

**Statement of Material Contravention of the
Dublin City Development Plan 2016-2022**

In respect of

**Proposed Build to Rent Apartment
and Commercial Development**

At

Newtown, Malahide Road, Dublin 17

Prepared by

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On behalf of

Claregrove Developments Ltd

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1.0 **INTRODUCTION**

- 1.1 On behalf of the applicant, Claregrove Developments Limited, GEM Group, Athlone Road, Longford, Co. Longford, we hereby submit this Material Contravention Statement to accompany this application for a proposed Strategic Housing Development at the Newtown, Malahide Road, Dublin 17.
- 1.2 The building heights within the proposed development seek to respond to the planning policy framework, the prominent location of these lands and have regard to the surrounding context, with heights of ten storeys provided for onto Malahide Road reducing to eight storeys to the rear, in addition to two storey height podiums containing communal gardens above. The architectural and planning rationale for the proposed heights is set out in the Architectural Design Statement and response to Item 1 in the Statement of Response Report.
- 1.3 However, as set out below, it may be considered that the proposed heights contravene the City Development Plan / LAP for the area. Therefore, this Material Contravention Statement is submitted in support of the application.
- 1.4 The Statement of Consistency / Planning Report accompanying the application demonstrates compliance with all other relevant policies and objectives of the City Development Plan / LAP, notwithstanding those superseded by SPPR's, and it is considered that the proposed heights are the only potential material contravention associated with the application.

Legislative Context

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

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

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

(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if Section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development.

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

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

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

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

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

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

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

1.7 A response to the criteria above is provided in Section 4 of this report should the Board consider the proposal a material contravention of the building heights recommended for the site in the Development Plan / LAP.

1.8 It is respectfully submitted that recent national planning policy, as set out in the Statement of Consistency / Planning Report, provides for increased residential densities and building heights on appropriately zoned and serviced lands within / adjacent to city centre / town centres and high quality public transport corridors. It is therefore submitted that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development notwithstanding the potential material contravention of the building height policies in the City Development Plan and Local Area Plan, as set out herein.

2.0 DEVELOPMENT PLAN AND LAP HEIGHT POLICIES

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

2.2 The Dublin City Development Plan 2016-2022 (CDP) set out in Section 16.7 maximum heights of up to 16 metres in the outer city. However, Section 16.7.2 of the CDP states that *“planning applications will be assessed against the building heights and development principles established in a relevant LAP/SDZ/SDRA. Proposals for high buildings should be in accordance with the provisions of the relevant LAP/SDZ/SDRA in addition to the assessment criteria for high buildings and development plan standards.”*

2.3 The subject site is located within the area subject to the Clongriffin – Belmayne (North Fringe) LAP 2012-2018, as extended up to 2022.

2.4 Section 7.8 of the LAP relates to building heights. Permissible heights under the LAP are generally low (4 storeys) with 5-6 storeys supported in the two KDCs. However, heights of at least 5 storeys are recommended within the KDC (Page 39 of the LAP refers), which the subject site falls within.

- 2.5 The LAP recognises that heights of five plus storeys are permissible along the Malahide Road corridor, in order to respond appropriately to the wide profile of this corridor. The proposed development provides for heights of 8 to 10 storeys facing onto this important corridor, providing an appropriate sense of enclosure and introducing a strong urban edge which has been lacking at this location heretofore. The LAP states at Section 7.8:

“In recognition of this character, the LAP identifies three areas for potential future height, which are the Key District Centre’s at Clongriffin rail station and the R139/Malahide Road Junction and the axis of the Main Street Boulevard connecting the two.

These locations have been identified based on the understanding of the existing urban structure of North Fringe and the vision to create a compact and sustainable urban neighbourhood.

The LAP recommends that in general, minimum heights for new developments in the designated Key District Centres of five storeys, and four to five storeys along the Main Street Boulevard are achieved.”

