

# **Material Contravention Statement**

## **Proposed SHD – BUILD TO RENT**

**Lands at the former TedCastles site  
And DunLeary House (a Proposed  
Protected Structure),  
Old Dunleary Road,  
Cumberland Street,  
Dun Leary Hill,  
Dun Laoghaire,  
Co. Dublin.**

**On behalf of**

**Ted Living Limited**

November 2021



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## 1 INTRODUCTION

We, Brock McClure Planning & Development Consultants, 63 York Road, Dun Laoghaire, Co. Dublin are instructed to prepare this Material Contravention Statement on behalf of **Ted Living Limited, Riverside One, Sir John Rogerson's Quay, Dublin 2.**

The development proposal which is the subject of this statement provides for construction of 146 **Build to Rent** residential units, a retail unit, conversion of DunLeary House (a Proposed Protected Structure) to co-working office space and associated ancillary residential tenant amenity spaces, all located on a site of c. 0.55 ha on lands at the former Tedcastles Site and Dun Leary House, Dun Leary Road, Cumberland Street and Dunleary Hill, Dun Laoghaire, Co. Dublin.

A full description of the development is contained within the accompanying application documentation. For the purposes of this statement, we specify the proposed development provides for:

- **Building Heights generally from 5 to 8 storeys.**
- **The refurbishment, partial removal and adaptation of a 4 storey building on site known as “DunLeary House” (a Proposed Protected Structure) to provide co-working office suites**
- **Residential Unit Mix of:**
  - **34 no. Studio units (23.3%)**
  - **77 no. 1 bed units (52.7%)**
  - **35 no. 2 bed units (23.9%)**
- **Residential Density of 261 units (gross) or 474 units (net) per ha.**
- **Parking provision of 0.3 spaces per residential unit**
- **Dual Aspect Provision 44.5%**

This statement details the basis for consideration of a material contravention of the Dún Laoghaire Rathdown County Development Plan 2016-2022 in relation to:

- ⇒ Building height,
- ⇒ Residential mix,
- ⇒ Residential density,
- ⇒ Private open space,
- ⇒ Car parking
- ⇒ Dual Aspect
- ⇒ Transitional Zones
- ⇒ SLO153

It is acknowledged that it is ultimately the decision of An Bord Pleanála as to whether the proposed development represents a material contravention of the County Development Plan. If it so concludes, the Board has power to grant permission for the proposed development by reference to the provisions of Section 37(2)(b) of the Planning and Development Act 2000 (as amended).

### 1.1 Legislative Context

This Statement has been prepared in compliance with **section 8(1)(a)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act, 2016**. The relevant text is set out below:

**Section 8(1)(a)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act, 2016:**

*“Section (8)(1) Before an applicant makes an application under Section 4(1) for permission, he or she shall –*

- (a) Have caused to be published, in one or more newspapers circulating in the area or areas in which it is proposed to carry out the strategy housing development, a notice – ...*

(iv) stating that the application contains a statement – ...

(II) Where the proposed development materially contravenes the said plan, other than in relation to the zoning of the land, indicating why permission should nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000.”

**Section 37 (2)(b) of the Planning and Development Act, 2000 (as amended):**

“37 (2)(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.”**

This material contravention statement is submitted on the basis that (i) the proposal currently before An Bord Pleanála is of strategic importance; and (ii) the proposal can be positively considered on the basis of Section 28 guidelines published post the adoption of the relevant Development Plan for the area, namely, the Dún Laoghaire Rathdown County Development Plan 2016-2022.

In the first instance, the proposed development is considered to be of strategic importance, that being, the proposal qualifies as a Strategic Housing Development by virtue of the nature of the definition identified under the Planning and Development (Housing) and Residential Tenancies Act, 2016. The proposed development is considered of strategic and national importance as it contributes positively to the national shortfall in housing supply, thereby addressing the ongoing housing and homelessness crisis in the State. Further detail on this is included in Section 3.

In the second instance, is submitted that the overall proposed development aligns with the national policy mandate and Section 28 ministerial guidelines, which were published post the adoption of the Dun Laoghaire-Rathdown County Council Development Plan.

In considering material contravention issues, it is also necessary to consider the requirements of Specific Planning Policy Requirements (SPPRs) under relevant ministerial guidelines issued pursuant to section 28 of the Act of 2000. Such guidelines include in particular:

- The Urban Development and Building Heights Guidelines for Planning Authorities (December 2018)
- The Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, 2020
- Sustainable Residential Development in Urban Areas (2009)
  - Urban Design Manual - Best Practice Guidelines
- Delivering Homes, Sustaining Communities (2008)
  - Best Practice Guidelines - Quality Housing for Sustainable Communities

Section 9(3) of the SHD Act refers to SPPRs and provides:

(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.***

*(c) In this subsection “specific planning policy requirements” means such policy requirements identified in guidelines issued by the Minister to support the consistent application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development.*

It is submitted that the overall proposed development aligns with national policy and Section 28 ministerial guidelines, which were published post the adoption of the Dun Laoghaire-Rathdown County Council Development Plan.

We now invite An Bord Pleanála to consider the justification set out in this report, which supports this position.

## 2 STATUTORY PLANNING POLICY

The relevant provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022 are outlined in detail below. This document is the key statutory policy guidance framing the development of the site.

### 2.1 Building Height

Policy UD6 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 states that it is the Council's objective to adhere to the recommendations and guidance set out within the Building Height Strategy for the County. This is provided by Appendix 9 of the County Development Plan and includes 'modifiers' which should be complied with to allow increased building heights within any proposed development.

The subject site is within Dun Laoghaire and is located in close proximity to existing DART stations as well as Dublin bus services. In addition, it is noted that the subject site is close to (albeit not directly adjoining and set back from) the West Pier and the coast/harbour area.

In this regard, the subject site may be considered to fit into two of the categories listed in the Building Height Strategy as follows:

- **Dun Laoghaire**
- **Coastal Fringe**

In relation to Dun Laoghaire Section 3.2 of the height strategy identifies:

- The coastal County town of Dun Laoghaire is designated as a Major Town Centre.
- Traditional building heights range from 2-4 storey, with some post war developments of 4-5 storey and more recent schemes up to 7 storeys.
- An Urban Structure Plan is included within the County Development Plan as an interim measure in the absence of a Local Area Plan for Dun Laoghaire
- The Urban Structure Plan aims to ensure that new development should be contextual, should seek to re-establish streetscapes, should be appropriately scaled and be rich in materials and detail consistent with the existing typology of the Town Centre.
- It is entirely appropriate, however, to provide landmark buildings at strategic points throughout the Town Centre.
- The specific wording of the Urban Framework Plan which states *"There is however, no implications that a "landmark building" should be interpreted as having to be a higher building than its surrounding"*
- The Height Strategy states that *"The Victorian -era floor to ceiling heights of many of the terraces along the shorefront of Dun Laoghaire results in a built form that can be significantly taller than modern apartment schemes."*

Within the Dun Laoghaire Urban Framework Plan the subject site is identified as an "Opportunity Site" though there are no specific height limits noted within Section 3.2 of the Height Strategy relating to Dun Laoghaire nor in the Dun Laoghaire Framework Plan (Appendix 12 of the Development Plan).

The site is also located within an area identified as the 'Coastal Fringe' in the Building Height Strategy. This is indicated to be a 'downward modifier' which may require a reduction in height of new buildings. The strategy states:

*"In order to retain and protect this outstanding coastline and its distinct skyline, this Building Height Strategy sets a 500m 'Coastal Fringe Zone' following the coastline. Where development is proposed within this zone which would exceed the height of its immediate surroundings, an urban design study and impact assessment study may be required to demonstrate that the scheme will not harm and will protect the particular character of the coastline including, where appropriate, views from the sea/pier".*

The Height Strategy also states that: “There will be occasions where the criteria for Upward and Downward Modifications overlap and could be contradictory for instance: when in close proximity to both a DART station yet within the Coastal fringe. In this kind of eventuality, a development’s height requires to be considered on its own merits on a case-by-case basis.”

Whilst it is acknowledged that the Building Height Strategy does not place a numerical height limit on new development in the Dun Laoghaire area, it is noted that the ‘Coastal Fringe’ designation may impede the delivery of an appropriate scale of development at the subject site. It is therefore respectfully submitted that the objectives in the Building Height Strategy as they relate to the subject site may seek to limit the building height at this site to 3-4 storeys, and it may be concluded that the subject proposal (with a max height of 8 storeys) would materially contravene the Development Plan.

