development.”

1.15 Section 37(2)(b) of the Planning and Development Act 2000 states the following:

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

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

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

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

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

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

1.16 A response to the relevant criteria above (underlined) is provided in Section 3 of this report, should the Board consider the proposal a material contravention of the building heights recommended for the site in the Blackrock LAP or a material contravention of Section 8.2.3.3 (iii) of the Development Plan in respect to unit mix.

2.0 LOCAL PLANNING POLICY, INCLUDING DLR COUNTY DEVELOPMENT PLAN 2016-2022 UNIT MIX OBJECTIVES AND BLACKROCK LOCAL AREA PLAN 2015-2021 HEIGHT POLICIES & SHD PRE-APPLICATION CONSULTATIONS

1) Unit Mix

2.1 The local planning policy context in respect to unit mix is summarised below, with an explanation for why this Material Contravention Statement is included with the subject application.

2.2 Chapter 8 of the DLR County Development Plan 2016-2022 provides detailed development management standards for residential development and Section 8.2.3.3 in particular provides guidance for apartment developments. This includes the requirement to ensure the apartments accord with (i) Design Standards, (ii) Dual Aspect, (iii) Mix of Units, (iv) Separation between Blocks, (v) Internal Storage, (vi) Penthouse Development, (vii) Minimum Apartment Floor Areas and (ix) Play Facilities.

2.3 An Advisory Note to Section 8 of the Plan confirms:

“Users of this Dún Laoghaire-Rathdown County Development Plan 2016-2022 are advised that the standards and specifications in respect of Apartment Developments as set out in Section 8.2.3.3 (i), (ii), (v), (vii) and (viii) of the Development Plan Written Statement –have been superseded by Ministerial Guidelines ‘Sustainable Urban Housing – Design Standards for New Apartments’ published by the Department of Environment, Community and Local Government (DoECLG) on 21st December 2015. The DoECLG Apartment Guidelines contain certain ‘Specific Planning Policy Requirements’ which became mandatory on foot of the Planning and Development (Amendment) Act 2015 that was signed into law by the President on 29th December 2015. The ‘Specific Planning Policy Requirements’ set out in the DoECLG Apartment Guidelines take precedence over the Dún Laoghaire-Rathdown standards and specifications as set out in Section 8.2.3.3 of the 2016 – 2022 County Development Plan.”

- 2.4 It is noted that this advisory note appears to exclude Section 8.2.3.3 (iii) which relates to Mix of Units, which would appear to be an anomaly, and therefore the Development Plan is not explicit in confirming the mix of units requirement has been superseded by the Apartment Guidelines 2015, which in any instance have since been superseded by the Apartment Guidelines 2018. Section 8.2.3.3 (iii) states the following:

“Apartment developments should provide a mix of units to cater for different size households, such that larger schemes over 30 units should generally comprise of no more than 20% 1-bed units and a minimum of 20% of units over 80 sq.m. Schemes with less than 30 apartments will be assessed on a case-by-case basis according to their unit numbers, configuration and location but should generally accord to a percentage ratio of 40/40/20% mix for 1/2/3+ bedroom units respectively. Some one-bed or two-bed units could be provided on the ground floor to potentially cater for elderly people ‘downsizing’ from more traditional housing types and should, where possible, have direct access onto public open spaces.”

- 2.5 Under this SHD application, the proposed unit mix is as follows:

- 20 no. studios (19%)
- 25 no. 1 beds (25%)
- 51 no. 2 beds (50%)
- 6 no. 3 beds (6%)

- 2.6 It is recognised that the proposed mix would not be fully consistent with the Development Plan requirements, as the number of studios/one bed units exceed 20%, However, the proposed mix is consistent with and considered to be justified in the context of the Apartment Guidelines 2018. Specific Planning Policy Requirement 1 (SPPR1) of the Apartment Guidelines states:

“Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s).”

- 2.7 The Apartment Guidelines 2018 also state in section 1.21 that “...where SPPRs are stated in this document, they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone

planning schemes. Where such conflicts arise, such plans should be amended by the relevant planning authority to reflect the content of these guidelines and properly inform the public of the relevant SPPR requirements.”

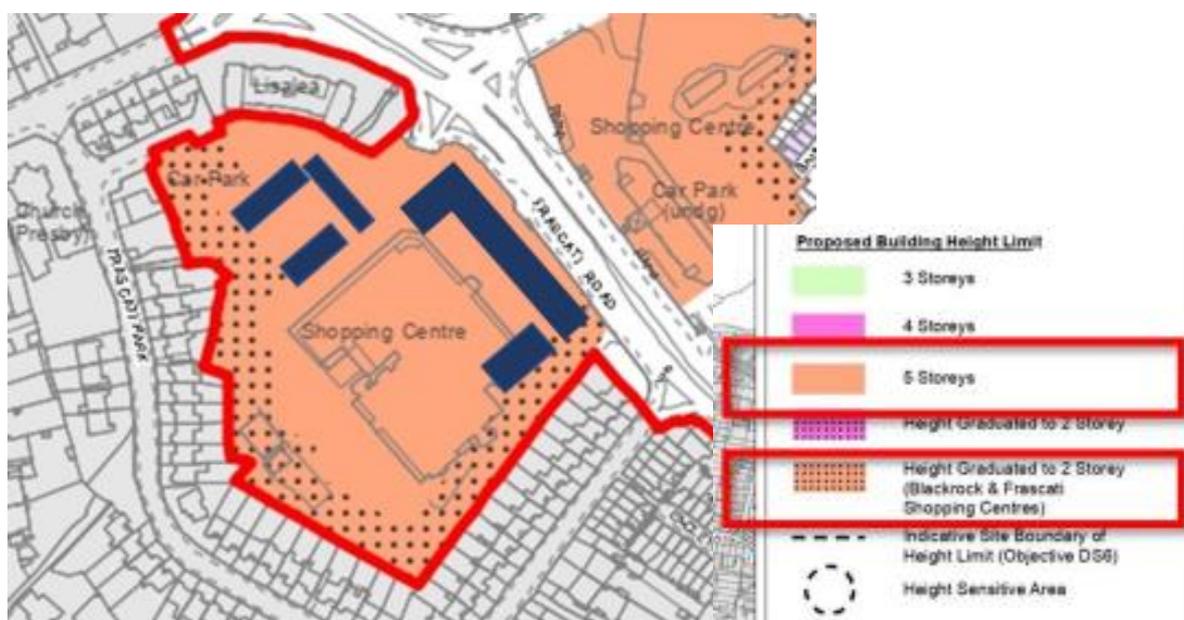
- 2.8 Overall, the proposed unit mix is consistent with the guidance set down in SPPR1 of the Apartment Guidelines 2018, as the percentage of studios and 1 beds does not exceed 50%. There is no requirement for 3 bed units under SPPR 1, however the proposed development includes 6 no. 3 beds which has regard to the Development Plan objectives and addresses concerns raised by the Planning Authority at the pre-application meeting on the proposed unit mix.
- 2.9 We also note that no Housing Need and Demand Assessment has been undertaken by the Planning Authority for this area of the County, and it is therefore submitted that the proposed unit mix is consistent with the relevant planning policy requirement for Unit Mix. Whilst the housing mix sought in the Development Plan differs from SPPR1, SPPR1 takes precedence over any policies of the Development Plan, as subsequently acknowledged in the LAP.
- 2.10 Having regard to the above, it is considered that even where the proposed unit mix development would normally breach the mix of units set out within a Development Plan or LAP, the mix is justified under SPPR1 of the Apartment Guidelines (which were issued under section 28 of the 2000 Act), the development will not materially contravene the local policy (as the conflicting policy provisions will be disapplied).