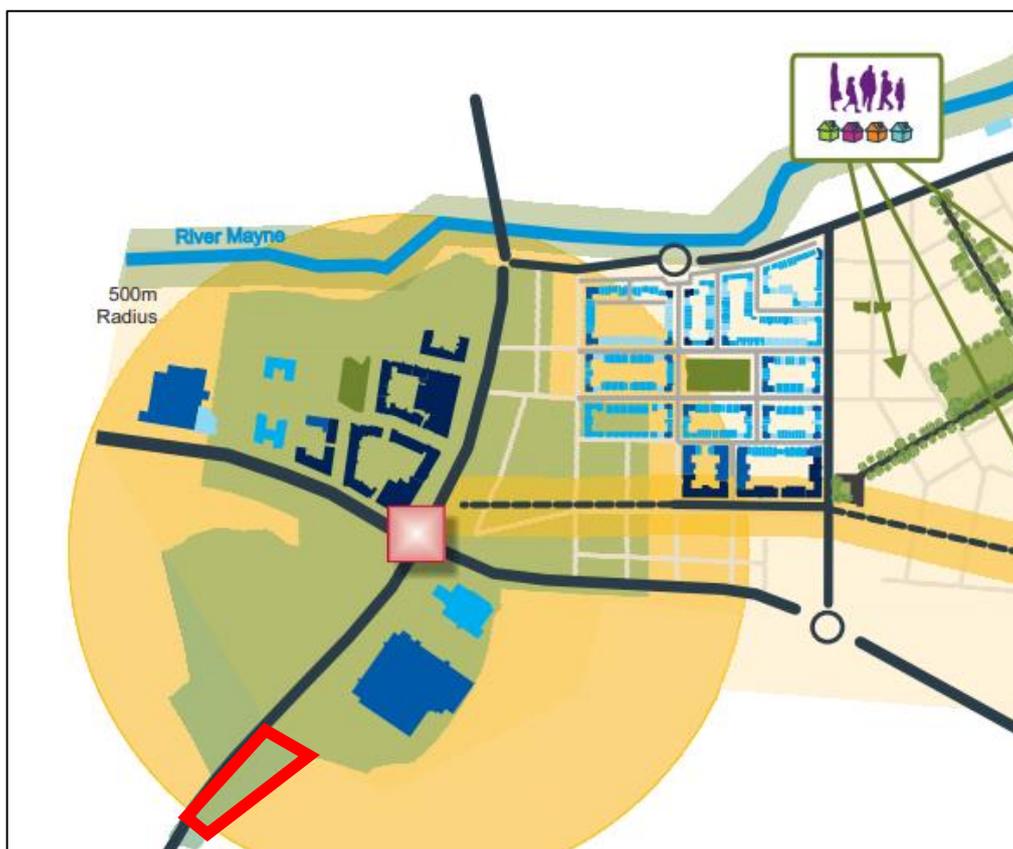


Figure 2.1: Extract from Figure 7 in the LAP – the green shading denotes the extent of the KDC, with the subject site outlined in red.

- 2.6 As the subject site is within the Key District Centre identified at the junction of the R139 / Malahide Road, it is our understanding that minimum heights of five storeys apply. The proposed development will introduce an appropriate scale of development under this framework, with heights of 8-10 storeys onto the Malahide Road corridor and therefore it is submitted that the proposed heights accord with the recommendations of the LAP.

2.7 However, during the pre-application consultation with An Bord Pleanála and the Planning Authority the issue of a potential material contravention of the Development Plan was raised in respect to building height, as reflected in additional information point no. 12 in the Board's Opinion.

2.8 The Inspector's Pre-Application Report summarises the policy context of the LAP in respect to building height as follows:

“Building Height- Section 7.8

Three areas are designated for potential higher buildings, one being the R139/R107 Malahide Road Junction.

The LAP recommends that in general, minimum heights for new developments in the designated Key District Centres of five storeys are achieved.

All proposals for tall buildings must have regard to the criteria set out in section 17.6.3 of Dublin City Development Plan 2011-1017.”