We note at this point that the objectives contained within the Building Height Strategy pre-date more recent ministerial guidelines in relation to height. It is therefore submitted that the proposed height materially contravenes the Development Plan Policy, that there is adequate support at national level to justify the height as currently proposed and a material contravention may be permitted.

## 2.2 Unit Mix

Section 8.2.3.3 (iii) of the County Development Plan sets out the requirements in relation to the mix of units provided as part of new apartment development as follows:

*“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.*

*CSO results from the 2011 Census indicate that 55% of all private households are composed of one or two persons in the County, compared to the 53% Nationally. These 2011 results also indicated that 62% of private households in the County were residing in detached or semi-detached houses with 19.4% in a flat or apartment.”*

The following statement contained on the cover page of Chapter 8 of the Development Plan appears to exclude **Section 8.2.3.3.(iii)** as referred to above.

*“ADVISORY NOTE - Sustainable Urban Housing – Design Standards for New Apartments’ DoECLG(2015) - Users of this Dún Laoghaire-Rathdown County Development Plan 2016-2022 are advised that the standards and specifications in respect of Apartment Development- 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 proposed development provides for the following mix of units:

- **34 no. Studio units (23.3%)**
- **77 no. 1 bed units (52.7%)**
- **35 no. 2 bed units (23.9%)**

The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’2020 contains a Specific Planning Policy Requirement in relation to dwelling mix requirements (SPPR 1), which the Board are required to apply, and takes precedence over any

conflicting policies and objectives of the 2016-2022 County Development Plan. This would include Section 8.2.3.3. (iii) relating to housing mix.

Furthermore, the subject application is a specific BTR development as such SPPR8 applies in this case, which states: *(i) No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise;*

Notwithstanding the cover page of Chapter 8 of the Development Plan, we consider that the proposed development would give rise to a Material Contravention of the Development Plan in respect of housing mix and have set out a full justification in respect of this matter in Section 3 of this report.

## 2.3 Residential Density

Section 2.1.3.3 of the current Dún Laoghaire-Rathdown County Council Development Plan 2016 - 2022 identifies the desired densities for Residential Developments in Dun Laoghaire Rathdown, as follows;

*“It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development...”*

*Where a site is located within circa 1 kilometre pedestrian catchment of a rail station, Luas line, BRT, Priority 1 Quality Bus Corridor and/or 500 metres of a Bus Priority Route, and/or 1 kilometre of a Town or District Centre, higher densities at a minimum of 50 units per hectare will be encouraged.”*

We also note Section 8.2.3.2 states:

*“In general, the number of dwellings to be provided on a site should be determined with reference to the Government Guidelines document: ‘Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities’ (2009). As a general principle, and on the grounds of sustainability, the objective is to optimise the density of development in response to type of site, location and accessibility to public transport. However, the overriding concern should be the quality of the proposed residential environment to be created and higher densities will only be acceptable if the criteria which contribute to this environment are satisfied. Higher residential density will not be appropriate in every circumstance and qualitative built form can sometimes be a more important determinant. Higher densities should have regard to surrounding dwellings and should be achieved tandem with the protection of the amenity of the future residents of the proposed development (Refer also to Policy RES3 in Section 2.1.3.3).”*

Policy RES5 provides that densities should be in the region of 35-50 units per ha. Higher densities will be allowed where it is demonstrated that the site is located within circa a 1km pedestrian catchment of a Luas Line and where there is a quality proposal set out.

A density of 261 units per ha is proposed at a rate of 146 units on a site area of approx. 0.55 ha. The net density, excluding the public realm works is 474 units per hectare, which is based on the immediate ownership site of 0.308ha. This is considered appropriate and achievable at this location given the quality of the scheme proposed, the proximity to public transport, and the protection of existing levels of residential amenity for sites surrounding. We note in particular:

- The layout and heights proposed have ensured that existing levels of residential amenity associated with the neighbouring development at Clearwater Cove is maintained.
- A quality proposal is delivered with the majority of units providing for in excess of the 10% uplift in floor areas.
- The daylight and sunlight analysis enclosed herewith sets out that the scheme performs exceptionally well in terms of daylight access to new units and existing residential development and also in terms of sunlight access to key areas of open space and adjoining properties
- Significant public realm upgrades are provided with this development



It is therefore submitted that the proposed development gives rise to a Material Contravention of the Development Plan in respect of residential density.

We therefore set out a full justification of this matter in Section 3 of this report.

## 2.4 Car Parking

Section 8.2.4.5 of the DLRCC County Development Plan 2016-22 provides the context for the Car Parking Standards for Dun Laoghaire Rathdown County Council Area. Table 8.2.3 provides the Residential Land Use – Car Parking Standards. It is highlighted that the requirements set out in this table are considered “standard” parking provision as opposed to a “maximum”:

Table 8.2.3: Residential Land Use - Car Parking Standards	
Land use	Standards
Residential Dwelling	1 space per 1-bed unit and per 2-bed unit 2 spaces per 3-bed unit+ (depending on design and location).
Apartments, Flats, Sheltered housing	1 space per 1-bed unit 1.5 spaces per 2-bed unit 2 spaces per 3-bed unit+ (depending on design and location)

Fig 1: Extract from DLR Development Plan Table 8.2.3

Section 8.2.4.5 of the DLRCC County Development Plan 2016-2022, states that the “principal objective of the application of car parking standards is to ensure that, in assessing development proposals, appropriate consideration is given to the accommodation of vehicles attracted to the site within the context of Smarter Travel, the Government policy aimed at promoting modal shift to more sustainable forms of transport.”

This section of the Development Plan also highlights that **“Reduced car parking standards for any development (residential and non-residential) may be acceptable dependant on:**

- The location of the proposed development and specifically its proximity to Town Centres and District Centres and high density commercial/ business areas.
- The proximity of the proposed development to public transport.
- The precise nature and characteristics of the proposed development.
- Appropriate mix of land uses within and surrounding the proposed development.
- The availability of on-street parking controls in the immediate area.
- The implementation of a Travel Plan for the proposed development where a significant modal shift towards sustainable travel modes can be achieved.
- Other agreed special circumstances where it can be justified on sustainability grounds.

**In very limited circumstances, the Council may also consider the development of car-free housing on suitable small-scale sites which have with high levels of public transport accessibility, have convenient and safe access to local shops and community facilities and/or are located very close to Town Centres.”**

With regard to the Apartment Guidelines, the subject site is classified as a “Central & Accessible Urban Location” which is defined as:

*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;*

- ⇒ The site is within the urban core of Dún Laoghaire Major Town Centre and within walking distance of significant employment locations including a hospital.

*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*

- ⇒ The site 300m from the Salthill/Monkstown DART Station, 900m from the Dún Laoghaire Public Transport Interchange.

*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.*

- ⇒ Frequent bus services are proximate to the site including the 10 minute peak hour 46A route within 250m walking distance.

Notwithstanding the general intent of the Development Plan to promote modal shift and reduce reliance on private car usage, we submit that the level of provision at 0.3 spaces per unit materially contravenes the Development Plan. However, as demonstrated within this Report, the subject development fully accords with National planning policy and we invite An Bord Pleanála to grant permission on this basis.

## **2.5 Private Open Space**

In respect to Private Open Space, Section 8.2.8.4 (iv) of the Development Plan refers to Table 8.2.5 which notes a requirement of 6 sqm and 8 sqm of private open space for 1 and 2 no. bed apartments respectively.

There are 16 units within the scheme which do not have private balcony. Due to their largely north facing orientation, they are provided with a dedicated communal terrace which provides more useable and pleasant space for residents of these units. A total of 163sqm additional landscaped communal amenity has been provided for these 16no. units. This is in excess of the 102sqm required as the standard private amenity space combined for these units. As a further provision to the above, 10no. of these 16 units are oversized and enjoy attractive views to the Seafront.

Notwithstanding the fact that Section 8.2.8.4 of the Development Plan states: *“In exceptional cases in ‘urban centres’, for reasons of maintenance of streetscape character, or the preservation of residential amenity of adjoining property, the Planning Authority may accept the provision of communal open space in lieu of private open space.”* we submit that the 16 units materially contravene the Development Plan. However, as demonstrated within this Report, the subject development fully accords with National planning policy and we invite An Bord Pleanála to grant permission on this basis.

## **2.6 Dual Aspect**

Section 16.3.3 of the *Dún Laoghaire-Rathdown County Development Plan, 2016-2022* prescribes minimum standards for the quantum of dual aspect apartments that are to be provided in new developments. Section 16.3.3 states;

*“(ii) Dual Aspect*

*Apartment developments are expected to provide a minimum of 70% of units as dual aspect apartments, and no single aspect units should be north facing.”*

The proposed development provides 44.5% dual aspect units and 16 of the single aspect units are north facing in orientation.

