

**Statement of Material Contravention of the
Dun Laoghaire Rathdown County Development Plan
2016-2022 and the Ballyogan and Environs Local Area
Plan 2019-2025**

In respect of

Proposed Strategic Housing Development

at

Golf Lane, Carrickmines, Dublin 18

Prepared for

Bowbeck DAC

Prepared by

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1.0 INTRODUCTION

- 1.1 On behalf of the applicant, Bowbeck DAC, this Material Contravention Statement is submitted with the application to An Bord Pleanála in respect of a proposed Strategic Housing Development at a site at Golf Lane, Carrickmines, Dublin 18. The site has an area of c. 2.56 hectares and is bound to the north by the M50 motorway, to the east by Golf Lane, to the west by Glenamuck Road, and to the south by existing residential development.
- 1.2 This statement provides a justification for a material contravention of the Dun Laoghaire Rathdown County Development Plan 2016-2022, in the event that the Board determines that the proposed unit mix contravenes Section 8.2.3.3 (iii) of the Development Plan and / or that the height of the proposed development contravenes Policy UD6 of the Development Plan. The statement also provides a justification for a material contravention of the Ballyogan and Environs Local Area Plan 2019-2025, in the event that the Board determines that the proposed density contravenes policy BELAP RES2 of the LAP.
- 1.3 The proposed development is described as follows in the public notices:

“The proposed development comprises a residential development of 482 no. units (all apartments), along with ancillary residential amenities, and provision of a childcare facility, gym, and local shop. The proposed residential units comprise 31 no. studio units, 183 no. 1-bedroom units, 229 no. 2-bedroom units, and 39 no. 3-bedroom units (including 2 no. duplex type units).

The proposed development is set out in 7 no. blocks which comprise the following:

- Block A1 comprises 62. no, apartments within a part four, part six storey building, including 10 no. studio units, 7 no. 1-bedroom units, 41 no. 2 bedroom units, and 4 no. 3-bedroom units. An ESB substation is provided at ground floor level.*
- Block A2 comprises 85 no. apartments within a part four, part eight storey building, including 25 no. 1-bedroom units, 45 no. 2-bedroom units, and 15 no. 3-bedroom units.*
- Block A3 comprises 79 no. apartments within a part four, part twelve storey building, including 21 no. studio units, 19 no. 1-bedroom units, 28 no. 2-bedroom units, and 11 no. 3-bedroom units.*
- Block B0 comprises 150 no. apartments and resident’s amenities within a part four, part eighteen, part twenty-one and part twenty-two storey building. The apartments include 76 no. 1-bedroom units, 68 no. 2-bedroom units, and 6 no. 3-bedroom units (including 2 no. duplex type units). An ESB substation, resident’s concierge area and amenity space (171 sq.m sq.m) are provided at ground floor level. A further resident’s amenity / event space is provided at the twentieth and twenty-first floor levels (83 sq.m).*
- Block B1 comprises 8 no. apartments and is four storeys in height, directly abutting Block B0. The apartments include 4 no. 1-bedroom units, and 4 no. 2-bedroom units.*
- Block C comprises 42 no. apartments and a local shop within a part five, part seven storey building. The apartments include 30 no. 1-bedroom units, 9 no.*

2-bedroom units, and 3 no. 3-bedroom units. A local shop (154 sq.m) and an ESB substation are provided at ground floor level.

- Block D comprises 56 no. apartments, a commercial gym, resident's concierge area, resident's lounge, and a childcare facility in a part four, part seven storey building. The apartments include 22 no. 1-bedroom units, and 34 no. 2-bedroom units. The resident's concierge area (99 sq.m), commercial gym (340 sq.m), and childcare facility (300 sq.m) units are located at ground floor level. The resident's lounge (292 sq.m) is located at first floor level.

Two basement levels are proposed, providing car parking spaces (299 no.), bin stores, plant rooms, bicycle parking (1,000 no. spaces), and circulation areas. A further 240 no. bicycle parking spaces and 4 no. car parking spaces are provided at ground level. The proposed development includes landscaping, boundary treatments, public, private and communal open space (including roof terraces), two cycle / pedestrian crossings over the stream at the western side of the site, along with a new pedestrian and cycle crossing of Glenamuck Road South at the west of the site, cycle and pedestrian facilities, play facilities, and lighting. The proposed buildings include the provision of private open space in the form of balconies and winter gardens to all elevations of the proposed buildings. The development also includes vehicular, pedestrian, and cycle accesses, drop off areas, boundary treatments, services, and all associated ancillary and site development works."

- 1.4 The public notice includes reference to the inclusion of a Material Contravention Statement with the SHD application as follows:

"The application contains a statement indicating why permission should be granted for the proposed development, having regard to a consideration specified in Section 37(2)(b) of the Planning and Development Act, 2000, as amended, notwithstanding that the proposed development materially contravenes a relevant development plan or local area plan other than in relation to the zoning of the land."