2.9 Thus, while it is submitted that the proposed development is not a material contravention of the Development Plan in respect to Building Height, due to the reference in the CDP to LAP's taking precedence (with the LAP supporting heights of five storeys + within this KDC and along the Malahide Road corridor, i.e. including the subject site), this Material Contravention Statement is submitted to demonstrate that the proposal for heights of 8 to 10 storeys is appropriate for the subject lands having regard to national planning policy and guidelines and can be granted permission even if it is considered a material contravention of the Development Plan or LAP.

3.0 RELEVANT PRECEDENTS

3.1 We note that the Board recently granted permission for a scheme of 123 no. build to rent residential units, under ABP Ref.: ABP-304196-19. on an adjacent site to the north east at Clarehall. The heights of the permitted scheme ranged from 4 to 9 storeys and the site was only partly located within the KDC, and therefore not entirely subject to the minimum heights of 5 storeys set out in the LAP for the KDC or the Malahide Road corridor.

3.2 In permitting the proposed development, the Board's Order stated that *‘the height the proposed building exceeds the limit of 16m for this area set down by section 16.7.2 of the city development plan and that the proposed development would materially contravene this provision of the plan. Nevertheless the Board considered that a grant of permission is warranted in accordance with section 37(2) (b) (iii) of the Planning and Development Act 2000, as amended, having regard to the provisions in favour of higher buildings set out in the Guidelines for Planning Authorities on Urban Development and Building Heights issued by the minister under section 28 of the act in December 2018 and the compliance of the proposed development with SPPR 3 of those guidelines.’*

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

“The height of the proposed building exceeds the limit of 16m for this area set down by section 16.7.2 of the Dublin City Development Plan and that the proposed development would materially contravene this provision of the plan. Nevertheless the Board considered that a grant of permission is warranted in accordance with section

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

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

- 3.4 As set out in this statement, it is submitted that a similar justification in terms of national planning policy and guidelines applies to the subject site and provides a justification for the heights proposed if the subject site is considered to be subject to the 16m height limits in the Development Plan, rather than the five storeys plus outlined in the LAP for this area of Malahide Road.

4.0 JUSTIFICATION FOR MATERIAL CONTRAVENTION

- 4.1 In the event that the Board considers that the proposed development constitutes a material contravention of the CDP / LAP by virtue of the proposed heights of 8 to 10 storeys proposed on the subject site, a justification for such a material contravention is set out below, under the relevant criteria set out under Section 37(2)(b) of the 2000 Act.

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

- 4.2 The proposed development comprises of inter alia the provision of 331 residential units, communal amenity facilities, commercial / retail units, and a childcare facility on a brownfield site located on a high quality public transport corridor.
- 4.3 The proposed development falls within the definition of a Strategic Housing Development in accordance with the definition of same provided under section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended. On this basis it is submitted that the proposed development is, by definition, strategic in nature and of strategic importance.
- 4.4 The long title of the Planning and Development (Housing) and Residential Tenancies Act 2016 is as follows:

"An Act to facilitate the implementation of the document entitled "Rebuilding Ireland - Action Plan for Housing and Homelessness" that was published by the Government on 19 July 2016, and for that and other purposes to amend the Planning and Development Acts 2000 to 2015, the Residential Tenancies Acts 2004 to 2015

and the Housing Finance Agency Act 1981, to amend the Local Government Act 1998 in relation to the Local Government Fund and to provide for connected matters.”

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

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

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

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

4.8 Having regard to this legislative and policy context, it is considered that the proposed significant Strategic Housing Development at the subject brownfield site, located within a KDC and SDRA, is, by definition, of strategic importance for the purposes of section 37(2)(b) of the 2000 Act.

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

4.9 The following section shall demonstrate how the proposed height is justified in the context of recent National Planning Policy and Section 28 Government Guidelines, which seek to increase residential densities on zoned services lands adjacent to public transport corridors. These include:

- Project Ireland: National Planning Framework 2040;
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018).

Project Ireland: National Planning Framework 2040

4.10 The NPF seeks to increase densities and building heights in appropriate urban locations to consolidate urban sprawl, increase the sustainability of public transport networks and meet the housing needs of our growing population.