2) Building Heights

- 2.11 The local planning policy context in respect to building height is summarised below, with an explanation for why this Material Contravention Statement is included with the planning application.
- 2.12 Chapter 8 and Section 8.1.2.3 of the Dun Laoghaire Rathdown County Development Plan includes Policy UD6: Building Height Strategy, which states the following:
- “It is Council policy to adhere to the recommendations and guidance set out within the Building Height Strategy for the County. **Council policy in relation to the issue of building height throughout the County will be guided by both the general principles and specific detailed recommendations detailed in the Building Height Strategy set out in Appendix 9.** The Strategy will be used in establishing building heights for individual areas and emerging new urban nodes in the County through the vehicles of **Local Area Plans**, Urban Framework Plans and other statutory plans such as the Cherrywood SDZ Planning Scheme. The Strategy will also influence and inform the assessment of building heights proposed in individual planning applications.”* (Emphasis added)
- 2.13 The application site is located within the area subject to the Blackrock Local Area Plan 2015-2021, which includes guidance on building heights as outlined below. The LAP was prepared prior to the Building Height Guidelines 2018 and has not been updated in the interim.
- 2.14 Policy objective BK05 of the Blackrock LAP, 2015 – 2021, states that *‘it is Council Policy to ensure that Building Height within future developments in Blackrock makes a positive contribution to the built form of the area and do not adversely impact on local amenity’.*

- 2.15 Under Section 3.4.2 of the Blackrock LAP, which relates to Future Building Height, Map 12 'Existing and Proposed Building Height' sets out the range of indicative heights for Blackrock and the subject site. As illustrated in Figure 1, the proposed building height limit on the application site is 5 storeys. Map 12 also indicates that the building heights should graduate to 2-storeys on the periphery of the subject site adjacent to established residential properties at George's Avenue, Frascati Park and Mount Merrion Avenue. The proposed courtyard layout and setbacks for the Phase 2 proposals ensures that the proposed Phase 2 apartments do not extend onto the area subject to the 2 storey height limit. However, it is acknowledged that the heights proposed are in excess of the 5 storey height limit within the north western part of the Centre, as the residential is located above existing / permitted podium car park levels, therefore equating to a maximum overall height of 7 storeys.

Figure 1: Extract from Map 12, Blackrock LAP (extent of Phase 1 and Phase 2 residential development outlined in blue)



Source: RA+U Design Statement

- 2.16 The LAP notes that height limits are informed by the objectives in Section 2.1.3 'Sites of Protected Structures with Development Potential', Section 3.5 'Site Framework Strategies' and Section 7.7.1 'Redevelopment of Blackrock and Frascati Shopping Centres'.
- 2.17 Objective SH1 of the LAP states that *"it is an objective of the Council to ensure that building height in Blackrock is in accordance with the building height limits set out on Map 12, The Height Sensitive Areas (as identified on Map 12) and Objectives DS1 & DS2 and CS1 and CS2 (St Teresa's, Dunardagh and Cluain Mhuire Site Framework Strategies), Objective ES1 (Section 3.5.3 'Former Europa Garage Framework Strategy') and Objective FR7 (Section 7.7.1 'Redevelopment of Blackrock and Frascati Shopping Centres') and shall have regard to Development Guidance set out in Section 7.7.2."*
- 2.18 Under Section 7.7.2 of the LAP which relates to design guidance for Frascati Shopping Centre, we note the following:

*“Any proposals for significant redevelopment of the Blackrock Shopping Centre and/or Frascati Shopping Centre shall adhere to the development guidance as set out under Section 7.7.2. Also, that any redevelopment shall incorporate a mix of uses, ... and any comprehensive redevelopment of the Frascati Shopping Centre shall incorporate an element of high quality residential development (and other community type uses) and any residential element should include a mix of unit types. **Guideline heights of between two and five storeys, height to graduate to a maximum of two-storeys along mutual boundaries and maximum height limits shall only be considered along the road frontage with Frascati Road.**”*

Any redevelopment shall enhance the streetscape and public realm and assist in improved movement between the two centres. Any redevelopment proposals should focus on providing an attractive and legible streetscape and public realm. Details of the proposed public realm should form part of any redevelopment application.”

- 2.19 Objective FR7 of the LAP also states *“It is an objective of the Council that any redevelopment of the Blackrock and Frascati Shopping Centres shall incorporate a range of building heights ... set out in Map 12 ... Notwithstanding the maximum height limits identified, the Planning Authority would have to be satisfied that the proposed development for the entire site provides for a range of building height that is respectful of the streetscape, the proximity to existing one and two-storey dwelling houses and would help enhance the overall visual character of the District Centre”.*

DLRCC's SHD Pre-Application Chief Executive's Opinion

- 2.20 The scheme submitted for the SHD pre-application consultation request to the Board provided building heights for Phase 2 residential development of 3, 4 and 5 storeys of apartments above three levels of parking (lower ground, ground and first floor podium levels). The Planning Authority's report on the SHD pre-application consultation request to the Board (ABP Ref.: 306989-19 / DLRCC Ref.: SHD/PAC/353/19) included commentary on the proposed building heights in the context of the Blackrock LAP policies.
- 2.21 The Planning Authority do not specifically reference Section 8.2.3.3 (iii) of the County Development Plan relating to unit mix and state the following with regard to the provisions of the Apartment Guidelines 2018:
- “The proposed scheme therefore accords with SPPR1 of the Apartment Guidelines, and it is considered that the mix of unit types within the scheme will add to the diversity and range of the housing stock within the area and will also provide opportunities for downsizing. In this regard, the proposal is acceptable”*
- 2.22 In the context of the above, whilst it is accepted by the Planning Authority that Section 8.2.3.3 (iii) has been superseded by the Apartment Guidelines 2018 and SPPR1, this Statement of Material Contravention is included with the subject application should the Board consider the proposed unit mix a material contravention of the Development Plan due to the omission of reference to Section 8.2.3.3 (iii) within the advisory note included in Section 8 of the Plan.
- 2.23 The following statements of the DLRCC Chief Executive's Opinion are considered to be of relevance to the proposed building heights now put forward in this SHD application:

“The Planning Authority has significant concerns with the scale and height of the proposed development. As five levels of accommodation are proposed to be provided above the existing and permitted podium car park, the proposed building will have an equivalent 8 no. storey building height and will substantially breach the recommended building heights as prescribed in the Blackrock LAP. The proposal fails to have regard to the transitional nature of the site and in its current form is detrimental to the residential amenity of residences within the vicinity of the subject site.

“It is recognised that in accordance with Government policy that building heights must be generally increased in appropriate urban locations. Although it is noted that the current County Development Plan and Blackrock LAP pre-dates these guidelines, the Planning Authority is satisfied that both the current County Development and Blackrock LAP provide a well-considered and robust framework to guide and manage development across the County particularly with regard to the issue of building height.

Notwithstanding this, the Planning Authority is cognisant of and has had regard to the Urban Development and Building Heights-Guidelines for Planning Authorities (2018) (referred to herein as the Building Height Guidelines). The Building Height Guidelines notes that in the event of making a planning application, the Applicant shall clearly demonstrate to the satisfaction of either the Planning Authority or An Bord Pleanála, that the proposed development satisfies various criteria including:

- At the scale of the relevant city/town;
- At the scale of district/ neighbourhood/street;
- At the scale of the site/building; and,
- Specific Assessments.

Of note, Specific Planning Policy Requirement (SPPR) 3 of the Building Height Guidelines is relevant and is included as follows:

*‘It is a specific planning policy requirement that where;
(A)*

- 1. An Applicant for planning permission sets out how a development proposal complies with the criteria above; and,*
- 2. The assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;*

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

*The Planning Authority has reviewed the Applicant’s detailed evaluation of the proposal against the various development management standards and development criteria as outlined in the Building Height Guidelines. However, significant concerns remain regarding the overall scale and height of the proposal and its impact on the residential amenity of properties within the vicinity. The proposal fails to provide an appropriate graduation in height to the adjoining sensitive residential interfaces, particularly to the site’s west. **Although it is acknowledged that additional height can be accommodated above the existing and permitted podium car park, the proposal requires a significant re-design so that it generally accords with the development guidance provided in the Blackrock LAP.**” (Emphasis added).*

- 2.24 In the context of the above, this Statement of Material Contravention is included with the subject application. In addition, as discussed in more detail in the Statement of Response and Architect's Design Statement, the proposals have been revised from pre-application stage to reduce the impact on adjoining residential properties, as summarised below:
- Omission of 1 no. apartment unit at third floor level of Block F to reduce the corner height on the north corner from 3 to 2 storeys and reducing impact on adjoining Lisalea;
 - Modified layout of Apartment No. 2315 at third floor level of Block F to avoid overlooking onto Frascati Park;
 - Building line setback at the south eastern corner and reoriented stairs on 4th and 5th floor of Block D to reduce massing resulting in omission of 2 no. apartments, to minimise impacts on Frascati Park.
 - The changes result in total number of units being reduced from 105 no. units to 102 no. units.
- 2.25 The application includes a detailed design and policy justification for the proposed development.
- 2.26 As outlined further below, the unit mix requirements of the DLR County Development Plan and height guidance set out in the Blackrock LAP is now superseded by provisions of SPPR1 of the Apartment Guidelines 2018, in respect to unit mix, and Section 3 of the Building Height Guidelines 2018. This following section demonstrates that it is Government policy that building heights must be generally increased in appropriate urban locations, in order to meet the ongoing housing crisis and residential demand. It is noted that the SPPR's listed under the Building Height Guidelines 2018 supersede Development Plan / Local Area Plans that are considered to be contrary to the Building Height Guidelines. In respect to specific applications, the applicant must demonstrate compliance with specific development management criteria to comply with SPPR 3. Section 3 below demonstrates how the proposed scheme complies with the criteria set out in Section 3.2 of the Building Height Guidelines 2018 and that the Board should grant permission for the proposed heights, notwithstanding the building height restriction under the Blackrock LAP and that the Board should grant permission for the proposed heights.