Unit Mix

- 1.5 The proposed development provides for the following mix of units:

- 31 no. studio units (6%)
- 183 no. one bed units (38%)
- 229 no. two bed units (48%)
- 39 no. three bed units (8%) (includes 2 no. 3-bed duplex units)

- 1.6 This mix fully accords with the Apartment Guidelines 2018 and SPPR1. However, in light of a recent SHD decision made by the Board (ABP Ref. ABP-306626) in respect of a proposed development at Charleville, Harbour Road, Dalkey, this material contravention statement is included. In the Charleville case, the applicant submitted a Material Contravention Statement in relation to Section 8.2.3.3 (iii) of the Development Plan, which relates to unit mix, and made reference to the omission of Section 8.2.3.3 (iii) from an advisory note to the Development Plan (confirming relevant parts that have been superseded by the Apartment Guidelines) and suggested that the proposed Charleville development could be interpreted as a Material Contravention.

1.7 The Board Order stated that:

“In respect of housing mix, while the planning authority are of the opinion that there is no material contravention of the Development Plan, the Board consider it to be a material contravention and considered that a grant of permission that would materially contravene Section 8.2.3.3 (iii) of the Dun Laoghaire-Rathdown County Development Plan 2016-2022, which applies to the site, would be justified in accordance with section 37(2)(b) (iii) of the Planning and Development Act 2000, as amended, having regard to SPPR 1 of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, issued in March 2018.”

1.8 Section 8.2.3.3 of the Development Plan provides guidance for apartment developments. This includes ensuring the apartments accord with Government Guidelines, minimum requirements for dual aspect, mix of units, separation between blocks, in addition to minimum floor areas, and provision of communal and open space.

1.9 An Advisory Note to Section 8 of the Development Plan confirms:

“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.”

1.10 It is noted the Advisory Note to the Development Plan excludes reference to Section 8.2.3.3 (iii), which relates to ‘Mix of Units’. Accordingly, the Development Plan does not specify that the provisions of Section 8.2.3.3(iii) – in relation to the mix of units requirement – have been superseded by the Apartment Guidelines 2015, which have since been superseded by the Apartment Guidelines 2018.

1.11 In these circumstances, the proposed development materially contravenes the provisions of Section 8.2.3.3(iii) of the Development Plan. However, for the reasons set out in a later section of this statement, the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b) of the Planning and Development Act 2000, as amended.

Height of the Proposed Development

Policy UD6

1.1. Appendix 9 of the Development Plan notes that in relation to apartment developments, a maximum of 3-4 storeys may be permitted in appropriate locations e.g. on large redevelopment sites or adjacent to key public transport nodes - providing they have no detrimental effect on existing character and residential amenity.

1.2. The Strategy goes on to state that *“this maximum height (3-4 storeys) for certain developments clearly cannot apply in every circumstance. There will be situations where a minor modification up or down in height could be considered. The factors that may allow for this are known as ‘Upward or Downward Modifiers’. There will be occasions*

where the criteria for Upward and Downward Modifiers overlap and could be contradictory, for instance: when in close proximity to both a DART station yet within the Coastal Fringe”.

- 6.2 The proposed development seeks to provide elements of higher development, including a landmark building with a maximum height of 22 storeys to the north of the site, introducing a high-quality piece of statement architecture at a major junction on the M50, acting as an entrance point to the Carrickmines Area and to the capital city on this major thoroughfare. It is considered that the height of the proposed development exceeds the heights specified within Appendix 9 of the Development Plan, as referred to under Policy UD6 and, therefore, materially contravenes this provision of the Development Plan.
- 6.3 However, in relation to Building Heights, the Ballyogan and Environs LAP states the following:

*“Policy BELAP RES4 – Locations for Higher Buildings: The locations identified as ‘RES4’ in **Glencairn North**, Kilgobbin South, Mimosa-Levmoss, Racecourse South, The Park Carrickmines, and Old Glenamuck Road are **considered as suitable locations for higher buildings within the BELAP area (see Figure 11.1)**. It is anticipated that all bar one of these locations would be suitable for residential buildings, consistent with the prevailing zoning objective. The designation at The Park Carrickmines is subject to ‘E’ Zoning Objective, where residential is ‘open for consideration’ under the County Development Plan and as such, any proposed use mix would need to display compliance with this zoning objective.”*

- 1.12 However, again for the reasons set out in a later section of this statement, the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b) of the Planning and Development Act 2000, as amended.

Density of the Proposed Development

- 1.13 Policy BELAP RES2 of the Ballyogan and Environs Local Area Plan 2019-2025 is as follows:

“Policy BELAP RES2 – Density by Neighbourhood: Any residential scheme within each of the Neighbourhoods shall as a general rule have a target net density as set out in Table 5.4, subject to the provisions of any Site Development Frameworks, where applicable. Within the site boundary, any major and local distributor roads; primary schools, churches, local shopping etc.; open spaces serving a wider area; and significant landscape buffer strips shall be deducted from gross site area to give a figure for net site area.”