4.11 In relation to residential development the plan states:

‘A major new policy emphasis on renewing and developing existing settlements will be required, rather than continual expansion and sprawl of cities and towns out into the countryside, at the expense of town centres and smaller villages. The target is for at least 40% of all new housing to be delivered within the existing built up

areas of cities, towns and villages on infill and/or brownfield sites'. (Emphasis added)

- 4.12 National Policy Objective 3a formalises the above as it seeks to '*Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements*'.
- 4.13 National Policy Objective 3c seeks to '*Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints*'.
- 4.14 National Policy Objective 6 seeks to '*regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area*'.
- 4.15 National Policy Objective 11 states that '*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*' (emphasis added).
- 4.16 The proposed development will deliver a good apartment unit mix will regenerate an underutilised brownfield site to provide residential and an element of employment and service use, in compliance with NPF objectives 3a, 3c, 6 and 11 listed above.
- 4.17 National Policy Objective 33 seeks to '*Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location*'.
- 4.18 National Policy Objective 35 seeks to '*Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights*'.
- 4.19 The proposal seeks to provide a higher density development within a Key District Centre and Strategic Development Regeneration Area of Dublin City, on lands zoned for a mix of uses, and thereby is consistent with NPF objectives 33 and 35 listed above.
- 4.20 It is considered therefore that the proposed heights, and associated density, for the subject site will provide for an acceptable efficiency in the usage of serviceable land on a site located on a high quality public transport corridor, which is consistent with the objectives set out in the NPF.
- 4.21 In summary, it is submitted that the NPF supports the scale of development proposed in this application on such urban sites.

Urban Development and Building Heights Guidelines for Planning Authorities 2018

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

to the guidelines and apply any specific planning policy requirements (SPPR's) of the guidelines in carrying out their function.

- 4.23 The Guidelines emphasise the policies of the NPF to greatly increase levels of residential development in urban centres and to increase building heights and overall density, and to ensure that the transition towards increased heights and densities are not only facilitated but actively sought out and brought forward by the planning process and particularly at Local Authority level and An Bord Pleanála level.
- 4.24 The Guidelines state that *‘the preparation of development plans, local areas plans, and Strategic Development Zone Planning Schemes and their implementation in the city, metropolitan and wider urban areas must therefore become more proactive and **more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights**’* (emphasis added).
- 4.25 The Guidelines also state that *‘the preparation of development plans, local area plans and Strategic Development Zone (SDZ) Planning Schemes and their implementation in city, metropolitan and wider urban areas **must therefore become more proactive and more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights**, while also being mindful of the quality of development and balancing amenity and environmental considerations’* (emphasis added).
- 4.26 The guidelines state that *‘implementation of the National Planning Framework requires **increased density, scale and height of development in our town and city cores**, including an appropriate mix of both the living, working, social and recreational space we need in our urban areas’*,

and;

*‘to meet the needs of a growing population without growing out urban areas outwards requires more focus in planning policy and implementation term on **reusing previously developed “brownfield” land, building up urban infill sites** (which may not have been built on before) and either reusing or redeveloping existing sites and buildings that may not be in the optimal usage or format taking into account contemporary and future requirements’*.

- 4.27 In advance of the Development Plan / LAP for the area being updated to reflect the Building Height Guidelines, it is outlined below how the proposed building heights meet the requirements of the criteria set out under SPPR 3 of the Guidelines.
- 4.28 SPPR 3 of the Building Height Guidelines notes that where the applicant sets out compliance with the criteria for assessing building height at the scale of the relevant town / city, at the scale of district / neighbourhood / street and at the scale of a site / building that the planning authority or An Bord Pleanála may approve such development even where specific objectives of the relevant development plan, local area plan or planning scheme may indicate otherwise.
- 4.29 SPPR 3 (a) states:

‘It is specific planning policy requirement that where:

- 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and*

2. the assessment of the planning authority concurs, taking account of the wider strategic 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, local area plan or planning scheme may indicate otherwise”.