3.0 JUSTIFICATION FOR MATERIAL CONTRAVENTION IN CONTEXT OF SECTION 37(2)(B) CRITERIA

- 3.1 In the event that the Board considers that the proposed development constitutes a material contravention of the LAP by virtue of the proposed building heights of 2 to 5 storeys above the permitted three levels of parking (lower ground, ground and first floor podium levels on the subject site), and / or Section 8.2.3.3 (iii) of the Development Plan by virtue of the proposed mix of units, a justification for such a material contravention is set out below, as required under the relevant criteria set out under Section 37(2)(b) of the 2000 Act, as amended.

Part (i) - Proposed Development is of Strategic or National Importance

- 3.2 The proposed development comprises of inter alia the provision of 102 no. residential units above the Frascati Centre, zoned for district centre and residential purposes, located within Blackrock Village on a well serviced site in proximity to high quality public transport.

3.3 As outlined in the Planning Report / Statement of Consistency, the proposed development, including the alterations to the Phase 1 residential units and the proposed Phase 2 residential units, fall within the definition of a Strategic Housing Development in accordance with the definition of same provided under section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended. On this basis it is submitted that the proposed development is, by definition, strategic in nature and of strategic importance.

3.4 The long title of the Planning and Development (Housing) and Residential Tenancies Act 2016 is as follows:

“An Act to facilitate the implementation of the document entitled “Rebuilding Ireland - Action Plan for Housing and Homelessness” that was published by the Government on 19 July 2016, and for that and other purposes to amend the Planning and Development Acts 2000 to 2015, the Residential Tenancies Acts 2004 to 2015 and the Housing Finance Agency Act 1981, to amend the Local Government Act 1998 in relation to the Local Government Fund and to provide for connected matters.”

3.5 The Rebuilding Ireland Action Plan, and consequently the 2016 Act, recognise the strategic importance of larger residential developments (including developments of over 100 residential units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply.

3.6 In relation to the arrangements to be put in place for Strategic Housing Developments, the Rebuilding Ireland Action Plan states:

“Such arrangements would draw on procedures already in place in respect of strategic infrastructure development projects under the Planning and Development (Strategic Infrastructure) Act 2006 and should speed up the planning decision-making process in respect of such developments, while also providing greater certainty for developers in terms of timeframes within which such developments can be determined in the planning system.”

3.7 Due to the strategic importance of larger housing developments designated as SHDs, the Government moved to introduce legislation under the 2016 Act, which would see such developments assessed in a similar manner to Strategic Infrastructure Developments.

3.8 Having regard to this legislative and policy context, it is considered that the proposed significant Strategic Housing Development at the subject mixed use development site, located within a designated District Centre on a high quality public transport corridor (DART and bus services), is, by definition, of strategic importance for the purposes of section 37(2)(b) of the 2000 Act, and therefore should the proposal

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

3.9 The following section shall demonstrate how the proposed heights are justified in the context of recent National Planning Policy and Section 28 Government Guidelines, which seek to increase residential densities on zoned services lands adjacent to public

transport corridors, and which have been published since the adoption of the Blackrock Local Area Plan in 2015. These include:

- Project Ireland: National Planning Framework 2040
- Regional Spatial & Economic Strategy for the Eastern & Midland Regional Assembly (2019)
- Retail Design Manual 2012, a companion to the Retail Planning Guidelines 2012
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guidelines 2018)
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018)

Project Ireland: National Planning Framework 2040

3.10 The National Planning Framework 2040 (hereinafter NPF) seeks to increase densities and building heights in appropriate urban locations to consolidate urban sprawl, increase the sustainability of public transport networks and meet the housing needs of our growing population.

3.11 In relation to residential development the plan states:

*'A major new **policy emphasis on renewing and developing existing settlements will be required**, rather than continual expansion and sprawl of cities and towns out into the countryside, at the expense of town centres and smaller villages. **The target is for at least 40% of all new housing to be delivered within the existing built up areas of cities, towns and villages on infill and/or brownfield sites**'.* (Emphasis added)

3.12 The following objectives in the NPF are of particular relevance:

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

*NPO13 "In urban areas, planning and related standards, including in particular **building height** and car parking will be based on **performance criteria that seeks to achieve well-designed high quality outcomes in order to achieve targeted growth**."*

NPO33 "Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location'.

*NPO35 "**Increase residential density** in settlements, through a range of measures, including reductions in vacancy, re-use of existing buildings, **infill development schemes, area or site-based regeneration and increased building heights**."*

NPO37 "A 'Housing Need Demand Assessment' (HNDA) is to be undertaken for each Local Authority Area in order to correlate and accurately align future housing requirements."

Building Heights

- 3.13 It is clear that there is a strong emphasis towards increased building heights in appropriate locations within existing urban centres and along public transport corridors in order to provide for the critical mass needed to make the public transport services viable. As such, it is respectfully submitted the proposed Phase 2 building heights of 2 to 5 storeys above the permitted car park levels comprising 57 no. apartment units is in line with government guidance and emerging trends for sustainable residential developments.
- 3.14 The proposed density and height of the development is considered appropriate for the location of the site and the availability of public transport facilities and services provided within the District Centre. The proposed development is therefore in accordance with the objectives of the NPF in this regard.
- 3.15 Restricting the height of the development at such a location well served by public transport to that set out under the Local Area Plan building height objectives would be a contravention of Government policy which promotes increased densities at well served urban sites, and discourages universal height standards in certain urban areas, such as the subject site.

Unit Mix

- 3.16 There is no national policy objective specific to housing mix, and whilst it is recognised NPO37 sets out a Housing Need Demand Assessment is to be undertaken for each authority to align future housing requirements, this has not been completed by DLRCC as of yet. The NPF also acknowledges that decreasing household sizes is an established trend, which is reflected in policy terms under SPPR1 of the Apartment Guidelines 2018, and thereby supporting the unit mix proposed for the subject site.

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

- 3.17 The EMRA RSES supports residential development on a key urban infill sites, in proximity to public transport facilities. The RSES also supports increased densities, heights and urban consolidation in inner suburban locations.
- 3.18 The RSES states that *“the Core Strategies of the relevant Local Authorities should demonstrate consistency with the population targets expressed in the NPF and the Implementation Roadmap for the National Planning Framework July 2018. **The NPF identifies a target population of 1.4 million people in Dublin City and Suburbs for 2031, an increase of some 220,000 people, and a target of 1.65m. in the MASP an increase of some 250,000 people.**”*
- 3.19 As part of the RSES and the accompanying Dublin Metropolitan Area Strategic Plan (MASP), the subject site is located within the Dublin City and Suburban boundary. The RSES states that *“the core strategies of development plans relevant to the MASP should have a focus on the delivery of sites in the MASP whilst retaining flexibility to respond **to new and future opportunities for the delivery of housing in the metropolitan area**, in line with the transitional population projections methodology in the NPF roadmap and a robust evidence-based analysis of demand, past delivery and potential.”*

- 3.20 The vision for the RSES is to create a sustainable and competitive region that supports the health and wellbeing of our people and places, from urban to rural, with access to quality housing, travel and employment opportunities for all.
- 3.21 The RSES supports 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 and suburbs and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport projects.
- 3.22 The subject development seeks to provide for residential development within an existing built up area on an established District Centre site, thereby delivering a greater mix of uses, increased densities, heights and urban consolidation in the core of Blackrock Village in an area well served by public transport. The proposed development therefore is compliant with the overall policies and objectives of the RSES in this regard.

Retail Design Manual 2012

- 3.23 The 2012 Retail Planning Guidelines are accompanied by a Retail Design Manual which seeks to provide guidance on design principles within the planning policy guidance framework. The Retail Design Manual sets out key principles of urban design to promote quality design.
- 3.24 The principle of providing residential development above an established shopping centre was established under the Phase 1 permission and is fully supported by national planning policy. In this respect the design team, as addressed in greater detail in the Architectural Design Statement, had regard to the Retail Design Manual, a companion document to the Retail Planning Guidelines for Planning Authorities, April 2012, which strongly supports the delivery of mixed-use developments in City, Town and District Centre locations.
- 3.25 The Retail Design Manual includes details of precedent schemes which involve high density, mixed use development combining upper floor residential apartments above retail / commercial uses, which accords with the principles of proper planning and sustainable development. Precedent schemes of relevance to the proposals now being brought forward for the Frascati Centre Phase 1 and Phase 2 residential development include Athlone Town Centre, Quayside Sligo, Scotch Hall Drogheda, Dun Laoghaire Town Centre and Opera Lane Cork. A greater mix of uses in the Frascati Centre, with residential above retail ensures activity throughout the day and evening and contributes to the vitality and viability of the Blackrock District Centre, and results in more compact growth and a better utilisation of urban lands.

Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guideline 2018)

- 3.26 The Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guideline 2018) build upon the provisions of the NPF. Under section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended), Planning Authorities and An Bord Pleanála will be required to have regard to the guidelines and apply any specific planning policy requirements (SPPR's) of the guidelines in carrying out their function.
- 3.27 The Guidelines state:

“These guidelines have been issued by the Minister for Housing, Planning and Local Government under Section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines and are also required to apply any specific planning policy requirements (SPPRs) of the guidelines, within the meaning of Section 28 (1C) of the Planning and Development Act 2000 (as amended) in carrying out their functions.

Accordingly, where SPPRs are stated in this document, they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes. Where such conflicts arise, such plans should be amended by the relevant planning authority to reflect the content of these guidelines and properly inform the public of the relevant SPPR requirements.”

Unit Mix

- 3.28 Full details on consistency with the Apartment Guidelines 2018 are set out in the Planning Report / Statement of Consistency and the Reddy A+U HQA submitted with the application. However, having regard to the above and specific to the mix of units, SPPR1 is directly relevant and states the following:

“SPPR1- Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s).”

- 3.29 The proposed unit mix is consistent with the guidance set down in SPPR1, as the percentage of studios and 1 beds does not exceed 50%. There is no requirement for 3 bed units under SPPR 1, however, the scheme incorporates 6 no. 3 bed units. We also note that no Housing Need and Demand Assessment has been undertaken by the Planning Authority for this area of the County.
- 3.30 As demonstrated in this report and accompanying application documentation, the proposed mix of units are consistent with the Apartment Guidelines 2018 and are appropriate for the subject site / location. Having regard to the above and the provisions of the Apartment Guidelines and SPPR1, it is respectfully submitted that the Board can approve the proposed development under section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended), notwithstanding any potential conflicting policies / objectives of the Development Plan.

Building Heights

- 3.31 The Apartment Guidelines state that Central and/or Accessible Urban Locations are generally suitable for small- to large-scale (will vary subject to location) and higher density development (will also vary), that may wholly comprise apartments, and are classified as follows:
- ‘Sites within walking distance (i.e. up to 15 minutes or 1,000- 1,500m), of principal city centres, or significant employment locations, that may include hospitals and third-level institutions;

- **Sites within reasonable walking distance (i.e. up to 10 minutes or 800-1,000m) to/from high capacity urban public transport stops (such as DART or Luas); and**
- **Sites within easy walking distance (i.e. up to 5 minutes or 400-500m) to/from high frequency (i.e. min 10 minute peak hour frequency) urban bus services’.**

3.32 The subject site the subject site falls into the category of ‘Accessible Urban Locations’, given the site’s location within 500 metres of a DART station and adjacent to a Quality Bus Corridor). The site is also located within Blackrock District Centre, with significant number of services, amenities and employment in the area. The proposed residential development is considered to positively contribute to the mix of uses on the site and in the surrounding area, and is suitable for high residential density development and the proposed building heights.

Urban Development and Building Heights Guidelines for Planning Authorities (Building Height Guidelines 2018)

Building Heights

3.33 The Urban Development and Building Height Guidelines 2018 are intended to set out national planning policy guidelines on building heights in urban areas in response to specific policy objectives set out in the National Planning Framework and Project Ireland 2040. Under Section 28 (1C) of the Planning and Development Act 2000 (as amended), Planning Authorities and An Bord Pleanála will be required to have regard to the guidelines and apply any specific planning policy requirements (SPPR’s) of the guidelines in carrying out their function.

3.34 The Guidelines state that *‘the preparation of development plans, local areas plans, and Strategic Development Zone Planning Schemes and their implementation in the city, metropolitan and wider urban areas must therefore become more proactive and **more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights’** (emphasis added).*

3.35 The Guidelines also state that *‘the preparation of development plans, local area plans and Strategic Development Zone (SDZ) Planning Schemes and their implementation in city, metropolitan and wider urban areas **must therefore become more proactive and more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights**, while also being mindful of the quality of development and balancing amenity and environmental considerations’* (emphasis added).

3.36 The guidelines state that *‘implementation of the National Planning Framework requires **increased density, scale and height of development in our town and city cores, including an appropriate mix of both the living, working, social and recreational space we need in our urban areas**,*

and;

*‘to meet the needs of a growing population without growing out urban areas outwards requires more focus in planning policy and implementation term on **reusing previously developed “brownfield” land, building up urban infill sites** (which may not have been built on before) and either reusing or redeveloping existing sites and*

buildings that may not be in the optimal usage or format taking into account contemporary and future requirements’.

3.37 Having regard to the above, SPPR 1 states the following:

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

3.38 The proposed infill development provides for an appropriate scale of development, having regard to the location of the site in proximity to high quality public transport and within Blackrock Village / District Centre.

3.39 Under Section 3 of the Guidelines, which relates to Building Height and the Development Management process, it states that in assessing individual planning applications, it is Government policy that building heights must be generally increased in appropriate urban locations. There is a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility in order to meet the ongoing housing crisis and residential demand.

3.40 SPPR 3 of the Building Height Guidelines notes that where the applicant sets out compliance with the criteria under Section 3.2 of the Guidelines for assessing building height at the scale of the relevant town / city, at the scale of district / neighbourhood / street and at the scale of a site / building that the planning authority or An Bord Pleanála may approve such development even where specific objectives of the relevant development plan or local area plan may indicate otherwise.

3.41 SPPR 3 (a) states the following:

“It is specific planning policy requirement that where:

- 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and*
- 2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;*

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

3.42 Compliance with the relevant criteria set out under Section 3.2 of the Guidelines, is demonstrated below to satisfy the requirements of SPPR3 for increased building height on the subject site. In responding to the criteria below, the emphasis is placed on the Phase 2 residential proposals, as the alterations to Phase 1 do not seek to increase the height or massing of the development relative to the permitted scheme (external and internal alterations only).

Compliance with Development Management Criteria

- 3.43 The guidelines set out the criteria for developments at the scale of the relevant city / town as follows:

Scale of the City / Town

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

Response

- 3.44 The subject site is located within the Dublin Metropolitan area within the administrative boundary of Dun Laoghaire Rathdown County Council. As outlined above, the subject site falls into the category of an 'Accessible Urban Location', given the site's location within 500 metres of Blackrock DART station and adjacent to a Quality Bus Corridor. The site is also located within Blackrock District Centre, with significant number of services, amenities and employment in the area.

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

Response

- 3.45 In addressing the above criteria, the Board should also refer to the following documentation which accompanies the application:

- Reddy Architecture + Urbanism Design Statement including CGI's prepared by Digital Dimensions and Statement of Response Report.
- Landscape/Townscape Visual Impact Assessment and photomontages as included as Chapter 6 of the EIAR.
- Architectural and Cultural Heritage assessment included as Chapter 4 of the EIAR.

- 3.46 The subject site, located at the Frascati Centre, is located within Blackrock District Centre and is the site of an established shopping centre, which has recently been rejuvenated. In preparing the Phase 2 proposals, the design team has sought to focus the graduate the heights away from the more sensitive surrounding land uses to the north and west, as illustrated in the aerial view CGI below. This ensures that the scheme integrates appropriately with existing / permitted development on the application site and with surrounding land uses.

- 3.47 This approach is acknowledged in the Landscape/Townscape Visual Impact Assessment Chapter within the EIAR, and the accompanying photomontages, with the assessment stating that "*The proposed development is in part focussed towards the Frascati Road where **there is ample capacity to visually absorb the proposed development**, and in part within the development lands where the Phase 2 residential block will establish a substantially larger building than the existing retail buildings, **but one that is residential in character and more appropriate to the adjoining residential uses.** The proposed development is considered appropriate to the*

area, and includes both design and mitigation measures that successfully address localised potential adverse impacts.” (Emphasis added).