- 1.14 The subject site is recognised at Table 5.4 of having potential for a target density of 55 units per hectare. The proposed development delivers a net density of c. 268 units per hectare, with a gross density of c. 188 units per hectare if the overall site area, including the area of land in DLR ownership is taken into account. The net density of the scheme is somewhat exaggerated by the piece of public open space / infrastructure serving the wider area comprising of the new cycle and pedestrian ways). A higher density of development on the subject site is considered to be an inevitable outcome of the

achievement of higher development on the lands, which is supported under the LAP pursuant to Policy BELAP RES4

- 1.15 . Noting that the target density expressed for the subject site in the LAP is 55 units per hectare, and the proposed net density of c. 268 units per hectare, it is considered that the Board may determine that the proposed development represents a material contravention of Policy BELAP RES2.
- 1.16 However, again for the reasons set out in a later section of this statement, the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b) of the Planning and Development Act 2000, as amended.
- 1.17 The Statement of Consistency / Planning Report accompanying this application demonstrates compliance with all other relevant policies and objectives of the County Development Plan and the Ballyogan and Environs LAP 2019-2025. Significantly, the proposed SHD does not contravene either the County Development or Local Area Plan in relation to the zoning of land, whether materially or at all.
- 1.18 It is also submitted that the proposed development is in accordance with the recent National Planning Framework, the Regional Spatial Strategy for the EMRA, the 2018 Apartment and Building Height Guidelines, and Government policy. It is therefore submitted that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development in the event that it is determined that the proposed mix of units and/or height of the development materially contravenes the Development Plan.

Legislative Context

- 1.19 The Planning and Development (Housing) and Residential Tenancies Act 2016 (“the 2016 Act”), empowers An Bord Pleanála to decide to grant permission for a development which materially contravenes policies and objectives of a Development Plan or Local Area Plan, other than in relation to the zoning of land. In these circumstances, the provisions of subsection 9(6) of the 2016 Act are relevant:

(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.

- 1.20 In circumstances where: (i) the Board has the power to decide to grant permission for a proposed SHD where the proposed development contravenes the development plan or local area plan; (ii) the proposed Golf Lane SHD does not contravene the development plan or local area plan in relation to the zoning of land; then (iii) the provisions of Section

37(2)(b) of the Planning and Development Act 2000 (“the 2000 Act”) are relevant to the Board’s consideration of this planning application. In this respect, subsection 37(2) of the 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)

- 1.21 A response to the relevant criteria above is provided in Section 3 of this report, and demonstrates that one or more of the criteria in section 37(2)(b) are satisfied in respect of the proposed Golf Lane SHD, thereby enabling the Board to decide to grant permission, notwithstanding the material contravention of Section 8.2.3.3 (iii) of the Development Plan in respect to unit mix and/or Policy UD6 in relation to Building Height.

2.0 LOCAL PLANNING POLICY CONTEXT AND SHD PRE-APPLICATION CONSULTATIONS

Unit Mix

- 2.1 The local planning policy context in respect to unit mix is summarised below.
- 2.2 Chapter 8 of the DLR County Development Plan 2016-2022 provides detailed development management standards for residential development and Section 8.2.3.3 in particular provides guidance for apartment developments. This includes the requirement to ensure the apartments accord with (i) Design Standards, (ii) Dual Aspect, (iii) Mix of Units, (iv) Separation between Blocks, (v) Internal Storage, (vi) Penthouse Development, (vii) Minimum Apartment Floor Areas and (ix) Play Facilities.
- 2.3 An Advisory Note to Section 8 confirms:

“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 DoECLG Apartment Guidelines contain certain ‘Specific Planning Policy Requirements’ which became mandatory on foot of the Planning and Development (Amendment) Act 2015 that was signed into law by the President on 29th December 2015. The ‘Specific Planning Policy Requirements’ set out in the DoECLG Apartment Guidelines take precedence over the Dún Laoghaire-Rathdown standards and specifications as set out in Section 8.2.3.3 of the 2016 – 2022 County Development Plan.”

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

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

- 2.5 Under this SHD application, the proposed unit mix is as follows:
- 31 no. studio units (10%)

- 31 no. studio units (6%)
- 183 no. one bed units (38%)
- 229 no. two bed units (48%)
- 39 no. three bed units (8%) (includes 2 no. 3-bed duplex units)

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

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

2.7 The Apartment Guidelines 2018 also state in section 1.21 that “...where SPPRs are stated in this document, they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes. Where such conflicts arise, such plans should be amended by the relevant planning authority to reflect the content of these guidelines and properly inform the public of the relevant SPPR requirements.”

2.8 The subject site is located within the north-eastern area of the Ballyogan and Environs LAP 2019-2025 (BELAP) area, which was adopted on the 1st of July 2019. Section 5.2.2 of the BELAP also recognises that the Apartment Guidelines takes precedence over the Development Plan requirements, stating:

*“These Guidelines contain a number of “Specific Planning Policy Requirements” (SPPRs) that take precedence over any policies of Development Plans or LAPs - **including SPPR 1 which relates to housing mix where it is stated that schemes may include up to 50% one-bedroom units and 20-25% studio units.** Statutory Development Plans may specify a mix for apartment and other housing developments, but only further to an evidence-based “Housing Need and Demand Assessment” (HNDA), which has not yet been undertaken to date in DLR. The Guidelines also contain a suite of design and layout requirements for apartments and apartment schemes.”*

Chapter 8 – Principles of Development – includes policies on topics such as urban design and permeability. Policy UD4 supports the LAP model as a way of promoting the principles of good urban design.