- 4.30 Compliance with the relevant criteria set out in the Building Height Guidelines is demonstrated below.
- 4.31 The Guidelines introduce Development Management criteria which proposals for higher buildings will be required to satisfy. The relevant criteria in respect of the proposed residential development are noted and responded to as follows:

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 subject lands are highly accessible, located directly adjacent to a priority bus route with several high frequency services providing links with the city centre and other centres. The adjacent bus corridor is also a proposed Bus Connects route along Malahide Road, which will become one of the core bus corridors under the Bus Connects scheme. This will also see the introduction of enhanced pedestrian and cycle facilities along the site frontage, although there are existing facilities on this route at present. The site is also within approximately 10 minutes cycling distance of the nearest DART station. The site is therefore considered to benefit from excellent accessibility in respect of public transport.

Development proposals incorporating increased building height... 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.

- The scale of the proposed development is considered to integrate appropriately with its surroundings, whilst introducing an element of increased height to define a strong urban edge to the Malahide Road at this important location. The 10 storey edge provided by the development steps up at building corners along Malahide Road to provide for enhanced legibility and reduces to 8 storeys on the rear returns.
- The development is considered to provide for an appropriate proportional framing of the Malahide Road’s wide street cross section at this location, in order to provide for a strong sense of place and a public realm which will be more comfortable and inviting for pedestrians. We note that DCC are preparing a masterplan for the Belcamp lands to the west of the Malahide Road and indicated in pre-application discussions that the proposed heights were in keeping with their vision for the area.
- The height of the proposed scheme steps down to eight storeys around communal courtyards to the rear of the site, in order to protect the amenity of

existing development on the opposite side of the existing private roadway to the east.

- The accompanying contiguous elevations and sections provided by JFA illustrate the proposed building height in the context of the existing urban environment.
- The visual impact of the proposals are discussed in greater detail in the accompanying Townscape and Visual Impact Assessment by Park Hood. The TVIA sets out that the impact of the proposed development will be significant, but positive, as it forms part of the wider changes to the landscape and visual context as provided for under the City Development Plan and the LAP for the area.

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 development site extends to approximately 1.2 ha and is therefore not considered as a 'larger urban redevelopment site'. Notwithstanding this, the proposals are considered to make a positive contribution to place-making through a high quality development which integrates with the existing development pattern and enhances the public realm along Malahide Road.
- The proposals also promote pedestrian linkages through the development with attractive public realm and open space surrounding both of the proposed buildings. This promotes public movement through the site and facilitates the possible link to the existing roadway to the east, if / when this route is taken in charge by the City Council (currently in the control of Tesco).
- The development creates visual interest at the site through a high quality design which responds to the surrounding pattern of development. The western frontage has been carefully designed to provide for a strong urban edge, defining this side of the Malahide Road as it enters the Key District Centre. To the east, the height of the development steps down and the massing is broken up to a greater degree, in deference to the existing residential development further to the east of the subject site.
- The proposals introduce a higher built element into the existing urban landscape along Malahide Road, with a maximum height of c. 33.4 metres where the building steps up at the corners. The scale and massing of this higher element has been carefully considered in terms of width and depth in order to appear in balance within the existing context while appropriately responding to the site context on a wide roadway.
- In this respect, the proposals are 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 brownfield lands.

At the scale of district / neighbourhood / street***The proposal responds to its overall natural built environment and makes a positive contribution to the urban neighbourhood and streetscape***

- The proposed development will significantly enhance the existing streetscape along Malahide Road by virtue of its context sensitive and carefully considered design. It will provide for high quality contemporary design at an appropriate location and make a significant positive contribution to the existing urban neighbourhood and streetscape at this location.
- It is considered that the proposal introduces a high quality development at an underutilised site of brownfield, infill lands within an urban setting. The proposed development responds appropriately to the massing and scale of the surrounding urban pattern and scale, with higher built elements situated along the Malahide Road frontage, falling in height moving east towards existing residential development.
- The proposals constitute the sustainable development of the brownfield lands and will enhance the appearance of the site, providing integration with the existing context and enhancing the urban realm at this location through the introduction of high quality landscaping and commercial uses which are accessible to the public. This will add positively to the quality and aesthetic appearance of the KDC.