Figure 1: CGI Aerial View of the Proposed Development

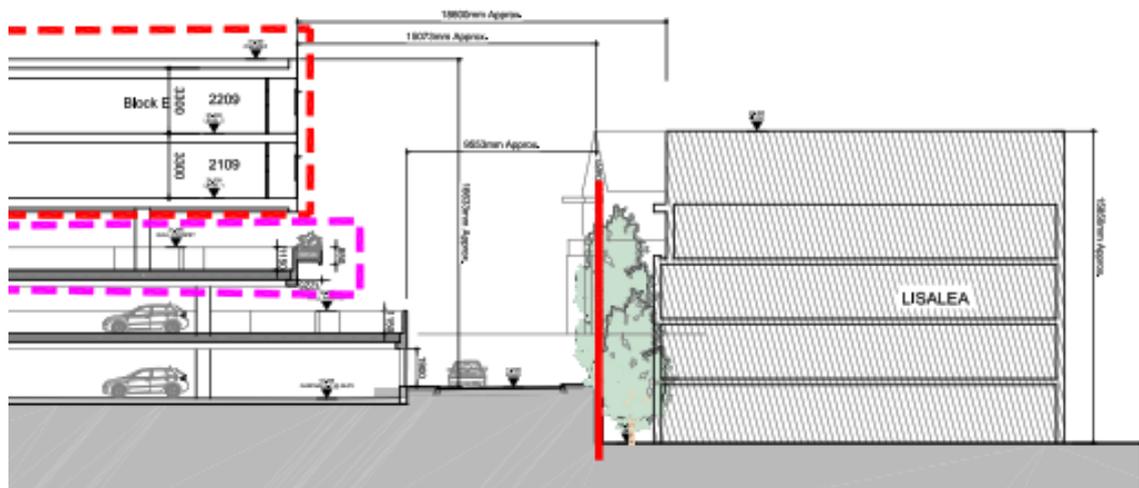


- 3.48 In respect to integration with / impact on surrounding properties it is acknowledged that there are a number of existing 2 no. storey dwellings in the vicinity of the site including Merrion Avenue to the west of the site and Frascati Park to the south of Phase 2 area. A 4 storey building is located to the north of the site on the Frascati Road comprising the Lisalea Apartment Block. These properties have been considered in terms of visual impact and impact on residential amenity.
- 3.49 The part two, part three storey northern block is set back from the rear of the terraced properties on Mount Merrion Avenue by a varying distance of c. 35m to over 50m. There is c. 24m separation distance between the proposed Phase 2 and No. 37 Frascati Park to the south (Figure 2), c.16-50m separation distance between corner of Phase 2 to Lisalea apartments (Figure 3). It should be noted that the Lisalea apartment block is in parts only located c. 1.8m from its own site boundary. The Phase 2 residential units facing Lisalea comprises a series of setbacks on plan and in elevation so as to maintain adequate separation between Phase 2 and Lisalea. Apartment windows are also located so as to maintain appropriate separation distances to avoid overlooking.

Figure 2: Section with Frascati Park



Figure 3: Section with Lisalea Apartment



- 3.50 It is submitted that the subject development integrates with its surrounding context and will enhance the visual amenity of the area and will be a positive architectural addition to the District Centre. The height in respect of the surrounding context has been carefully considered including stepping down of the proposed building height and massing at the north and west and the use of landscaping around the site to assist in visual screening and buffer zones, as illustrated in Figure 4 below. The proposed landscaping will provide a buffer along the site boundaries, and the elevational green-wall will soften and mitigate the appearance of the built forms and will also establish visual screening to limit overlooking.

Figure 4: Proposed Elevational Landscaping

- 3.51 We note that the DLRCC Conservation Report submitted at SHD pre-application stage states the following in respect to the proposed development when considering the proposals impact in respect to architectural heritage:

*“The site of the proposed development is not contained within an Architectural Conservation Area (ACA) or within the curtilage of any Protected Structure(s). The land is zoned Mixed Use/District Centre. In this **respect there are no built heritage concerns arising.**”*

*However, we note the terrace comprising No's 8-16 Mount Merrion Avenue, which are designated Protected Structures, **appear to have been afforded an adequate separation distance and this has minimised any potential detrimental impact on the setting and amenity of same...**it is the opinion of the Conservation Division that given the zoning of the site, **the Protected Structures standing a sufficient distance from the proposed development any visual impact will not be adversely significant”** (Emphasis added).*

- 3.52 Having regard to the above, it is submitted that the proposed development provides for an appropriate scale of development to provide a stronger mixed-use profile at the Frascati Centre lands. It is also submitted that the proposed height and scale of the development accords with urban design principles and provides for a quality street frontage at this location, creating a sense of place and acting as a landmark at Blackrock District Centre and providing an appropriate design response to the surrounding residential properties. We refer the Board to the Architectural Design statement by Reddy A+U for further information and details of the design process.

- *On larger urban redevelopment sites, proposed developments should make a positive contribution to place-making, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient*

variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.

Response

- 3.53 The subject site would not be considered to constitute a large urban redevelopment site. The Phase 1 residential development, for which alterations are proposed as part of this application, will help enhance the positive new streetscape to Frascati Road complementing the permitted / recently implemented office building at Enterprise House and the upgrades underway at Blackrock Shopping Centre. Thus, in terms of the surrounding context, the Frascati Road is considered to have the visual capacity to readily accommodate such development, as established under the existing Phase 1 permission, and also to benefit from it in terms of urban structure and form, and in increased vitality and vibrancy.
- 3.54 The Phase 1 and Phase 2 residential development will provide for a high-quality architectural addition to the Frascati Centre, that responds to and respects the existing development surrounding the site. The proposed residential development is designed to complement and be incorporated into the rejuvenated Frascati Centre and is configured so as to provide a high quality of residential amenity, whilst respecting the residential amenities of properties adjacent to the site.
- 3.55 The proposal will make a positive contribution to the area and mix of uses at this prominent district centre location. The proposed development provides for an appropriate scale of development, which will help deliver a vibrant mixed-use centre. Cumulatively the proposed development along with the existing development in the area will create a sense of place inviting to the wider community and proposed future occupants.
- 3.56 Furthermore, the rejuvenation of the Frascati Centre provides for public realm improvements which have positively contributed to the public realm of the area. The proposed development will provide for communal open spaces that will add to the sense of place and make a positive contribution to the overall structure and form of the development. We refer to the Architectural Design Statement prepared by Reddy A+U and landscape proposals prepared by Stephen Diamond Landscape Architect for which accompanies this planning application for further details.

Scale of District / Neighbourhood / Street

- 3.57 The guidelines further set out the criteria for developments at the scale of district/ neighbourhood / street context as follows:
- *The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape;*

Response

- 3.58 The permitted Phase 1 development provides for 3 no. storeys of residential development above 2 no. storeys of retail. The proposed alterations to Phase 1 do not seek to alter the height or overall massing of the scheme, the alterations are primarily internal or external treatment changes, which will allow the construction of the residential units to commence in the interim period.

- 3.59 The proposed Phase 2 development ranges in height from 2 to 5 storeys above the existing and permitted podium car parks. The range in building heights takes account of the surrounding context of development. The stepped heights along the north west and north east, and greening of elevations, seeks to respond to the existing residential properties surrounding the site and provides for an appropriate transition in heights (as illustrated in the Design Statement CGI extract below).

Figure 5: CGI Extract from the Design Statement



- 3.60 As outlined in the Architectural Statement of Response to ABP's Opinion, the existing separation of the permitted podium to the red line boundary is 16m. The separation distance from the proposed Phase 2 residential development to the surrounding residential properties ranges from c. 17 to 28 metres and are considered sufficient to avoid issues of overlooking and overbearing and result in an appropriate scale of development for a district centre mixed use development.
- 3.61 It is considered that the proposal has provided adequate mitigation measures to protect the residential amenity of surrounding properties and the development integrated into and responds to the site and surrounding context.
- *The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.*

Response

- 3.62 The site occupies a prominent location within Blackrock District Centre. Phase 1, as permitted and subject of alterations in this application, will provide a positive new addition to Frascati Road increasing the enclosure and passive surveillance of this important urban road. Phase 2 of the proposed development will intensify the land use on the northern part of the Frascati Centre, in a manner that is consistent with the permitted and proposed development on the southern portion of the site.

- 3.63 The residential floors step back at the north western and south eastern ends of the building to reduce overall scale and height of the development when viewed from the adjoining residential properties. Phase 2 is arranged as a three-sided courtyard, with blocks on the southern, eastern and northern sides stepping from 2 to 5 storeys above existing and permitted car park. The blocks are set back from the site boundaries by differing amounts so as to maintain an appropriate buffer to adjoining properties. Additionally, the courtyard is open on the western side so as to reduce the overall scale of Phase 2.
- 3.64 The proposal is not monolithic and has been designed to facilitate appropriate setbacks from the neighbouring buildings to negate against any negative daylight impacts and overlooking.