Section 8.2 sets out a full suite of quantitative and qualitative standards for residential development, although these now must be read in conjunction with the recently published Ministerial Guidelines relating to Design Standards for New Apartments (see above), which may now take precedence.”

- 2.9 Overall, the proposed unit mix is consistent with the guidance set down in SPPR1 of the Apartment Guidelines 2018, as the percentage of studios and 1 bed units does not exceed 50%. There is no requirement for 3 bed units under SPPR 1. It should also be noted that a Housing Need and Demand Assessment has not yet been undertaken by the Planning Authority for this area of the County at time of writing and, consequently, the proposed unit mix is consistent with the relevant planning policy requirement for Unit Mix.
- 2.10 Having regard to the above, it is considered that even where the proposed unit mix development would normally breach the mix of units set out within a Development Plan or LAP, the mix is justified under SPPR1 of the Apartment Guidelines (which were issued under section 28 of the 2000 Act).

Building Height

- 2.11 The local planning policy context in respect to building height is summarised below.
- 2.12 Chapter 8 and Section 8.1.2.3 of the Dun Laoghaire Rathdown County Development Plan includes Policy UD6: Building Height Strategy, which states the following:

*“It is Council policy to adhere to the recommendations and guidance set out within the Building Height Strategy for the County. **Council policy in relation to the issue of building height throughout the County will be guided by both the general principles and specific detailed recommendations detailed in the Building Height Strategy set out in Appendix 9.** The Strategy will be used in establishing building heights for individual areas and emerging new urban nodes in the County through the vehicles of **Local Area Plans**, Urban Framework Plans and other statutory plans such as the Cherrywood SDZ Planning Scheme. The Strategy will also influence and inform the assessment of building heights proposed in individual planning applications.”* (Emphasis added)

- 6.4 The application site is located within the area subject to the Ballyogan and Environs LAP , Policy BELAP RES4 of which states the following:

*“Policy BELAP RES4 – Locations for Higher Buildings: The locations identified as ‘RES4’ in **Glencairn North**, Kilgobbin South, Mimosa-Levmoss, Racecourse South, The Park Carrickmines, and Old Glenamuck Road are **considered as suitable locations for higher buildings within the BELAP area (see Figure 11.1).** It is anticipated that all bar one of these locations would be suitable for residential buildings, consistent with the prevailing zoning objective. The designation at The Park Carrickmines is subject to ‘E’ Zoning Objective, where residential is ‘open for consideration’ under the County Development Plan and as such, any proposed use mix would need to display compliance with this zoning objective.”*

- 2.13 While the site is specifically identified as an appropriate location for higher buildings under the Local Area Plan, it is considered that the Board may still determine that the proposals represent a material contravention of Policy UD6 of the County Development Plan height policy.

Density of Development

Dun Laoghaire Rathdown County Development Plan

2.14 The relevant local planning policy in relation to density of development is set out below.

2.15 Chapter 8 of the Dun Laoghaire Rathdown County Development Plan sets out policies and objectives in relation to density of residential development. Section 8.2.3.2 of the Plan 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.”

2.16 The proposed development complies with the principle of the provision of higher density at a strategic location which is highly accessible. The suitability of the site for a landmark higher building also contributes to the overall density of the scheme.

2.17 Policy RES3 of the County Development Plan states:

“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. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines: ‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009); ‘Urban Design Manual - A Best Practice Guide’ (DoEHLG 2009); ‘Quality Housing for Sustainable Communities’ (DoEHLG 2007); ‘Irish Design Manual for Urban Roads and Streets’; (DTTaS and DoECLG, 2013); ‘National Climate Change Adaptation Framework Building Resilience to Climate Change’ (DoECLG, 2013).”

2.18 The proposed development accords with the above policy having regard to the fact that the scheme has been designed with cognisance of surrounding residential amenity, seeking to ameliorate any significant impact thereon. The proposed development promotes more compact, sustainable residential development on a major public transport corridor and in proximity to a range of facilities and amenities. It is considered the proposed density accords with national policy as set out in the Planning Report and Statement of Consistency, including the Apartment Guidelines, and the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009), and accompanying Urban Design Manual (2009).

Ballyogan and Environs Local Area Plan

2.19 Policy BELAP RES2 of the Ballyogan and Environs Local Area Plan 2019-2025 is as follows:

“Policy BELAP RES2 – Density by Neighbourhood: Any residential scheme within each of the Neighbourhoods shall as a general rule have a target net density as set out in Table 5.4, subject to the provisions of any Site Development Frameworks, where applicable. Within the site boundary, any major and local distributor roads; primary schools, churches, local shopping etc.; open spaces serving a wider area; and significant landscape buffer strips shall be deducted from gross site area to give a figure for net site area.”