The proposal avoids long, uninterrupted walls of building in the form of perimeter blocks or slab blocks with materials / building fabric well considered.

- The proposal introduces 2 no. residential apartment buildings constructed with high quality materials which relate well to the site's location and the style and palette of neighbouring properties. The extensive use of glazing throughout the scheme provides continuity with the architectural design of Clarehall Shopping Centre to the north, with the palette of glass, brick, and render making a visual connection to the appearance of the existing residential development to the east and southeast. The introduction of metal double height commercial units and glazed circulation cores introduce a modern element to the streetscape and serve to reinforce the vertical emphasis of the design.
- The layout and siting of the development has been sensitively chosen to align and provide continuity with the building line along Malahide Road, introducing a new high quality frontage onto this important route, and imbuing it with a greater sense of place. Elevations have been carefully designed and introduce varied aspects, through recessed styles and elements stepped out from the dominant building line. This provides variety and visual interest to the buildings. This is complemented by a high quality hard and soft landscaping scheme which further enhances the visual appeal of the proposals, as well as attracting public use and animation long the street frontage.

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 significantly enhance the existing Malahide Road Corridor, which is a key thoroughfare in the area. It will provide for a high quality contemporary development at an appropriate location and make a significant contribution to the existing streetscape, providing for an enhanced sense of scale and enclosure.
- The proposal introduces a development which is compatible with its land use zoning and adjacent residential development. The scheme introduces public areas of landscaping adjacent to the commercial elements of the development onto Malahide Road, and a significant high quality open space in the centre of the scheme. A landscaped pedestrian pathway along the eastern perimeter facilitates a future connection to the existing roadway to the east, subject to it being taken in charge.
- The additional height proposed makes optimal use of an underutilised area of infill brownfield land which benefits from a strategic location. The layout of the two residential blocks contributes to the creation of a central courtyard which will function as a managed public open space. This contributes to a sense of place and benefits from passive surveillance from the residential buildings.

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 Malahide Road, while effectively breaking down the scale and massing of the scheme to ensure that it sits comfortably in its setting. It will make a positive contribution to the legibility of the area, the wider KDC, and the surrounding area.
- 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 pedestrian links. The development will also attract footfall through the introduction of commercial elements and a childcare facility. This will integrate successfully with the site’s location and increase pedestrian movement and activity in the area.

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 proposed scale, massing and height of the development has been informed by the existing and emerging built environment in the surrounding area. The development introduces a higher built element to the urban environment which seeks to optimise the site's location and position on a key thoroughfare. The scale and height of the proposed residential blocks take cognisance of the surrounding urban form, stepping down in height moving east towards the existing development to the east. This is seen to integrate successfully with the urban environment whilst introducing an element of height which effectively responds to the site's prominent location.
 - A Sunlight / Daylight Analysis and Shadow Analysis have been carried out by 3D Design Bureau in the preparation of this request. The sunlight / daylight analysis assessed the level of light access at windows of adjacent buildings. Results indicate that owing to the site's urban context and proximity to existing buildings, there will be some impacts on the volume of daylight received. The daylight and sunlight aspects of the proposed development are discussed in further detail in the Statement of Response and Statement of Consistency / Planning Report accompanying the application.
 - The final application is also accompanied by a Noise Assessment and Microclimate Study prepared by TMS, which does not indicate any significant environmental issues associated with the proposed 8 to 10 storey development subject to mitigation in relation to walls and glazing to address background noise levels.
 - It should be acknowledged that the proposals will enable the regeneration of an area of infill brownfield land which is significantly underutilised at present, with a high-quality development, the introduction of a residential population in close proximity to good quality public transport, as well as providing publicly accessible commercial uses and landscaped public open space.
- 4.32 It is clear that there is a strong emphasis towards increased density and building height in appropriate locations within existing urban centres and in close proximity to public transport links within existing and emerging Government policy.
- 4.33 From the above analysis, it is considered that the proposal meets the criteria for higher buildings as set out within the 2018 Guidelines on Building Heights. The site is well placed to absorb a high-density development which is appropriately scaled and designed in the context of its urban surroundings, whilst introducing an element of increased building height which defines an urban edge for the Key District Centre along the Malahide Road, responding to the scale and width of the adjacent roadway and providing for an appropriate sense of enclosure.
- 4.34 The site benefits from excellent public transport links and a plethora of services and amenities within the KDC area, including the wide range of retail and services provision within Clarehall Shopping Centre adjacent to the site. Employment locations within Dublin city centre, and the Docklands are also easily accessible from the subject site via public transport.