Figure 6: Proposed Courtyard



- *The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway / marine frontage, thereby enabling additional height in development form to be favourably considered in terms of enhancing a sense of scale and enclosure while being in line with the requirements of the “the Planning System and Flood Risk Management Guidelines for Planning Authorities 2009;*

Response

- 3.65 The proposed development provides for an appropriate residential extension of the existing Frascati Centre with an increase in height towards the central section of the Phase 2 proposal, with appropriate setbacks to adjoining residential developments. The proposed height and scale of the development accords with urban design principles and provides for an appropriate design response to increased density on this District Centre zoned site.

Figure 7: Contiguous North Eastern Elevation

- *The proposal makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is situated and integrated in a cohesive manner.*

Response

- 3.66 As outlined above, the rejuvenation project has significantly enhanced the public realm and street frontage at this location. The residential proposals will enhance the urban area by providing a higher density mixed use development. The development provides for a suitable intensification of the subject site which encourages mixed use development within Blackrock District Centre. The design of the elevation fronting onto Frascati Road reinforces the built edge of the Frascati Road, creating a focal point from certain distance views; adding visual interest to the streetscape; and establishing a distinctive building that will reinforce the identity of this important district centre location.
- 3.67 The Phase 1 residential use at the new upper levels facing the Frascati Road, and Phase 2 within the site, will intensify the urban character of the site and provide increased animation of the site.
- 3.68 The proposed development has been designed with a courtyard layout and significantly improves the pedestrian environment in the area and creates a more appropriate use of the subject site by providing high density of development on the upper levels of the existing shopping centre / podium car park.

Scale of the Site / Building

- 3.69 The guidelines lastly set out the following criteria for developments at the scale of the site / building;
- *The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.*

Response

- 3.70 RA+U project architects worked closely with BPG3, daylight consultants, and BSM, visual impact consultants, to ensure a form, massing and height of development which maximised access to daylight, views and minimised overshadowing and loss of light to surrounding properties.
- 3.71 The application is accompanied by a detailed daylight/ sunlight assessment prepared by BPG3. The report assesses a variety of different unit types within the development and impact on surrounding properties and amenity spaces.

- 3.72 As outlined above Phase 1 is permitted and no alterations are proposed in respect to building height or massing. The proposed alterations relate to external and internal alterations to enhance the amenity of units. The assessment notes that it is important to recognise that the compact development faces a North Easterly direction onto Frascati Road and while the accommodation on this elevation will inevitably receive reduced levels of sunlight, it is reasonable to propose that the views over Dublin Bay act as a compensating factor. The report notes that when assessed in the round, and in relation to wider planning imperatives, it is possible that acceptable levels of sunlight amenity and internal skylight amenity would be provided within the development.
- 3.73 Phase 2 is arranged as a three-sided courtyard, with blocks on the southern, eastern and northern sides stepping from 2 to 5 storeys above existing and permitted car park. Phase 2 has been designed with heights and orientation which provide for optimum levels of daylight/sunlight. The proposed internal layout has been carefully considered with regard to the best possible results for daylight / sunlight levels. The orientation of the room layout has been carefully considered to ensure that the best amenity value is obtained for the residents.
- 3.74 The communal open space areas have also been assessed as part of this application, which achieve adequate levels of light which comply with the BRE Guidelines, to enable active use throughout the year. It is intended that these spaces will be a usable meeting / recreational space for residents to lounge and relax on summer evening.
- 3.75 As such it is respectfully submitted that the proposed development has been carefully designed as to maximise access to natural daylight, ventilation and views and to minimise overshadowing and loss of light.
- *Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlines in guides like the Building Research Establishment's "Site Layout Planning for Daylight and Sunlight" (2nd edition) or BS 8206-2:2008 – "lighting for Buildings – Part 2; Code of Practice for Daylighting".*

Response

- 3.76 As mentioned above, a daylight / sunlight analysis has been prepared and is submitted with this application. The design, form and layout have been informed by achieving the best possible results for daylight/ sunlight within the development and the surrounding properties.
- 3.77 Below is a summary of the assessment results.

Skylight Access to Neighbouring Accommodation

- 3.78 In terms of the assessment of skylight access levels available to neighbouring accommodation, the results of the assessment indicate that 83 out of 109 windows assessed satisfy the minimum recommendations of the BRE. This includes all windows assessed for properties on Frascati Park and Mount Merrion Avenue. In respect to the Lisalea apartment block, full compliance with the advisory targets would be achieved at a number of rooms. No significant diminution in skylight amenity is anticipated for these spaces. Where VSC levels are found to fall short of the advisory targets, a secondary testing has been carried out to demonstrate that it has been possible to show that the rooms in question would remain capable of receiving acceptable levels of internal skylight. It is on this basis that the impacts identified in primary testing can be considered to fall within tolerable bounds.

Sunlight Levels to Neighbouring Accommodation

- 3.79 In terms of Sunlight Assessment, the results of the assessment state:

“The results of this assessment indicate that substantial levels of compliance with advisory minimums would be achieved. In the small number of cases where it has not been possible to demonstrate full compliance with advisory minimums the magnitude of the departures registering are found to be modest in all cases”.

Sunlight Levels to Neighbouring Amenity Areas

- 3.80 In terms of Sunlight Assessment on neighbouring amenity areas, the results of the assessment state:

“in this case, full compliance with BRE guidelines has been demonstrated in all cases. It follows that no significant loss of sunlight amenity can be reasonably anticipated for any of the gardens located in the immediate neighbourhood of the proposed development.”

Daylight & Sunlight Amenity within the Development

- 3.81 In terms of the levels of daylight amenity within the habitable accommodation, the assessment assesses a sample number of rooms within Phase 1 and Phase 2 which are considered to experience the most constrained access to natural light. The results of the assessment state:

“The results of this study demonstrate that advisory minimums would be satisfied in most cases (a compliance rate of 93% is predicted). Having regard to this finding it is reasonable to conclude that the potential for acceptable levels of internal skylight amenity would be provided within this development”

- 3.82 In terms of the levels of sunlight amenity which would be available to the accommodation, which is being proposed as part of this development, the results of this study state

“The results of this study indicate that acceptable levels of sunlight access would be provided within the development and that this is particularly true when the aggregate contribution of unique sunlight hours, registering on all of the windows in each unit, are accounted for. While lower levels of sunlight access are identified within Phase 1 by comparison to Phase 2, it is also clear that the views over Dublin Bay which are available from Phase 1 accommodation represent a compensating factor”.

Sunlight Amenity on Outdoor Spaces

- 3.83 The results of this study demonstrate that full compliance with guideline recommendations would be achieved in all cases; it follows that good levels of outdoor sunlight amenity can be anticipated.

- 3.84 The Daylight and Sunlight Assessment concludes by stating:

“When assessed in the round, and in relation to the other factors which contribute to the proper planning and sustainable development of this area, it is possible to conclude that acceptable levels of daylight amenity would be provided within this development”

and that acceptable levels of daylight would remain available to neighbouring properties”.

- 3.85 It is submitted that while care should be taken to ensure that substantial levels of compliance with the BRE recommendations in these guides are achieved, it is often the case that the particulars of a given site structurally impede the ability of a development to achieve full compliance at all points of assessment. In this regard it is important to weigh up the isolated cases where full compliance with guideline targets has not been satisfied against the broader benefits which a development can provide to the compactness, vitality and viability of an emerging neighbourhood.

Specific Assessments

- 3.86 The Guidelines note that to support proposals at some or all of these scales, specific assessments may be required, and these may include:
- 1) *Specific Impact assessment of the micro-climatic effects such as down-draft. Such assessments shall include measures to avoid/mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.*

Response

- 3.87 The application is accompanied by a Microclimate Assessment which is included as Chapter 11 of the EIAR. The aim of the assessment was to determine if there was considered to be a risk of elevated wind-speeds occurring at ground level as a result of the proposed residential development. The proposed residential development is considerably less than 10 storeys and is not classed as a high building and the separation between buildings is such that the risk of elevated windspeeds occurring at ground level is considered extremely unlikely. It can be concluded that the proposed residential development at the Frascati Centre is therefore not a high building and that its shape will not lead to a significant acceleration of wind-speeds.
- 3.88 The cumulative impact of the proposed development with other developments in the area was also examined. It was concluded that the proposed development would have no significant impact on windspeeds in the area.
- 2) *In development locations in proximity to sensitive bird and/or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight lines and/or collision.*

Response

- 3.89 This SHD application is accompanied by a AA Screening Report prepared by Openfield Ecology and an EIAR, including Chapter 5 Biodiversity, which demonstrates that the proposed building heights do not have the potential to adversely impact on the biodiversity of the area. As outlined in the AA Screening, the development will not increase disturbance effects to birds in Dublin Bay given its distance from these sensitive areas. The subject site and adjacent built-up/urban lands are not suitable for wetland birds and so cannot contribute to any ex-situ impacts. In respect to bats, the Biodiversity chapter notes that based on surveys undertaken and given ongoing construction works over the last number of years that there is no evidence of bats on site or bird species. For this reason, and given the ongoing construction activities on

the site, it is not considered that the proposed building heights have the potential to adversely impact on sensitive bird or bat species.