- 2.20 The subject site is recognised at Table 5.4 of having potential for a target density of 55 units per hectare. The proposed development delivers a net density of c. 268 units per hectare, with a gross density of c. 188 units per hectare if the overall site area, including the area of land in DLR ownership is taken into account. The net density of the scheme is somewhat exaggerated by the piece of public open space / infrastructure serving the wider area comprising of the new cycle and pedestrian ways). A higher density of development on the subject site is considered to be an inevitable outcome of the achievement of higher development on the lands, which is supported under the LAP pursuant to Policy BELAP RES4
- 2.21 Noting that the target density expressed for the subject site in the LAP is 55 units per hectare, and the proposed net density of c. 268 units per hectare, it is considered that the Board may determine that the proposed development represents a material contravention of Policy BELAP RES2.

DLRCC’s Chief Executive’s Opinion

- 2.22 The Planning Authority’s Written Opinion on the SHD pre-application consultation request to the Board noted that the proposed development accorded with SPPR 1 of the Apartment Guidelines 2018.
- 2.23 The Written Opinion notes that *“the standards and specifications in respect of Apartment Development, as set out in Section 8.2.3.3 (i), (ii), (v), (vii), and (vii) of the current County Development Plan have now been superseded by Ministerial Guidelines”*. It is noted that this statement also appears to omit reference Section 8.2.3.3 (iii) which relates to Mix of Units.
- 2.24 In relation to scale and height, the Planning Authority noted the provisions within the LAP for the area, which promote higher buildings at this location. The Planning Authority also noted the previous refusal reason on site and indicated that the site would be suited to accommodating additional height. However, the Planning Authority raised concerns regarding the height of certain elements of the scheme, and in particular the 12 storey element adjoining the landmark tower. The Planning Authority did not state that the development represented a material contravention in relation to its height.
- 2.25 In relation to the density of the proposed development, the Planning Authority acknowledged the potential of accommodating a higher density of development at this location. However, the Planning Authority went on at section 2.6 of their report to state that the proposed density was a cause for concern. The Planning Authority stated that they considered that the site represented an *intermediate urban location* rather than a *“central and accessible urban location”*. In this regard, the Planning Report and Statement of Consistency has clearly demonstrated that the subject site falls within the category of a ‘Central and /or Accessible Urban Location’ as defined in the 2018 Apartment Guidelines.

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

- 3.1 In the event that the Board considers that the proposed development constitutes a material contravention of Policy UD6 of the Development Plan by virtue of the proposed building heights, and / or Section 8.2.3.3 (iii) of the Development Plan by virtue of the proposed mix of units, and / or Policy BELAP RES2 of the Ballyogan and Environs Local Area Plan the justification for deciding to grant permission in circumstances of such a material contravention is set out below, as required under the relevant criteria set out under Section 37(2)(b) of the 2000 Act, as amended.

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

- 3.2 The proposed development comprises of inter alia the provision of 482 no. residential units on lands zoned for residential use, located on a well serviced site in proximity to high quality public transport.
- 3.3 As outlined in the Planning Report / Statement of Consistency, the proposed development 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.
- 3.4 The long title of the Planning and Development (Housing) and Residential Tenancies Act 2016 is as follows:

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

- 3.5 The Rebuilding Ireland Action Plan, and consequently the 2016 Act, recognise the strategic importance of larger residential developments (including developments of over 100 residential units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply.
- 3.6 In relation to the arrangements to be put in place for Strategic Housing Developments, the Rebuilding Ireland Action Plan states:

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

- 3.7 Due to the strategic importance of larger housing developments designated as SHDs, the Government moved to introduce legislation under the 2016 Act, which would see

such developments assessed in a similar manner to Strategic Infrastructure Developments.

- 3.8 Having regard to this legislative and policy context, it is considered that the proposed significant Strategic Housing Development is, by definition, of strategic importance for the purposes of section 37(2)(b) of the 2000 Act, 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) of the Planning and Development Act 2000, as amended.

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

- 3.9 The following section demonstrates how the proposed unit mix and building heights are justified in the context of recent National Planning Policy and Section 28 Government Guidelines, which seek to increase residential densities on zoned services lands adjacent to public transport corridors, and which have been published since the adoption of the Dun Laoghaire Rathdown County Development Plan 2016-2022. These include:

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

Project Ireland: National Planning Framework 2040

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

- 3.11 In relation to residential development the plan states:

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

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

"In particular, general restriction on building height or universal standards for car parking or garden size may not be applicable in all circumstances in urban areas and should be replaced by performance based criteria

appropriate to general locations e.g. city/ town centre, public transport hub, inner suburban, public transport corridor, outer suburban, town, village etc”.