- 4.35 The proposals make optimum use of this underutilised area of land which is zoned Z14 and located within a designated KDC, under which residential and commercial development is permissible. The proposals are therefore considered compatible with adjacent existing land use. The scheme integrates appropriately with the urban environment and enhances public open space provision and pedestrian permeability without compromising the amenity of existing adjacent properties.

Part (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

- 4.36 As set out in preceding sections, in considering the appropriateness of the proposed development on the subject site, the Board should have regard to the following recent permissions in this area of the City, particularly the 4 to 9 storey development to the north west.

Clarehall SHD- ABP Ref.: 304196-19

- 4.37 The Board recently granted permission for a SHD scheme of 123 no. build to rent residential units, under ABP Ref.: ABP-304196-19. on an adjacent site to the north east at Clarehall. The heights of the permitted scheme ranged from 4 to 9 storeys and the site was only partly located within the KDC, and therefore not entirely subject to the minimum heights of 5 storeys set out in the LAP for the KDC or the Malahide Road corridor.

Figure 4.1: CGI of the Permitted Development



Figure 4.2: Contiguous Elevation of the Proposed Malahide Road SHD Scheme with Clarehall SHD Permission Outlined (See JFA Drawings)



Former Chivers Factory Site SHD- ABP Ref.: 304346-19

4.38 The Board recently granted permission subject to conditions for a 4 to 9 storey BTR development, including creche, cafe, gym and associated site works, on a site to the west of the Malahide Road. The image below is a CGI of the proposed development as applied. Some of the conditions attached amended the scheme, including a reduction in height from 10 to 9 storeys in part.

Figure 4.3: CGI of the SHD Development at the Former Chivers Factory Site



4.39 It is respectfully submitted that the above recent SHD permissions illustrate compliance with part (iv) of Section 37(2)(b) as they demonstrate that the proposed heights have regard to the existing and emerging pattern of development in this area of the City, particularly since the making of the development plan.

5.0 CONCLUSION

5.1 It is respectfully submitted that should An Bord Pleanála consider the proposed development a material contravention of the Dublin City Council Development Plan 2016-2022 / Clongriffin-Belmayne LAP 2012-2018 as extended, an appropriate justification is set out within this statement demonstrating that the building heights proposed in this development are appropriate for the subject site.

- 5.2 The proposal which provides heights of 8 to 10 no. storeys is supported by recent National planning policy which has set out the need for increased density at appropriate locations such as the subject site. The current limitation of building height as set out in the Development Plan is inconsistent with the Building Height Guidelines, as higher density development cannot be achieved without the provision of taller buildings at appropriate locations within suitable areas.
- 5.3 The proposal meets all criteria outlined in National planning policy and S.28 Guidelines, particularly the Building Height Guidelines 2018, in terms of suitability for high density development incorporating taller buildings. The site is located on a high quality public transport corridor, located in a KDC and SDRA, there is an adjacent 6 storey building and a permitted 4 to 9 storey residential development, and further planned growth on the Belcamp lands to the west of the site.
- 5.4 It is respectfully requested that An Bord Pleanála have regard to the justification set out within this statement and permit the proposed height in this instance. There is ample justification for An Bord Pleanála to permit a material contravention of the Development Plan in terms of allowable height having regard to Section 37(2)(b)(i), (iii) and (iv) of the Planning and Development Act, 2000 (as amended).