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

Response

- 3.90 We refer the Board to Appendix 1 of the Energy Sustainability Report prepared by Homan O'Brien in respect to telecommunications. This statement confirms that given the urban location of the site that there are a significant number of telecommunications equipment sites in the locality. The statement notes that there is potential for the taller elements of the proposed scheme to impact on certain microwave links. However, it is predicted that most providers will be able to reconfigure their equipment to compensate for the proposed structure. Thus, it is submitted that the proposed development will not result in any significant impact on telecommunications.

- 4) *An assessment that the proposal maintains safe air navigation.*

Response

- 3.91 The application site is not located in proximity to any airports or airfields and as the development is modest in height ranging from 5 to 7 storeys, including the existing and permitted car park decks below, with a maximum height of 25 metres, it is considered that the proposed development does not have the potential to impact on air navigation as a result of the height increase proposed on site.

- 5) *An urban design statement including, as appropriate, impact on the historic built environment.*

Response

- 3.92 As set out above, the application is accompanied by the following documentation of relevance to this requirement:

- 1) Architectural Design Statement and Statement of Response prepared by Reddy Architecture + Urbanism
- 2) Landscape and Visual Impact Assessment and Photomontage Views Brochure, included in Chapter 6 of the EIAR, prepared by Brady Shipman Martin
- 3) Archaeological and Cultural Heritage Chapter included within the EIAR
- 4) Landscape Report prepared by Stephen Diamond Landscape Architects

- 3.93 As outlined in the Design Statement and Statement of Consistency / Planning Report, the surrounding area is characterised by a mix of uses. The proposed development has been designed to respect and enhance the surrounding character of the area. The proposed layout of the building appropriately responds to the site's context and character.

- 3.94 The Phase 2 proposal consists of 20 no. studios, 22 no. 1 beds and 15 no. 2 beds (57 no. apartments) in three no. blocks (Block D, E & F), arranged around a central communal courtyard space, above the existing and permitted podium car park to the north west of the centre. The Phase 2 proposal could be considered to range from 5 to 7 storeys, including the existing and permitted car park decks below, with a maximum

height of 25 metres. The scheme has incorporated appropriate setbacks to surrounding residential properties and the building heights and design are modulated to break down the massing of the buildings to form an effective architectural composition.

- 3.95 The Landscape/Townscape Visual Impact Assessment concludes by stating that *“The proposed development is in part focussed towards the Frascati Road where there is ample capacity to visually absorb the proposed development, and in part within the development lands where the Phase 2 residential block will establish a substantially larger building than the existing retail buildings, but one that is residential in character and more appropriate to the adjoining residential uses. The proposed development is considered appropriate to the area, and includes both design and mitigation measures that successfully address localised potential adverse impacts.”*

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

Response

- 3.96 As noted above, this SHD application is accompanied by an AA Screening Report and Chapter 5- Biodiversity of the EIAR prepared by Openfield Ecologists. The EIAR was prepared / coordinated by JSA with an experienced environmental consultancy teams. These environmental reports demonstrate that the proposed increase in building heights on the subject site does not have the potential to result in adverse environmental impacts on European sites or the local environment.

Specific Planning Policy Requirement 3

- 3.97 Under SPPR 3 of the Building Height Guidelines, it states that where the applicant sets out compliance with the criteria for assessing building height at the scale of the relevant town / city, at the scale of district / neighbourhood / street and at the scale of a site / building that the planning authority or An Bord Pleanála may approve such development even where specific objectives of the relevant development plan, local area plan or planning scheme may indicate otherwise.

- 3.98 As demonstrated above, it has been demonstrated that the proposed building heights are appropriate within the context of the above development management criteria, which is summarised below.

- The site is located within a District Centre, in the Dublin Metropolitan Area in the administrative boundary of Dun Laoghaire Rathdown County Council, which is well served by public transport into the city centre and a number of services, amenities and employment in the area. There is a presumption of increased height in our town/city cores and in other urban locations with good public transport accessibility and therefore the proposed heights in this context are considered appropriate
- The subject site provides for a mixed-use development and zoned for District Centre uses. The site occupies a prominent location within Blackrock. The proposal responds to the natural and built environment and makes a positive contribution to the urban neighbourhood. The proposal is considered to utilise the site's prominent location at the edge of the village as it improves and consolidates the built form and public realm within Blackrock District Centre.

- The Frascati Centre has provided significant enhancements of the public realm which will be utilised by the proposed development. The Phase 1 development, which this application seeks to alter, will enhance the streetscape along Frascati Road in line with the LAP objectives, whilst the Phase 2 proposal of 5 to 7 storeys, including the existing and permitted car park decks below, with a maximum height of 25 metres, will help enhance the overall unit mix and architectural composition of the centre. The development provides for a suitable and sustainable utilisation of the subject site.
- The proposed development has been carefully designed as to maximise access to natural daylight, ventilation and views and to minimise overshadowing and loss of light. Other site specific reports have demonstrated no additional environmental impacts arise as a result of the proposed heights.

3.99 Having regard to the above, the applicant has demonstrated compliance with the criteria under Section 3.2 of the Guidelines as required under SPPR3 which states the following:

“It is specific planning policy requirement that where:

- 3. an applicant for planning permission sets out how a development proposal complies with the criteria above; and**
- 4. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;*

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

3.100 Having regard to the above, it is respectfully submitted that the Board can approve the proposed development under Section 28 (1C) of the Planning and Development Act 2000 (as amended) as compliance has been demonstrated with the relevant development management criteria under Section 3 of the Building Height Guidelines 2018.

4.0 RELEVANT PRECEDENTS

4.1 In addition to the preceding section which addresses the specific development management criteria for increased building heights under the Building Height Guidelines, it is also considered relevant to draw the Board’s attention to recent relevant precedent decisions from the Board / planning authorities, where permission was granted for building heights that would have (prior to the publication of the Guidelines) been considered to be material contravention of the local planning policy framework.

SHD PERMISSIONS

ABP Ref.: 304823-19 – Churchview Road and Church Road, Killiney, Co. Dublin

4.2 The Board granted permission for a SHD development of 210 no. units on a site at Churchview Road and Church Road, Killiney, Co. Dublin. The permitted heights range from part 3, part 4 to part 7 no. storeys.

4.3 This precedent is considered to be relevant to the subject application, given its suburban location within the Dublin Metropolitan area, as the Board considered the

site on Churchview Road, Killiney, Co. Dublin, to be an accessible urban location having regard to the terms of the Apartment Guidelines 2018 and proximity to bus routes, where the peak frequency is 10 minutes or less

- 4.4 We note the Inspector's Report states that *"it is considered that the height of the proposed buildings of 3 and 4 storeys on the edges of the site with a 7 storey element on its western boundary would be in keeping with the height strategy set out in appendix 9 of the development plan, although the implementation of this strategy is affected by the subsequent adoption of the national building height guidelines."*
- 4.5 The Inspector further states that *"the greater height of the proposed buildings compared to those around them would accord with the statement at SPPR1 of the guidelines to support increased building height and density in locations with good public transport accessibility."*

Figure 8: CGI of Permitted SHD at Churchview Road and Church Road, Killiney



ABP Ref.: 305176-19 - Stillorgan Leisureplex, Old Dublin Road, Stillorgan, Co. Dublin

- 4.6 We note that the Board recently granted permission for a scheme of 232 no. build to rent residential units, under ABP Ref.: 305176-19 at Stillorgan Leisureplex, Old Dublin Road, Stillorgan, Co. Dublin.
- 4.7 The heights of the permitted scheme ranged from 4 no. to 8 no. storeys in an area subject to the objectives and policies of the Stillorgan Local Area Plan 2018-2024 which limit building heights to 5 storeys across the site and a reduction to 3 storeys at the rear, adjoining 2 storey dwellings.
- 4.8 It is noted that the Board's Order and Direction do not refer to the development being a material contravention of the Development Plan and Local Area Plan. In assessing the development, the Inspector's Report states that *'since the adoption of this LAP, the national guidance for increased building heights in urban areas has been published. An advisory note attached to the DLRCC development plan states that all housing standards in the development plan are superseded by the most up to date standards and specifications in the "Specific Planning Policy Requirements" (SPPR) therefore I have assessed the proposal in line with relevant SPPR's and the overall design and layout further below.'*

- 4.9 The Inspector further states that *“the terms of the 2018 guidelines on building height and the recent permitted development on the adjoining development (ABP 300520-17) would justify a grant of permission for the proposed development despite its height exceeding the benchmark height of 5 storeys, with reduction along the north, as detailed in Site Development Framework in the LAP, in accordance with section 37(2)(b)(iii) of the planning act. In addition, as stated above, an advisory note attached to the CDP refers to the implementation of the national guidance aside from any development management standards in the CDP.”*

ABP Ref.: 304346-19 - Former Chivers site on Malahide Road

- 4.10 The Board granted permission for a SHD development at the Former Chivers site on Malahide Road, under ABP Ref.: 304346-19, with permitted heights ranging from 4 to 9 storeys. We note the following extracts from the Board’s Direction granting permission for that particular development:

“The height of the proposed building exceeds the limit of 16m for this area set down by section 16.7.2 of the Dublin City Development Plan and that the proposed development would materially contravene this provision of the plan. Nevertheless the Board considered that a grant of permission is warranted in accordance with section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, having regard to the provisions in favour of higher buildings set out in the Guidelines for Planning Authorities on Urban Development and Building Heights issued by the Minister under section 28 of the Act in December 2018 and the compliance of the proposed development with SPPR 3 of those guidelines.