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

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

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

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

Unit Mix

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

Building Heights

- 3.14 It is clear that there is a strong emphasis towards increased building heights in appropriate locations within existing urban centres and along public transport corridors in order to provide for the critical mass needed to make the public transport services viable. As such, it is submitted the proposed building heights are in line with government guidance and emerging trends for sustainable residential developments.
- 3.15 The proposed density and height of the development is considered appropriate for the location of the site and the availability of public transport facilities and services provided within the area, including the location of a Luas stop in close proximity to the site. The proposed development is therefore in accordance with the objectives of the NPF in this regard.
- 3.16 Restricting the height of the development at such a location well served by public transport and identified for higher buildings under the BELAP to that set out under the height strategy of the County Development Plan would be contrary to Government policy which promotes increased densities at well served urban sites, and which discourages universal height standards in favour of a more site-specific approach.

Density

- 3.17 It is also clear that there is a strong emphasis on increasing the density of development at appropriate locations which are well served by public transport. In relation to compact growth, the National Planning Framework states:

“Carefully managing the sustainable growth of compact cities, towns and villages will add value and create more attractive places in which people can live and work. All our urban settlements contain many potential development areas, centrally located and frequently publicly owned, that are suitable and capable of re-use to provide housing, jobs, amenities and services, but which need a streamlined and co-ordinated approach to their development, with investment in enabling infrastructure and supporting amenities, to realise their potential. Activating these strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development, is a top priority.”

- 3.18 The proposed development represents the achievement of effective density on a strategically located site which is well served in terms of the necessary facilities, infrastructure, and amenities to facilitate a higher density development such as that proposed.
- 3.19 The proposed development directly responds to National Policy Objective 5 via the provision of higher density residential development on an infill site within an existing built up area, which is well served by public transport.

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

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

- 3.24 The RSES supports the consolidation and re-intensification of infill, brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin city and suburbs and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport projects.
- 3.25 The subject development seeks to provide for residential development within an existing built up area on a site which was previously occupied by low density residential development, thereby delivering a greater mix of uses, increased densities, heights and urban consolidation in an area well served by public transport. The proposed development therefore is compliant with the overall policies and objectives of the RSES in this regard.

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

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

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

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

Unit Mix

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

“SPPR1- Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence based Housing

Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s)."

3.29 The proposed unit mix is consistent with the guidance set down in SPPR1, as the percentage of studios and 1 beds does not exceed 50%. There is no requirement for 3 bed units under SPPR 1, however, the scheme incorporates a significant number of generous 3 bedroom units. We also note that no Housing Need and Demand Assessment has been undertaken by the Planning Authority for this area of the County.

3.30 As demonstrated in this report and accompanying application documentation, the proposed mix of units are consistent with the Apartment Guidelines 2018 and are appropriate for the subject site / location. Having regard to the above and the provisions of the Apartment Guidelines and SPPR1, the Board should note the provisions of subsection 9(3)(b) of the 2016 Act, which expressly provides that:

where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.

3.31 Accordingly, in deciding whether to grant permission under subsection 9(6), the Board should have regard to the fact that SPPR1 of the Apartment Guidelines 2018 applies instead of the relevant provisions of the development plan.

3.32 In the circumstances, the Board may to decide to grant permission for the proposed Golf Lane SHD, notwithstanding the material contravention of the provisions of the development plan in respect of unit mix.

Building Heights

3.33 The Apartment Guidelines state that Central and/or Accessible Urban Locations are generally suitable for small- to large-scale (will vary subject to location) and higher density development (will also vary), that may wholly comprise apartments, and are classified as follows:

- 'Sites within walking distance (i.e. up to 15 minutes or 1,000- 1,500m), of principal city centres, or significant employment locations, that may include hospitals and third-level institutions;
- **Sites within reasonable walking distance (i.e. up to 10 minutes or 800-1,000m) to/from high capacity urban public transport stops (such as DART or Luas); and**
- Sites within easy walking distance (i.e. up to 5 minutes or 400-500m) to/from high frequency (i.e. min 10 minute peak hour frequency) urban bus services'.

3.34 The subject site the subject site falls into the category of 'Accessible Urban Locations', given the site's location within 500 metres of a LUAS station, although the Planning Authority's contention that the site constitutes an intermediate urban location (within the Planning Authority's Opinion at pre-application stage) is noted, it is submitted that the site clearly falls into the category of an accessible urban location as set out above. The proposed residential development is considered to positively contribute to the mix of

uses on the site and in the surrounding area, and is suitable for high residential density development and the proposed building heights.

Density

- 3.35 As set out above, the subject site is an accessible urban location as defined within the 2018 Guidelines. Therefore it is suitable for higher density development that may wholly comprise apartments.