Having regard to the site configuration and the requirements for open space, daylight/shadow considerations and privacy, it is submitted that the proposed layout is the optimum design response and is in accordance with national planning policy as set out in this Statement. The rationale for the site layout is clearly detailed in the Design Statement prepared by MOLA Architecture and we trust the Board will note that there is a strong mandate to deliver a scheme of scale on this grossly underutilised and centrally located site. The provision of 146 new homes, a retail unit and office space represents sustainable development within an existing built up urban area.

Furthermore, this is a Build to Rent scheme which is in accordance with SPPR 8 (i) of the Design Standards for new Apartments (2020). SPPR 8 states:

***“For proposals that qualify as specific BTR development, in accordance with SPPR8:***

- (i) **No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise;**

Notwithstanding this, we note that the Guidelines include SPPR 4 in relation to the aspect issue, which states:

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

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

The former Ted Castles site is defined as a central and accessible location on the basis of its location adjacent to an existing public transport services (namely the DART and Dublin bus routes) and so the 33% dual aspect requirement is an appropriate benchmark for this site, notwithstanding the exemption to these standards for Build to Rent development.

It is worth noting that the subject scheme delivers excellent street frontage, having active and vibrant facades on all 3 street elevations which is a marked contrast to the existing context.

Nonetheless, we submit that a material contravention of Section 16.3.3 has occurred. As demonstrated within this Report, the subject development fully accords with National planning policy and we invite An Bord Pleanála to grant permission on this basis.

## 2.7 Transitional Zones

The subject site is zoned NC ‘neighbourhood centre’ and directly bounds lands to the east zoned “A” for Residential uses:

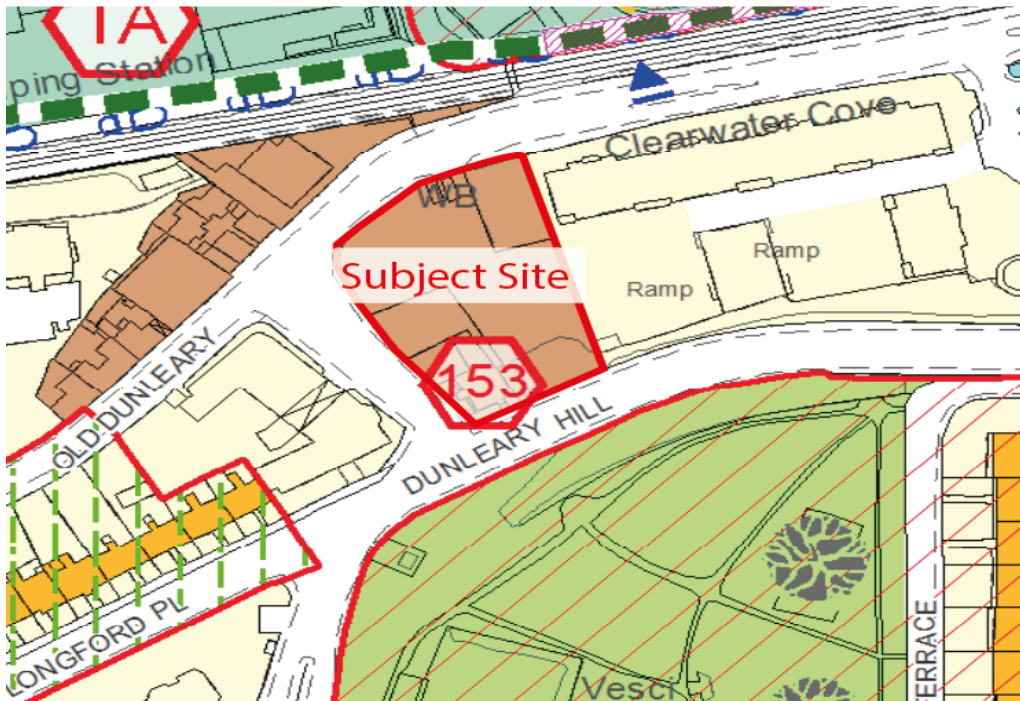


Fig 2: Extract from DLR Development Plan Zoning Map

Section 8.3.2 of the Development Plan sets out that:

*“The maps of the County Development Plan show the boundaries between zones. While the zoning objectives and development management standards indicate the different uses and densities, etc. permitted in each zone, it is important to avoid abrupt transitions in scale and use in the boundary areas of adjoining land use zones. In dealing with development proposals in these contiguous transitional zonal areas, it is necessary to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone. For instance, in zones abutting ‘residential areas’ or abutting residential development within mixed-use zones, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of these residential properties.”*

In consideration of the above provision, we are of the view that the current proposal for residential development along the shared boundary is an appropriate land use with no perceived negative impact.

The residential use on the neighbouring site is Clearwater Cove, an apartment development extending to 6 and 7 storeys in height. The subject development does therefore not represent an ‘abrupt transition’ in scale or use between the neighbourhood and residential zones, as evidenced by this extract from MOLA Architecture’s Drawings:





Fig 4: Extract from Drawing C0101L101 prepared by Cameo & Partners

The open space in the proposed development mirrors that in Clearwater Cove, though the space in that development appears to be dedicated to surface car parking.

All considered, the subject scheme is considered a positive contribution to this particular transitional zone and accords with Council policy on this issue.

Notwithstanding this, it could be interpreted that a Material Contravention in respect of a transitional zoning is occurring in this instance and this is a matter for An Bord Pleanála to ultimately adjudicate on.

## 2.8 SLO153

There is an overall objective relating to the site signified by the hatched red line on the Development Plan zoning map – it is referenced as Objective 153 in the County Development Plan.

*Objective 153 states that:*

***“The Dunleary House (Yellow Brick House) and associated boundary be retained in situ and renovated”.***

The subject development proposes the incorporation of DunLeary House (a proposed Protected Structure) into the overall development. This will entail the refurbishment, partial removal and adaptation of the existing 4 storey building as detailed on the enclosed drawings by MOLA Architecture. The works will include partial removal of original walls and floors, removal of non original extensions to DunLeary House, repointing and repair of brickwork and granite fabric, reinstatement of timber sash windows, removal of existing roof, alterations to internal floor layouts, reinstatement of entrance point on DunLeary Hill, removal of level 00 and linking the existing building to the new development from level 01 to level 03 with the construction of 3 floors of development (with set back at roof level) above the existing building. It is proposed to repair, reinstate and improve the existing boundary treatment to DunLeary House.

The renovated building will become co-working office suites, available for use by the general public.

It is considered that the works proposed to the building accord with SLO153 which seeks the renovation of the House and the retention of the boundary. It is clear that the architectural value of the existing building and boundary is the contribution of its two principle elevations to the



streetscape at this corner of DunLeary Hill. This streetscape value is retained and enhanced by way of the subject scheme.



Fig 5 CGI View by 3D Design Bureau – existing boundary retained and enhanced

Notwithstanding this, it could be interpreted that a Material Contravention in respect of a SLO153 is occurring in this instance and this is a matter for An Bord Pleanála to ultimately adjudicate on.

### 3 MATERIAL CONTRAVENTION JUSTIFICATION

In the event that the Board considers that the proposed development constitutes a material contravention of the Development Plan by virtue of the proposed building heights, mix of units, density, car parking, private open space, dual aspect, transitional zoning and/or SLO 153 the justification for deciding to grant permission in circumstances of such a material contravention is set out below.

The full 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.”***

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

This proposal contributes positively to the current national shortfall in housing supply. The Rebuilding Ireland Action Plan and the above 2016 Act recognise the of larger residential developments (including those over 100 units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply.

The significant shortfall in housing output to address current and projected demand is a national problem, with lack of housing having social and economic ramifications for sustainable national growth. The pressing need for housing development is recognised in the National Planning Framework (e.g. National Policy Objective 32: To target the delivery of 550,000 additional households to 2040; National Policy Objective 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location). Therefore, the proposed development is of both strategic and national importance.

Having regard to this legislative and policy context, it is considered that this proposed Strategic Housing Development is important for the purposes of section 37(2)(b)(i) of the 2000 Act as amended, and therefore should the proposal be determined to be a material contravention of any of the policies set out above, the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b)(ii) of the Planning and Development Act 2000, as amended.