In deciding not to accept the Inspector’s recommendation to refuse permission, the Board considered that the proposed development was located within sufficient distance of several major employment centres including Beaumont Hospital and the City centre and also within 1km of a high capacity integrated public transport system and was satisfied that the development at the scale and density proposed would be fully in accordance with the provisions of the Urban Development and Building Heights Guidelines for Planning Authorities, 2018. It further considered that the proposed development would not set an undesirable precedent for similar developments and had regard to recent decisions in the area. The Board was also satisfied that the proposed design strategy as it relates to scale, mass and height of the proposed structures, represents an appropriate design response to the site’s locational context and to the established character and pattern of development of the area and was satisfied that the large open space/parkland to the northern reach of the site provided an appropriate setting for increased height at this location.”

ABP Ref.: 304196-19 - Clarehall, Malahide Road, Dublin 17

- 4.11 The Board granted permission for a SHD development of 132 no. build to Rent development on a site at Clarehall, Malahide Road, Dublin 17 under ABP Ref.: 304196-19. The permitted heights raised from 6 to 9 no. storeys in a location with a general limit of 16 metres under the City Development Plan and a guideline of 4-6 storeys under the North Fringe – Belmayne LAP.
- 4.12 The Board’s Direction which accompanies the Order granting permission for the development states that *“the height the proposed building exceeds the limit of 16m for this area set down by section 16.7.2 of the city development plan and that the proposed development would materially contravene this provision of the plan. Nevertheless the Board considered that a grant of permission is warranted in accordance with section*

37(2)(b)(iii) of the Planning and Development Act 2000, as amended, having regard to the provisions in favour of higher buildings set out in the Guidelines for Planning Authorities on Urban Development and Building Heights issued by the minister under section 28 of the act in December 2018 and the compliance of the proposed development with SPPR 3 of those guidelines.”

- 4.13 In assessing the development, the Inspector states that *“the terms of the 2018 guidelines on building height and the recent permitted development on the adjoining development (ABP 300520-17) would justify a grant of permission for the proposed development despite its height exceeding the benchmark height of 5 storeys, with reduction along the north, as detailed in Site Development Framework in the LAP, in accordance with section 37(2) (b)(iii) of the planning act. In addition, as stated above, an advisory note attached to the CDP refers to the implementation of the national guidance aside from any development management standards in the CDP.”*
- 4.14 As set out in this statement, it is submitted that a similar justification in terms of national planning policy and Government guidelines applies to the subject site and provides a justification for the heights proposed under this SHD application to the Board.

Section 34 Permissions

- 4.15 We are aware of situations where Dublin City Council and / or An Bord Pleanála have granted permission under SPPR3 for Section 34 planning applications where the development proposed included building heights which exceeded the relevant 16m / 24m / 28m height limits in the City Development Plan. In such cases, the applicant had demonstrated that the proposal complied with the relevant SPPR3 criteria and therefore it was appropriate to grant permission notwithstanding the relevant local height restrictions.
- 4.16 For ease of reference we note the following relevant precedents:

- **Eglinton Road, Donnybrook- DCC Reg. Ref.: 3047/18 and ABP Reg. Ref.: ABP-303708-19.** Permission granted by DCC and ABP for a 7 storey development on a site where maximum heights of 16 metres are specified in the City Development Plan.

The Board's Order in approving the development noted the Urban Development and Building Heights - Guidelines for Planning Authorities (December, 2018) and stated that *‘the proposed development would be in accordance with current development plan policy, would not detract from the visual amenities of the area, would not adversely affect the architectural heritage of the area, would be acceptable in the context of the amenities of adjoining properties and would be acceptable in the terms of pedestrian and traffic safety and convenience.’*

- **3 Poplar Row and Annesley Place, Ballybough, Dublin 3- DCC Reg. Ref.: 3900/18.** Planning permission granted on the 22nd March 2019 by Dublin City Council for development comprising the demolition of an existing commercial building and the development of a 'Build to Rent' residential apartment development of seven storeys in height containing 46 no. apartments. A third party appeal was lodged and subsequently withdrawn.

The Planning Report, dated 27th March 2019, in recommending planning permission to be granted included the following commentary regarding the proposed heights:

“In relation to the concerns regarding the height of the proposed development, the covering submission notes the adoption of the new height guidelines and the specific planning policy requirements. An urban design statement has been submitted in which the issue of the height of the proposed development is addressed. This concludes that the proposed build-to-rent development is a build is a new building typology, which will make a positive contribution to the area, that the site at Poplar Row constitutes a suitable location for an increased scale of development and that the amended proposal, together with recessed sixth floor, satisfies the criteria set out in the guidelines, at the scale of the city, the district/neighbourhood/street and the site/building; having regard to this, it is contended that the proposed seven-storey height is acceptable and that permission should therefore be granted.

It is submitted that the 16m maximum height which would apply under the development plan is not consistent with the provisions of the departmental guidelines. The site is adjacent to North Strand Road which is a bus corridor, with 16 Dublin Bus routes within a five-minute walk, while Connolly and Clontarf Road stations are both 1km away. The proposed Bus Connects service would also serve North Strand Road. The proposed development is therefore considered to be in a central and accessible location which should be developed to a sustainable density.”

- **Former Cumberland House, Fenian Street- DCC Reg. Ref.: 3336 / 19 –** Permission was granted for an additional storey of development, i.e. a seven storey development with an overall height of 31.9 metres, in a location where the maximum height of 28 metres applies under the City Development Plan.

The Planning Officer’s assessment stated the following:

“It is considered in principle the proposed development has made sufficient justification for the height proposed and therefore complies with the Urban Development and Building Heights Guidelines.”

- 4.18 Having regard to the foregoing, it is respectfully submitted that it is appropriate for the Board to grant permission for the proposed building heights, notwithstanding that it exceeds the heights for the subject site as specified under the Blackrock Local Area Plan, having regard to SPPR 3 of the Urban Development and Building Heights Guidelines 2019.

5.0 CONCLUSION

- 5.1 It is respectfully submitted that, should An Bord Pleanála consider the proposed development a material contravention of the Blackrock LAP 2015-2021, this statement demonstrates that the building heights proposed are appropriate for the subject site and comply with the relevant development management criteria set out under Section 3.2 of the the Building Height Guidelines 2018.
- 5.2 Furthermore, should the Board consider that the proposed development constitutes a material contravention of the DLR County Development Plan 2016-2022, specifically Section 8.2.3.3 (iii) Mix of Units, this statement demonstrates that the proposed unit mix for this SHD application accords with the provisions of SPPR1 under the Apartment Guidelines 2018.

- 5.3 It is respectfully submitted that the proposed building heights for Phase 2 proposals of 5 to 7 storeys, including the existing and permitted car park decks below, with a maximum height of 25 metres, is supported by recent National Planning Policy Framework and Government Street which has set out the need for increased density at appropriate locations such as the subject site. The current limitation of building height as set out in the Local Area Plan is inconsistent with the Building Height Guidelines, which acknowledges that to achieve higher density, development of taller buildings is required at appropriate locations.
- 5.4 This statement has outlined how the proposal meets all criteria outlined in national planning policy and S.28 Guidelines, particularly the Apartment Guidelines 2018 and Building Height Guidelines 2018. It has been demonstrated how the site is suitable for high density development incorporating taller buildings and the proposed unit mix. There is ample justification for An Bord Pleanála to permit a material contravention of the Local Area Plan in terms of allowable height and the Development Plan in respect to unit mix, should they consider it to arise, having regard to Section 37(2)(b)(i), (iii) and (iv) of the Planning and Development Act, 2000 (as amended).