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

Building Heights

- 3.36 The Urban Development and Building Height Guidelines 2018 are intended to set out national planning policy guidelines on building heights in urban areas in response to specific policy objectives set out in the National Planning Framework and Project Ireland 2040. Under Section 28 (1C) of the Planning and Development Act 2000 (as amended), Planning Authorities and An Bord Pleanála will be required to have regard to the guidelines and apply any specific planning policy requirements (SPPR's) of the guidelines in carrying out their function.
- 3.37 The Guidelines state that *'the preparation of development plans, local areas plans, and Strategic Development Zone Planning Schemes and their implementation in the city, metropolitan and wider urban areas must therefore become more proactive and **more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights**'* (emphasis added).
- 3.38 The Guidelines also state:
- 'the preparation of development plans, local area plans and Strategic Development Zone (SDZ) Planning Schemes and their implementation in city, metropolitan and wider urban areas **must therefore become more proactive and more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights**, while also being mindful of the quality of development and balancing amenity and environmental considerations'* (emphasis added).
- 3.39 The guidelines state that:

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

and;

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

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

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

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

3.41 The subject site presents the opportunity to provide a higher density, taller form of development at a location which has been specifically identified by the Board as a suitable location for a landmark building in their decision on the previous SHD application on the subject site.

3.42 Under SPPR3 it is a specific planning policy requirement that the Board may approve a development where an applicant demonstrates compliance with development management criteria for height. The assessment of the planning authority or the Board must take account of the wider strategic and national policy parameters set out in the National Planning Framework and the Building Height Guidelines.

3.43 The proposed development seeks to provide elements of higher development, including a landmark building of 22 storeys in the north of the site, introducing a high-quality piece of statement architecture at a major junction on the M50, acting as an entrance point to the Carrickmines Area and to the capital city on this major thoroughfare.

3.44 In relation to Building Heights the Ballyogan and Environs LAP states the following:

*“Policy BELAP RES4 – Locations for Higher Buildings: The locations identified as ‘RES4’ in **Glencairn North**, Kilgobbin South, Mimosa-Levmoss, Racecourse South, The Park Carrickmines, and Old Glenamuck Road are **considered as suitable locations for higher buildings within the BELAP area (see Figure 11.1)**. It is anticipated that all bar one of these locations would be suitable for residential buildings, consistent with the prevailing zoning objective. The designation at The Park Carrickmines is subject to ‘E’ Zoning Objective, where residential is ‘open for consideration’ under the County Development Plan and as such, any proposed use mix would need to display compliance with this zoning objective.”*

3.45 Thus, the BELAP provides for increased height on the subject site. Notwithstanding the BELAP provisions and the previous recommendations of ABP in the refused SHD application, we have also demonstrated how the proposed development meets the criteria required under SPPR3 below.

3.46 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 or local area plan may indicate otherwise”.

- 3.47 Compliance with the relevant criteria set out under Section 3.2 of the Guidelines is demonstrated below to satisfy the requirements of SPPR3 for increased building height on the subject site.

Compliance with Development Management Criteria

- 3.48 The guidelines set out the criteria for developments at the scale of the relevant city / town 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.

- 3.49 The subject lands are highly accessible, located in close proximity (500 metres) to an existing Luas stop at Ballyogan providing links with the city centre and other centres, providing high frequency, high capacity public transport service in close proximity to the proposed development. The site is also within close proximity (less than 250 metres) to existing bus services. Thus, the site has access to high quality, high capacity, and high frequency public transport services. The site is therefore considered to benefit from a high level of 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.

- 3.50 The scale of the proposed development is considered to integrate appropriately with its surroundings, whilst introducing an element of increased height, with a higher landmark element and development along the perimeter with adjoining roads to define a strong urban edge to the M50 and the other adjoining streets at this important location. This strong urban edge provided by the development steps up towards the north of the site, culminating in a 22 storey tower. This sculptural and slender architectural piece seeks to provide for enhanced legibility along the M50 corridor, providing for an appropriate proportional framing of this wide transport corridor.

- 3.51 The proposal will provide for a strong sense of place and a public realm which will be more comfortable and inviting for pedestrians due to improved enclosure, and permeability around and through the scheme. The scheme responds both to its existing and permitted / planned context, which will see the wider develop as a new urban district, including the permitted neighbourhood centre and mixed-use development at Quadrant 3, the Park, on the opposite side of Glenamuck Road.

- 3.52 The height of the proposed scheme steps down from north to south, and where the scheme adjoins other properties. Setbacks and landscape buffer areas are provided along such frontages in order to ameliorate impacts on the amenities of adjoining properties, while also allowing for higher buildings and higher residential densities on the site.
- 3.53 The accompanying contiguous elevations and sections provided by HJL illustrate the proposed building height in the context of the existing urban environment.
- 3.54 The visual impact of the proposals are discussed in greater detail in the accompanying Townscape and Visual Impact Assessment by Kennett Consulting, which is included as part of the Environmental Impact Assessment Report. 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 Development Plan and the LAP for the area.



Figure 1: Extract from distant view of the proposed development, highlighting the high quality design of the landmark building

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.

- 3.55 The proposed development site extends to approximately 2.6 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 adjoining routes, whilst also providing a landmark development on the

- important M50 corridor, signalling an entrance point to the area and to Dublin on this major route.
- 3.56 The proposals also promote pedestrian linkages through the development with attractive public realm and open space surrounding the proposed buildings. This promotes public movement through the site and facilitates pedestrian desire lines through the site to access The Park Carrickmines, the nearby Luas stop, and the permitted Quadrant 3 neighbourhood centre development.
- 3.57 The development creates visual interest at the site through a high quality design which responds to the surrounding pattern of development.
- 3.58 The proposals introduce a higher built element into the existing urban landscape along the M50, with a maximum height of c. 71 metres where the building steps up to its maximum height. 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, at a location which demands a landmark architectural response.
- 3.59 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 strategic, prominent location.