### 3.1 Compliance with National Policy and Section 28 Ministerial Guidelines

The following section demonstrates how the proposed building heights, residential mix, density, car parking, private open space, dual aspect provision, transitional zoning and SLO153 are justified in the context of recent National Planning Policy and Section 28 Government Guidelines, which seek to increase residential densities on zoned serviced lands adjacent to public transport corridors, and which have been published since the adoption of the Dun Laoghaire Rathdown County Development Plan 2016-2022. These include:

- Project Ireland: National Planning Framework 2040
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guidelines 2020)
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018)

#### 3.1.1 Project Ireland: National Planning Framework 2040

The National Planning Framework (NPF) is the Government's plan to cater for the extra one million people that will be living in Ireland, the additional two thirds of a million people working in Ireland and the half a million extra homes needed in Ireland by 2040. As a strategic development framework, 'Project Ireland 2040' sets the long-term context for our country's physical development and associated progress in economic, social and environmental terms and in an island, European and global context.

The 'National Planning Framework 2040' sets out the following Objectives:

##### **National Policy Objective 11:**

***"In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth."***

- ⇒ The site is of strategic importance both within the settlement of Dun Laoghaire, Monkstown and within the County area. The lands in question are significantly underutilised; are brownfield in nature; and have the benefit of immediate adjacency to existing public transport services at Salthill/Monkstown DART station and Dun Laoghaire DART station as well as Dublin Bus services. The site is also appropriately zoned to deliver residential development with supporting commercial spaces.
- ⇒ The proposal offers a range of benefits and wider planning gain including an exceptional public realm proposal; quality residential amenity facilities, coworking office space and a retail unit all delivered at the subject site which has access to a wide range of services/facilities and exceptional public transport connections.

- ⇒ The development has the potential to add a significant population to the local area (c. ranging between 315 -435 persons (given the quantum of studios and 1 beds in the proposed scheme it is likely the population range will be towards the lower end of the range.) and has direct access to a high quality public transport corridor including DART and Commuter rail facilities. New residents will support the vibrancy and vitality of the existing settlements at Dun Laoghaire and Monkstown and have easy access to local employment centres as well as Dublin City centre.

**National Policy Objective 13:**

***“In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.”***

- ⇒ The subject proposal has been designed as an exemplar architectural model by award winning architects, MOLA Architecture.
- ⇒ The development meets and exceeds all relevant performance criteria, as set out in the Reports accompanying this application.

**National Policy Objective 33:**

***“Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.”***

- ⇒ The site is critically underutilised (in that it is disused and proximate to existing public transport services), serviced, zoned land, in close proximity to existing DART stations as well as Dublin bus routes. It is eminently suitable for increased building height and residential density.
- ⇒ The development responds to its context and provides a successful transition in scale with appropriate set backs at boundaries and responds to the context of the surrounding buildings, in particular the Victorian terraces and the residential developments proximate to the site. There is a clear urban design rationale for the transition in height, which is carefully modulated to respond to its context.
- ⇒ The scheme has fully considered existing levels of residential amenities at adjoining residential developments. We note in particular that adjoining developments were a primary focus of the design evolution of the scheme. The development has been carefully designed to ensure there are no significant/adverse impacts arising by way of overlooking, overbearing or overshadowing of existing units by way of this proposal.
- ⇒ As set out in Architectural Design Statement, in terms of height there are a number of similar developments along the coast, which set precedent for taller buildings. In this regard it is considered that the proposed architectural language responds to the context of the surrounding buildings, in particular the Victorian terraces, and provides 3No. terrace buildings linked by the central circulation atrium.

**National Policy Objective 35:**

***“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”.***

- ⇒ The scheme for 146 residential units in a development which ranges in height generally from 6-8 storeys (with set backs) is a well designed, high quality scheme and one



that delivers an appropriate residential density, which is mandated by national planning policy.

When considering the density per hectare it is important to note that this is a dedicated BTR proposal with the resultant unit mix weighted towards one bedroom and smaller units which results in a higher density than an equivalent Build To Sell development.

Based on the above, it is respectfully submitted that the development accords with the key principles of the National Planning Framework.

In relation to some of the specific items within this Material Contravention Statement, we note the following:

#### **Unit Mix**

There is no national policy objective specific to housing mix. The NPF also acknowledges that decreasing household sizes is an established trend, which is reflected in policy terms under SPPR1 of the Apartment Guidelines 2020. We also refer the Board to the enclosed 'Demographic Drivers & Changing Housing Demands in Dublin Over the Coming Decade' prepared by KPMG Future Analytics which presents quantitative analysis that 1 person unit demand is going to increase significantly over the next decade and there is a lack of appropriately sized residential development forthcoming to accommodate it.

#### **Building Heights**

The National Plan places a clear emphasis on increasing building heights at appropriate locations in urban centres that have good connectivity to public transport. The proposed heights deliver a density of development that is in line with government guidance for sustainable residential development.

The height strategy for the site has been carefully considered by the project architects and is considered appropriate given its location and the availability of public transport. Restricting the height to the Building Height Strategy of the County Plan would result in a max of 3-4 storeys (or 5 if one upward modifier were feasible) which would be contrary to government policy and make inefficient use of this central and accessible site.

#### **Car Parking**

The NPF advises *"general restrictions 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 location, e.g. city/ town centre, public transport hub, inner suburban, public transport corridor, outer suburban, town, village, etc."*

It also advises that ***"there should also generally be no car parking requirement for new development in or near the centres of the five cities, and a significantly reduced requirement in the inner suburbs of all five."***

On this basis, we submit that the scheme complies with the requirements of the National Planning Framework.

#### **Private Open Space**

Objective 4 of the NPF is to *"ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being"*.

It is submitted that the 16 units without private balconies comply in full with this objective of the NPF. The units are provided with excellent compensatory communal amenity space, significantly in excess of Development Plan provision for similar balconies. The communal space is better located and orientated to be of more functional value to residents. communal terraces, will have high quality landscaping and will be protected from the wind. Furthermore 10 of the 16 units are oversized and enjoy attractive views of the seafront.

#### **Dual Aspect**

There is no national policy objective specific to dual aspect provision. The NPF also acknowledges the need to increase density on well located sites in built up urban areas, which is reflected in policy terms under SPPR4 and SPPR 8 of the Apartment Guidelines 2020, and thereby supporting the dual aspect provision proposed for the subject site.

### 3.1.2 Apartment Guidelines (2020)

The ‘Sustainable Urban Housing: Design Standards for New Apartments (2020)’ are also relevant for consideration in this report given the Section 28 Ministerial nature of this guidance document. This guidance was published after the publication of the Dun Laoghaire Rathdown County Development Plan 2016-2022.

The Specific Planning Policy Requirements (SPPR) take precedence over policies and objectives of development plans and local areas plans. Where such conflicts arise, Section 9(3)(b) of the 2016 Act, as amended, provides that to the extent that they differ from the provisions of the Development Plan or Local Area Plans, the provisions of SPPRs must be applied instead. Section 9(3) provides:

*“(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.*

*(c) In this subsection “specific planning policy requirements” means such policy requirements identified in guidelines issued by the Minister to support the consistent application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development.”*

Section 2.2. of the Guidelines stated that *“apartments are most appropriately located within urban areas. As with housing generally, the scale and extent of apartment development should increase in relation to proximity to core urban centres and other relevant factors. Existing public transport nodes or locations where high frequency public transport can be provided, that are close to locations of employment and a range of urban amenities including parks/waterfronts, shopping and other services, are also particularly suited to apartments.”*

Section 2.23 of the Guidelines also recognises that the National Planning Framework *“signals a move away from rigidly applied, blanket planning standards in relation to building design, in favour of performance-based standards to ensure well-designed high-quality outcomes. In particular, general blanket restrictions on building height or building separation distance that may be specified in development plans, should be replaced by performance criteria, appropriate to location.”*

As set out above, the 2020 Apartment Guidelines explicitly direct that the scale and extent of apartment development should increase on sites that are proximate to urban centres and public transport. The subject site is located adjacent to high frequency public transport services (the DART stations at Salthill/Monkstown and Dun Laoghaire and Dublin Bus services including no.’s 7, 46A and 111) and is located in close proximity to the existing settlement of Dun Laoghaire and Monkstown, with easy access to a wide range of existing services, shops and amenities. The scale of development proposed in this case is therefore supported by the Apartment Guidelines and any material contravention of specific Development Plan policies such as SLO153 and/or Transitional Zoning may be permitted by the Board.

The Guidelines also state that the rigid application of numerical limits on height (as set out in the County Development Plan) is not appropriate and performance based standards should be relied upon in the assessment of such schemes. It is submitted that the proposed development

performs exceptionally well when tested against the relevant criteria – as set out in the following section of this Report.

In relation to some of the specific items within this Material Contravention Statement, we note the following:

### Unit Mix

Full details on consistency with the Apartment Guidelines 2020 are set out in the Statement of Consistency and the MOLA Architects HQA submitted with the application. We note that in this case SPPR8 applies to the subject development, which places no restriction on the unit mix with 'Build to Rent' Developments.

### Building Height

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'.

The site is located within a "Central and/or accessible urban location" as defined by the Guidelines as it is within 5 minutes walking distance of 2no. high capacity urban public transport stops (both DART) and 250m walking distance of the 10 minute peak hour frequency 46A Bus Route.

### Car Parking

As stated previously, the subject site is within a 'central and accessible urban location' as defined by the Apartment Guidelines. On such sites, the Guidelines state:

*In larger scale and higher density developments, **comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances.** The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.*

Furthermore, the subject site is a Build to Rent development and as such SPPR8 applies, where item (iii) states:

***There shall be a default of minimal or significantly reduced car parking provision on the basis of BTR development being more suitable for central locations and/or proximity to public transport services. The requirement for a BTR scheme to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures.***

### Private Open Space

the subject site is a Build to Rent development and as such SPPR8 applies, where item (ii) states:

*'flexibility shall apply in relation to the provision of a proportion of... private amenity space associated with individual units as set out in Appendix 1'.*

We submit that the 16 units within the scheme that are without private balconies warrant acceptance under the flexibility provided for in SPPR8. A total of 163sqm additional landscaped communal amenity has been provided for these 16no. units. This is in excess of the 102sqm required as the standard private amenity space combined for these units. (See table on Page 6 in

the HQA). As a further provision to the above, 10no. of these 16 units are oversized and enjoy attractive views to the Seafront.

The design proposal provides for these residents to have controlled access to dedicated shared large south facing terraces to address the private amenity space provision.

These communal terraces, will have high quality landscaping and will be protected from the wind, offering an excellent level of amenity for residents.

#### **Dual Aspect**

This is a Build to Rent scheme which is in accordance with SPPR 8 (i) of the Design Standards for new Apartments (2020). SPPR 8 states:

***“For proposals that qualify as specific BTR development, in accordance with SPPR8:***

- (ii) ***No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise;***

Notwithstanding this, we note that the Guidelines include SPPR 4 in relation to the aspect issue, which states:

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

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

The former Ted Castles site is defined as a central and accessible location on the basis of its location adjacent to an existing public transport services (namely the DART and Dublin bus routes) and so the 33% dual aspect requirement is an appropriate benchmark for this site, notwithstanding the exemption to these standards for Build to Rent development.

It is worth noting that the subject scheme delivers excellent street frontage, having active and vibrant facades on all 3 street elevations which is a marked contrast to the existing context.

### **3.2 Urban Development and Building Heights (2018)**

The ‘Urban Development and Building Heights, Guidelines for Planning Authorities (2018)’ which were issued in December 2018 under Section 28 of the 2000 Act set out national planning policy guidelines on building heights in relation to urban areas. These guidelines post-date the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022.

Under section 3.1 of the Guidelines, three following broad principles or criteria must be applied in considering development proposals for buildings taller than prevailing building heights in urban areas in pursuit of these guidelines:

- ***Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?***

As set out in Section 3.2.1 above, the proposal secures the relevant objectives of the National Planning Framework. The location of the proposed development is on a brownfield infill site and is considered a unique opportunity for the delivery of strategic housing and the delivery of compact growth in accordance with national strategic planning policy.

- ***Is the proposal in line with the requirements of the development plan in force and which plan has taken clear account of the requirements set out in Chapter 2 of these guidelines?***

The Statement of Consistency enclosed herewith has also set out how the current proposal complies with the provisions of the Dún Laoghaire Rathdown County Development Plan 2016-2022. The current DLRCC Development Plan was prepared and adopted before the 2018 guidelines came into effect. Whilst, the Development Plan is currently the subject of a review process, the plan has not yet been formally adopted or amended with a view to implementing the requirements of Chapter 2 of the Building Height Guidelines.

- ***Where the relevant development plan or local area plan pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework?***

With regard to existing policies and objectives of the Dún Laoghaire Rathdown County Development Plan 2016-2022, there is a clear misalignment with the National Planning Framework with regards to height. We note specifically that the National Planning Framework provides for an increased residential density in settlements through a range of measures including increased building heights. National Policy Objective 35 refers. Development Plan policy and objectives on height by comparison are restrictive in that there are particular locations earmarked for building height and blanket limits are set for all other areas unless a set of exceptional circumstances in the form of upward and downward modifiers are met.

In addition, section 1.14 of the Guidelines published, reflecting the statutory position as set out below, states:

*“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/ schemes need to be amended by the relevant planning authority to reflect the content and requirements of these guidelines and properly inform the public of the relevant SPPR requirements.**”*

#### **Specific Planning Policy Requirements**

SPPR 3A of the Urban Development and Building Heights Guidelines 2018 requires applicants for planning permission to set out how the proposal complies with the *“criteria above”*. This refers to the Development Management criteria at Section 3.2 of the Guidelines, which are discussed below.

If the Board is satisfied that the criteria under section 3.2 have been met, it *“may approve such a development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise”*. The paragraph introducing SPPR 3 itself is set out below for ease of reference, following which, each of the criteria (denoted by italics) are considered in turn:

*“Where the relevant planning authority or An Bord Pleanála considers that such criteria are appropriately incorporated into development proposals, the relevant authority shall apply the following Strategic Planning Policy Requirement under Section 28 (1C) of the Planning and Development Act 2000 (as amended).*

#### **SPPR 3 (A)**

***“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 performance of the proposal vis a vis the building height criteria is further assessed below in sub-section ‘Development Management Criteria’. The consistency of the proposal with the National Planning Framework has been considered above.

### **Development Management Criteria**

The Guidelines clearly set out that in the event of making a planning application, the applicant shall demonstrate to the satisfaction of the Planning Authority/An Bord Pleanála, that the proposed development satisfies a number of criteria. The relevant criteria are set out in bold below, followed by the applicant's response:

**At the scale of the relevant city/town:**

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

The site is situated c.300m from the Salthill/Monkstown DART Station and c. 900m from Dun Laoghaire DART Station. In addition, the site is proximate to high frequency bus stops (namely the 46A). The mobility management plan enclosed from DBFL sets out that the site is a highly accessible location for both existing public transport nodes and future improvements for proposals.

- ***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.***

Careful consideration has been given to the successful integration of the scheme into the existing character and topography of the site and area. The steep topography of the site has been addressed and reflected in the careful design integrating the development into its local environment.

With a maximum height of 8 storeys, the scheme is not out of scale with neighbouring developments, and is in keeping with prevailing heights in the area. To the east and west of the site are 6/7 and 5 storey apartment developments.

The new building provides a strong sense of place and a much improved public realm, enhancing amenity and accessibility for pedestrians. The enclosed elevations from MOLA Architects illustrate the proposed building height in the context of the existing urban environment.

DunLeary House (a Proposed Protected Structure) has been a central consideration in the design evolution of this scheme from the outset. The design concept detailed by MOLA Architecture is to redevelop the building, incorporate original features where appropriate and elevate new development above the parapet. It is proposed to provide co-working office suites within the building (open to the general public) which is reflective of its original purposes as offices of the coal yard. The proposed office use provides a clear purpose and identity to the retained building, and complies with the Neighbourhood Centre zoning for the site.

It is clear that the architectural value of the existing building and boundary is the contribution of its two principal elevations to the streetscape at this corner of DunLeary Hill. This streetscape value is retained and enhanced by way of the subject scheme which incorporates the principal elevations and existing boundary treatment into the development.

The design approach by MOLA Architecture has been guided by advice from David Slattery Historic Building Consultants and Bronagh Lanigan, Conservation Consultant. The team have carefully reviewed case study examples in both Ireland and internationally, where original industrial sites have been redeveloped with key original features being incorporated into the new scheme.

The visual impact of the scheme is assessed in the enclosed Landscape & Visual Impact Assessment prepared by Mitchell + Associates, Landscape Architects. Visually, a total of 22 no. views are considered within the LVIA and we refer An Bord Pleanála to the detailed assessment of the views enclosed herewith for further detail on the visual impact of the proposal.

In summary however, we note the following comments in terms of the effects of the proposal on the landscape character of the area:

*The existing site is underutilised and largely unoccupied. Generally, it has an appearance of dereliction which is only partially screened from view by the natural granite boundary wall. A well-conceived and sensitively designed building has every prospect of providing a positive insertion which enhances the local landscape and the views and visual amenity within it. The proposed design represents such a scheme and responds sensitively and positively to the physical, social and planning context within which it is proposed.*

The construction phase impacts are assessed as varying from slight and neutral to moderate and negative, largely depending on the stage of construction. These are not unusual impacts for the construction of any development and they are of short-term duration.

For the operational phase the existing site will be cleared and the buildings occupying the site will be demolished, apart from the main south, west and northern facades of Dunleary House and its garden boundary walls, railings and piers, all of which will be restored and integrated within the new proposed development. Whilst Dunleary House currently offers an established presence on the corner of Cumberland Street and Dun Leary Hill and is indeed currently a Proposed Protected Structure, it is of little architectural merit and in some respects is a little discordant in this urban landscape context. The proposed development will occupy the whole site and provide an animated relationship between it and the adjacent public realm and it will assist in supporting the existing adjacent local commercial enterprises. The need for a properly considered interface and relationship between building and public realm has been incorporated in the scheme design in order to support this aspect of the development, despite the obvious challenges posed by differences in level. In a broader context, the building is designed to sit appropriately within the existing seafront in terms of scale, tone and finished details, particularly in the context of views from the East and West piers. It is also appropriately scaled in the local architectural context, but will provide a sense of gateway or arrival to the town when entering from the Old Dunleary Road. As a result of retaining Dunleary House within the embrace of the proposed new development, the local landmark presence it conveys will be retained and indeed enhanced through the development of the proposed design. The architectural design successfully integrates the accepted qualities of the existing house and garden within a development which will deliver residential development of an appropriate scale in a manner which complements the existing urban landscape and public realm. The impact of the proposed development on the local landscape is therefore generally positive.

The visual impact of the proposed development is amply illustrated in the photomontages prepared for 22 viewpoints, both distant from and close to the development. Of the 22 views selected, the proposed development will be imperceptible in 9 of them. Of the remaining 13 views, impacts are assessed as slight, moderate and significant in near equal measure and in all cases the impacts are assessed as either neutral or positive. From closer vantage points, where the detail of the building can be appreciated, the impacts are generally positive.

Despite the many Protected Structures in the vicinity of the proposed development there is only a very marginal impact on one view from the Longstone Terrace (View 20) which is assessed as moderate and neutral. The viewpoint is at the eastern end of the terrace and the view is nearly at right angles to the terrace, so is not a particularly sensitive view from the terrace. There are no impacts on Preserved Views in the area.

With regard to the contribution of the proposal to placemaking, we note that the proposal offers the potential to significantly improve the existing street frontages along Old Dun Leary Road, Cumberland Street and Dun Leary Hill. The interface and road layout between Old Dun

Leary Road and DunLeary Hill has long been an area of concern for the Council, with the wide road alignment and poor pedestrian facilities. The introduction of the Coastal Mobility Route has benefitted the area, but the general streetscape is poor quality and hostile to pedestrians.

As detailed in the enclosed plans, this scheme provides for:

- large corner plaza area for pedestrian amenity and additional traffic calming measures
- Wider footpaths on Cumberland Street, road alignment and improved traffic junctions
- New and improved signalised pedestrian crossing on Old Dunleary Road to support pedestrian access to DART
- Cumberland Street narrowed for road safety
- Landscape measures in order to create a distinctive sense of place.

CHARACTER AREA 1: GROUND FLOOR PUBLIC REALM



Fig 6: Extract from Cameo + Partners Design Statement, Public Realm

***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."***

The proposed site extends to less than 1ha and is therefore not considered a 'larger urban redevelopment site'. Nonetheless, the scheme makes a significant contribution to place making by animating 3 streets, upgrading the public realm and providing a new public space in front of the café unit at the corner of the Old Dun Leary Road and Cumberland Street.

The landscape masterplan will deliver a superior public realm. The proposal offers communal open space in the form of a courtyard area (c.482sqm) and landscaped roof terraces and external areas (c.391sqm) and is considered exceptional in terms of provision.

Massing and height has been given significant attention within the proposal. Careful consideration has ensured that additional height can be accommodated within the site without compromising on the character of the local area or the adjoining residential development. Specifically, set backs in scale is offered along existing boundaries as illustrated in the enclosed Architectural drawings prepared by MOLA Architecture.



Overall the scheme is considered to be of an appropriate scale, height and massing to complement the existing urban form whilst successfully introducing a high- quality element of architecture to the site, making optimal use of the strategic, prominent location.

**At the scale of district/ neighbourhood/ street:**

- ***“The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.***

The redevelopment of this long vacant and underutilised site will make a positive contribution to the urban neighbourhood and will greatly improve the natural and built environment, which currently has limited activation. The contribution of the proposed public realm with new finishes and planting will notably improve the visual amenity of the area.

The proposal to integrate DunLeary House into the development and to retain the existing boundary features will ensure the streetscape heritage context is maintained and enhanced into the future.

The proposed development seeks to create a dialogue with Clearwater Cove apartments, whilst also looking to mark itself as a significant new piece of Dún Laoghaire urban context. Views from the waterfront, from Monkstown to the West and Dún Laoghaire to the east, have been important in determining the scale of the development as the site’s topography affords it added prominence.

As the development heads south through the site, the scale reduces to relate to the neighbouring residential properties and terraces towards Monkstown.

The scale of the developments to the west and north take reference from the historical terraces of this area in a respectful manner, and the unified materials selected ensure that the scheme is read as a whole from all surrounding streets.

The scheme will positively contribute to the architectural quality and aesthetic appearance of the area, in addition to the delivery of a new vibrant public realm.

- ***The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.***

Appropriate use of materials and fenestrations details and a coherent site height strategy are proposed by MOLA Architecture to deliver appropriate massing and scale . We refer An Bord Pleanala to the MOLA Architecture drawings and Architectural Design statement enclosed as part of this planning application for further details.

A fundamental aspect of the design approach has been to develop this plot as a wrapping external form which creates a coherent ‘family’ of buildings with an appropriate balance between consistency and variety in the character and appearance from all sides of this scheme.

The adaption of the former Tedcastle Office building within the scheme is integrated into the overall massing as one element of this collection of buildings and accommodates commercial space on the corner of Dun Leary Hill and Cumberland Street.

Whilst there is some variation in massing and formal expression across the scheme, materiality and articulation of detail are used to bring a common language to the plot as a whole.

The materials and architectural expression has been developed to allow the proposed buildings to sit comfortably in its townscape context.

The proposed roofscape materiality and form has been design to emphasize a strong parapet rationale and enhances the simplicity of the regular fenestration pattern and solid to void proportions in the main facades of the project.

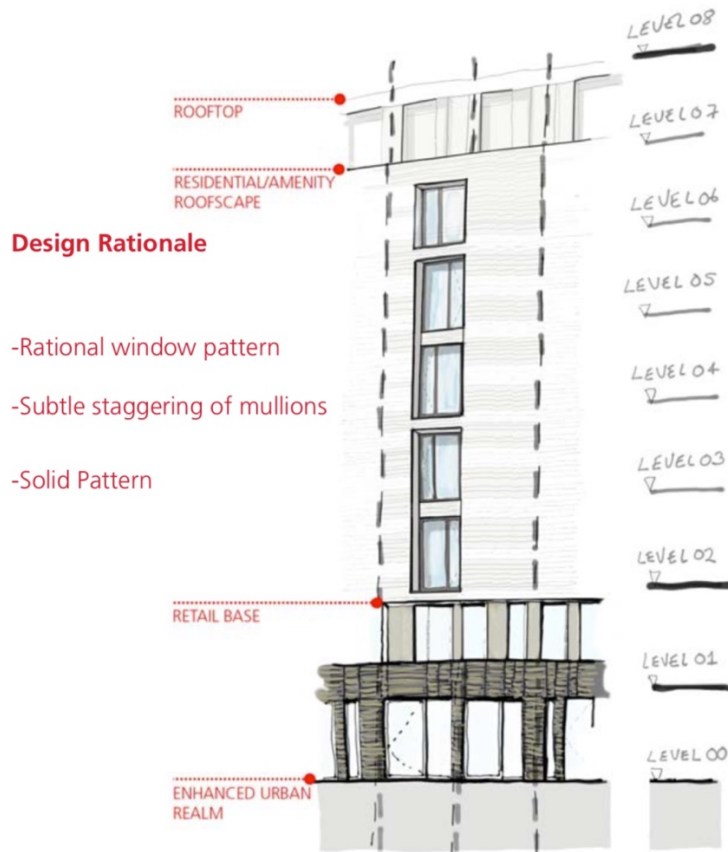
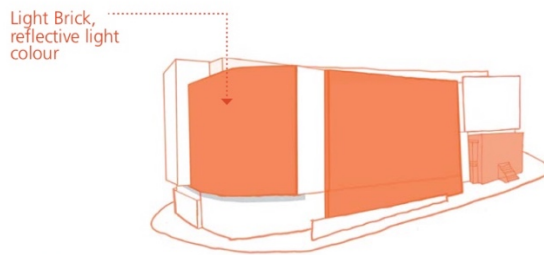


Fig 7: Extract from Section 5.5 of MOLA Design Statement

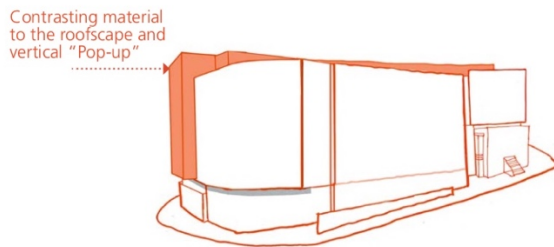
In keeping with surrounding Victorian townhouse, generous and well proportioned windows are used to bring life and activity to the street. At balconies and entrances finer detailing and tactile materials are used to bring a secondary level of detail at a human scale

The degree and nature of sub-division of the urban block and the resultant urban grain is articulated through vertical breaks and detailing in the material choices. Shifts within the facade further assists in activating and animating the external facades (North, West and South) and internal courtyard.

#### 5.5.5 Main facade treatment



#### 5.5.6 Roof facade treatment



#### 5.5.7 Ground floor facade treatment

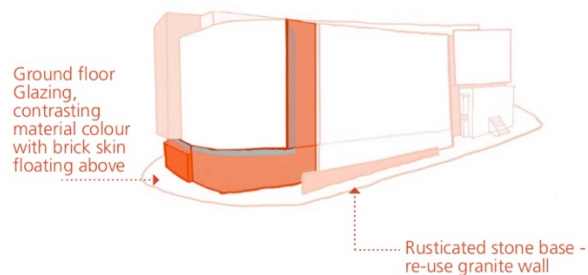


Fig 8 Extract from Section 5.5 of MOLA Design Statement

Through the design development process, the North facade has evolved as a regular fenestration pattern with an “architectural feature” in the form of a dramatic pop-out to the street. This “feature” has been created by breaking the strong uniform brick facade with a glass and metal projecting element from Level 02 to roofscape. The addition of this feature sets up a dynamic intervention to the restrained language of the window and brick proportions and pattern.

- ***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 Planning System and Flood Risk Management – Guidelines for Planning Authorities” (2009).***

The proposed development will greatly enhance the key thoroughfare of the Old Dunleary Road, which now features the Coastal Mobility Route. The redevelopment of this underutilised site will deliver a high quality contemporary scheme with associated public realm upgrade measures. It is necessary to remove the existing building on site in order to achieve this design objective.

In particular, the proposed blend of an exceptional landscape plan prepared by Cameo & Partners Landscape Architects, the extensive public realm proposal as discussed and agreed

with Dun Laoghaire Rathdown County Council (incorporating footpath upgrades, signalized junction on Old Dun Leary Road and Cumberland Street including pedestrian crossings on all arms and associated landscaping) and the high quality articulation of the proposed built form (conceived by MOLA Architecture) addressing the street frontages will ensure a quality proposal is delivered.



Fig 9: Photomontage view prepared by 3D Design Bureau

The proposed vibrant streetscapes and the significant public realm improvements constitute a significant improvement on the existing situation. The proposals presented herein to An Bord Pleanála represents a clear planning gain in comparison to the current streetscape.

We can confirm that a Flood Risk Assessment prepared by DBFL Consulting Engineers has been prepared. This document concludes that the proposal is appropriate for the site's flood zone category C. There is no inland waterway or marine frontage within the proposed development.

• ***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 integrates in a cohesive manner.***

The proposed development will add interest and articulation to this section of the Dun Laoghaire Urban Core. It will make a positive contribution to the legibility of the area, not through the height of the buildings proposed but by way of the overall contribution of the quality architectural approach and new public realm created.

As noted in the LVIA by Mitchell + Associates:

*In a broader context, the building is designed to sit appropriately within the existing seafront in terms of scale, tone and finished details, particularly in the context of views from the East and West piers. It is also appropriately scaled in the local architectural context, but will provide a sense of gateway or arrival to the town when entering from the Old Dunleary Road. As a result of retaining Dunleary House within the embrace of the proposed new development, the local landmark presence it conveys will be retained and indeed enhanced through the development of the proposed design.*

- ***The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood.”***

An appropriate mix of units types and sizes are incorporated into the development proposal. Importantly as part of the proposed Build to Rent scheme, a mix of studio, 1, and 2 bed apartments are delivered in conjunction with a wide range of tenant amenities/facilities. As set out previously in this document, the applicant has undertaken significant research into the local demographic profile and the mix delivered is a direct reflection of current and future forecast market demands.

The development will introduce a new residential population at the location who will benefit from the site’s accessibility in terms of public transport and existing and proposed pedestrian links.

The proposed retail addressing the corner at Old Dunleary Road/Cumberland Street will provide animation and a useful service to residents within the immediate area.

The regenerated building will return to its original purpose as commercial office space within the new scheme. It is considered that this use is most appropriate for the building and will meet predicted demand in the locality for alternative work locations.

#### **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.***

*Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined 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’.*

*Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.”*

The proposal is accompanied by a Daylight and Sunlight Analysis prepared by O Connor Sutton Cronin Consulting Engineers, which confirms that there are acceptable levels of access to natural daylight and that there is no significant impact in terms of overshadowing. The design of the scheme has ensured that there is no significant overshadowing to adjoining properties or internally within the scheme. In this regard the key conclusion of the enclosed O Connor Sutton Cronin “Daylight and Sunlight Analysis” report is set out below:

#### Internal daylight within the proposed development

*The analysis confirms that across the entire development excellent levels of internal daylight are achieved. The majority of apartments not only meet but greatly exceed the recommendations outlined within the BRE Guidelines and British Standard BS8206, achieving a 98.9 % compliance rate across the proposed apartments.*

#### Sunlight to proposed development amenity spaces

*In terms of sunlight access, excellent levels of sunlight are experienced across the proposed development. The communal amenity spaces and roof top terraces provided exceed the BRE guidelines for sunlight on the test day of 21st of March. Also, excellent levels of sunlight will be achieved during the summer.*

#### Sunlight to windows within the proposed development

*The annual probable sunlight hours assessment has shown that 46% of the main living room windows across the development achieve the recommended APSH values stated in the BRE Guidelines, while 48% of windows achieve the recommended values during the winter months, when sunlight is more valuable.*

*Impact to surrounding properties*

*The Vertical Sky Component analysis has shown that the surrounding properties will perceive an impact due to the proposed development over the existing scenario, this is normal due to the comparison between an empty brownfield site and the construction of any new development higher than that. However, the Average Daylight Factor analysis shows that the adjacent properties will still achieve excellent levels of daylight in the majority of surrounding properties once the proposed development is built.*

*The annual probable sunlight hour (APSH) analysis has shown that the adjacent properties will still receive good levels of sunlight once the proposed development is constructed. Only two of the windows selected for analysis will perceive an impact on sunlight during the annual period. All selected windows meet the recommended APSH winter time values, when sunlight is more valuable. In relation to overshadowing, negligible impact will be perceivable to adjacent open spaces.*

It is evident therefore from the above that there are no issues with overshadowing associated with the proposal.

O Connor Sutton Cronin Consulting Engineers (OCSC) can confirm that the calculation methodology for daylight and sunlight is based on the British Research Establishments "Site Layout Planning for Daylight and Sunlight: A Good Practice Guide" by PJ Littlefair, 2011 Second Edition.

It is evident from the enclosed assessment that the scheme performs very highly in relation to the relevant benchmarks for sunlight/daylight/shadow impact. There is a 98.9% compliance rate for daylight to the proposed apartments, using an ADF benchmark of 2% for living/kitchen spaces. Of the 291 rooms that comprise the development, only 3 fall slightly short of the BRE Guidelines and BS 8206 recommendations, therefore a 98.9% compliance rate is achieved across the development.

In order to demonstrate that excellent levels of daylight are achieved in those units falling slightly short of compliance, OCSC provide the following image ( on page 29 of the Assessment) which illustrates the ADF levels being achieved throughout the 'worst case' living room/kitchen located in Level 01. OCSC note that daylight levels are excellent within close proximity to the external wall and begin to drop off as you move towards the kitchen area which are typically located to the rear of the open space. It must be noted that the apartments within the Ted Castles development contain a kitchen which is designed to be used mainly for food preparation rather than occupants spending a long time sitting in the kitchen area. Instead, occupants are expected to spend most of their time in the living room area, where daylight penetration will be more appreciated. Therefore, it can be stated that even though some rooms fall slightly short of the compliance target set, they will still receive excellent levels of daylight within the zone closest to the external wall, where sitting areas are located and where occupants are expected to spend the majority of their time.



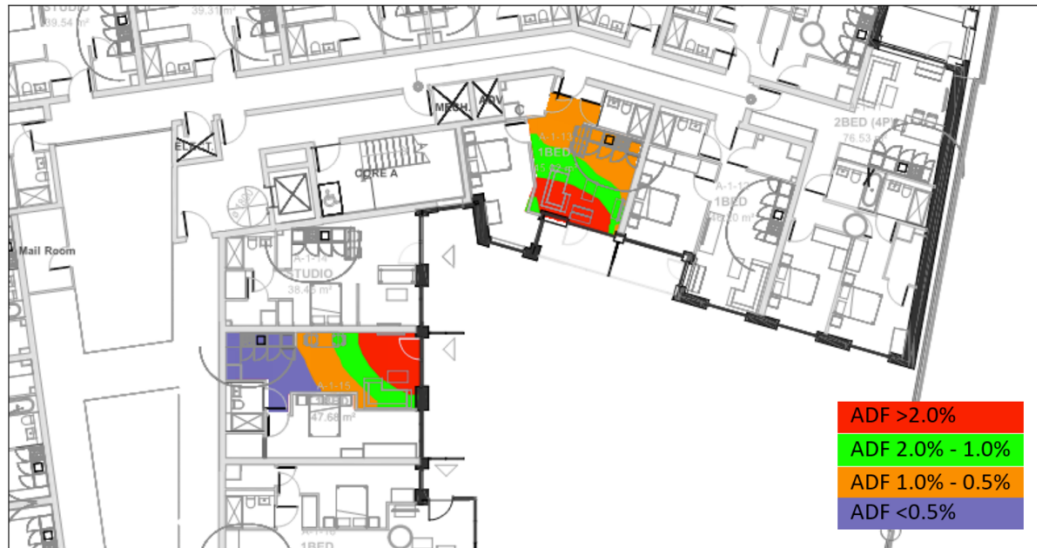


Figure 14 – Level 01 – ‘Worst Case’ Living/ Kitchen Rooms – Assessment with ADF Contours

Fig 10: Image from OCSC Assessment (Page 29)

In line with the above objective, the proposed development seeks to balance ADF compliance with quality urban design, regeneration of a brownfield site and the provision of new streetscapes. The proposed development seeks to deliver a high quality living environment through the provision of a high quality courtyard and roof top terraces, which residents can enjoy immediately adjacent to their homes. Additionally, the proposed development provides quality external private open space to all residential units, ensuring maximum opportunities to enjoy their residential living environment.

There is a notable planning gain associated with the proposed development – a long underutilised centrally located urban site is being developed to provide much needed new homes and active commercial uses, an existing building is being regenerated to provide new co-working space for the general public to avail of and 3 new vibrant streetscapes are being provided. The scheme will positively contribute to the immediate area and we trust the Board will grant permission on this basis.

### Specific Assessments

The guidelines set out that to support proposals at some or all of these scales, specific assessments may be required and these may include:

- ***“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.***

We confirm that a Pedestrian Wind Comfort Study prepared by O Connor Sutton Cronin Consulting Engineers is enclosed as part of this planning application. This comprehensively assesses the impact of the development and specifically the building height on the surrounding context.

- ***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.***

The project’s ecology team (Openfield and Enviroguide) have undertaken ecological assessments for all possible requirements including Environmental Impact Assessment Screening, Natura Impact Statements, and Biodiversity Studies for the proposed site and surrounding area. The proposed development site is not located within or directly adjacent to

any Natura 2000 site, or in proximity to any sensitive bird and/or bat areas. We also confirm there is no potential interaction for the building location, materials and artificial lighting to impact flight lines and/or collision.

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

The applicant commissioned ISM to prepare an assessment of impact on telecommunication channels, which is enclosed with this application. ISM did not identify any telecommunication channels that would as a consequence of the height and scale of the Development, require specific mitigation measures in order to retain them.

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

In preparation of this planning application, the applicant has entered into pre-planning discussions with the IAA who had no significant comment to make on the proposal. As identified in the appendix to the rear of this report, the IAA in their review conclude that “Based on the information provided, it is likely that only general observations would be issued during the planning process relating to the construction process and the notification of proposed crane operations with at least 30 days notification to the Authority.

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

An Architectural Design Statement has been prepared and submitted by MOLA Architecture. In addition a report entitled “Report on the Architectural/Historical Significance of Dun Leary House “Yellow Brick Building”, Dun Laoghaire Hill, Cumberland Street, Dun Laoghaire.” prepared by David Slattery Conservation Architects -Historic Building Consultants is enclosed as part of this planning application.

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

The relevant environmental assessments have been considered. A Screening Report for Appropriate Assessment Report has been prepared by Openfield and included as part of this SHD planning application. An EIAR Screening Statement has been prepared by Enviroguide.

On the basis of the foregoing analysis, the proposed development meets the criteria under Section 3.2 of the Guidelines and is in compliance with SPPR3. Therefore, in the event that the Board is of the view that the proposed development might be in material contravention of the development plan in terms of height, such contravention can be justified by reference to the Building Height Guidelines and, in particular, by reference to SPPR 3: see section 37(2)(b)(iii).

We submit that the subject proposal is in accordance with the wider strategic and national policy requirements in relation to regeneration, compact development and integrated communities. The subject site is ideally located to maximise residential supply with exceptional connectivity to Sandyford Urban Core.

It is in consideration of the above that the current proposal for 5 - 8 storeys in height can be positively considered by the competent authority. Specifically, the proposal has addressed the specific development criteria requirements of the Guidelines and is in compliance with SPPR 3. Most notably the site’s location is considered to address the very spirit and intent of the Guidelines that being one proximate to public transport with high frequency services. The current site is therefore appropriate for increased building height and residential densities.



## 4 CONCLUSION

Section 9(3)(b) of the 2016 Act, as amended, provides that to the extent that they differ from the provisions of the Development Plan, the provisions of SPPRs must be applied instead.

In the context of increased height, the most relevant of these requirements is SPPR 3A of the Building Height Guidelines. It is submitted that the Development Management criteria under Section 3.2 of the Guidelines have been satisfied in this regard by the development as proposed and that, accordingly, the Board can grant permission for the proposed development even if it considers that it would be a material contravention of building height policy and standards under the Development Plan, having regard to the terms of the relevant national policy discussed above and SPPR 3A of the Building Height Guidelines, in particular.

In the context of dwelling mix, SPPR 1 of the 2020 Apartment Guidelines applies and the proposal is considered to comply with this Specific Policy requirement.

In relation to density, the proposal clearly supports the key policies of the National Planning Framework to deliver appropriate residential densities and brownfield and infill sites.

In the context of the Council's Transitional Zones policy and SLO 153, it is submitted that if the Board considers a material contravention has occurred, then permission may be granted having regard to relevant national planning policy such as the National Planning Framework, The Building Height Guidelines and the Apartment Guidelines, which all mandate the delivery of higher density development in central and accessible urban areas.

This Statement demonstrates that the proposed unit mix, private open space and car parking provision for this SHD BTR application accords with the provisions of SPPR1 and SPPR8 of the Apartment Guidelines 2020.

It is therefore considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the Dun Laoghaire-Rathdown County Development Plan 2016-2022.

In the event that the Board were to grant permission, the Board's "*reasons and considerations*" should reference the matters under Section 37(2)(b) of the 2000 Act upon which it relies to justify the granting of permission in material contravention of the Development Plan. It is apparent from section 10(3)(b) of the 2016 Act that such reasons and considerations must appear in the Board decision itself.

Section 10(3) provides as follows:

*"(3) A decision of the Board to grant a permission under section 9(4) shall state-*

*....*

*(b) where the Board grants a permission in accordance with section 9(6)(a), the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be."*

Having regard to the justification set out within this statement, it is respectfully submitted that this is an appropriate case for the Board to grant permission for the proposed development in accordance with national planning policy and statutory guidelines.