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

- 3.60 The proposed development will form a landmark in views along the M50, Glenamuck Road, and Golf Lane, positively contributing to its urban neighbourhood and streetscape 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.
- 3.61 It is considered that the proposal introduces a high-quality development at an underutilised site within a setting which is swiftly developing and which is destined for significant planned further growth. The proposed development responds appropriately to the surrounding urban pattern and scale, with higher built elements situated along the M50 and Glenamuck Road frontages, falling in height moving south and east, towards Golf Lane and existing properties to the south.
- 3.62 The proposals constitute the sustainable development of these underutilised 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 area, allowing for vibrancy within the public realm, and a range of building heights and formulations that avoid any sense of monotony or monolithic design. The landmark building in the scheme is a sculptural, slender and vertically emphasised foil to the lower-rise, more horizontally emphasised elements of the scheme.



Figure 2: View of the high quality landscaping proposed within the scheme – this view shows the perimeter cycle and pedestrian route, with courtyard spaces in the background

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

- 3.63 The proposal introduces a series of residential apartment buildings constructed with high quality materials which relate well to the site's location and the style and palette of neighbouring properties and the wider existing and permitted context, including Quadrant 3 in The Park. The extensive use of glazing throughout the scheme provides continuity with the architectural design of the Quadrant 3 scheme, while the choice of infill panelling and materials for the building 'fins' will result in a high standard of finish and texture within the development. The design of the buildings and the materials used serve to express the architectural intent of the scheme, with floorplates expressed on the facades, and fins to the landmark building accentuating its slenderness and sculptural quality when viewed from the surrounding area. This approach also breaks up the scale and massing of the scheme, ensuring that it will be pleasing to the eye when viewed from a distance, as much as within the scheme itself. The final application is accompanied by a detailed materials and finishes brochure, in response to specific information item 3 of the Board's Opinion.
- 3.64 The layout and siting of the development has been sensitively chosen to create attractive new streetscapes along surrounding routes, giving the area a more urban feel, 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 lines. 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 frontages and within the internal courtyard and garden spaces. No long, uninterrupted walls are proposed in the form of perimeter or slab blocks, as the scheme effectively varies in height, and steps to avoid any sense of monotony.

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).

- 3.65 The proposed development will significantly enhance the existing M50, which is a key thoroughfare in the area and for the city at large. 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, in proportion to the scale of the adjoining road.
- 3.66 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 Golf Lane, including a neighbourhood shop and a gym, with a creche located more internally within the scheme. A significant high-quality open space is provided in the centre of the scheme for communal use. A landscaped pedestrian pathway along the western, southern and northern boundaries facilitates new pedestrian and cycle connections, across new crossings of the stream which traverses the site, and onwards via a new pedestrian and cycle crossing of Glenamuck Road to the Quadrant 3 scheme at the Park Carrickmines and the parkland which will be provided therein. That parkland within Quadrant 3 will ultimately link up with a linear park running to the new Ballyogan park, and then to the linear park within the Clay Farm scheme to the north west.
- 3.67 The additional height proposed makes optimal use of an underutilised area of land which benefits from a strategic location. The layout of the residential blocks contributes to the creation of a central courtyard / garden space which will function as a managed open space. This contributes to a sense of place and benefits from passive surveillance from the residential buildings. The Site Specific Flood Risk Assessment prepared by DBFL Consulting Engineers demonstrates the compliance of the scheme with “The Planning System and Flood Risk Management – Guidelines for Planning Authorities” (2009).

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.

- 3.68 The proposed development will add interest and articulation to the M50, Glenamuck Road, and Golf Lane, 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, in particular via the provision of a landmark building, acknowledging the site’s prominence.



Figure 3: The proposed landmark element will enhance the legibility of the area and improve wayfinding, including on the M50

- 3.69 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 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.

- 3.70 The proposed scale, massing and height of the development has been informed by the existing, planned 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 to the south and east, towards existing properties to the south, and the more modest scale of development on Golf Lane. 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.

- 3.71 A Sunlight / Daylight Analysis and Shadow Analysis have been carried out by JAK in the preparation of this request, which indicates good daylight access for the proposed development, with no significant impact on surrounding properties.
- 3.72 The planning application is accompanied by an EIAR incorporating noise and air quality assessment chapters, which include mitigation measures to ensure a healthy and comfortable environment for residents and visitors to the scheme. A wind assessment has also been undertaken, with design-based mitigation to avoid any negative microclimate impacts arising from the taller built elements. The design of the scheme has followed an iterative approach, with repeated modelling of wind and noise impacts allowing for the incorporation of extensive design-based mitigation via changes to the building and landscape design of the development since the pre-application stage.
- 3.73 It should be acknowledged that the proposals will enable the redevelopment of a site in a prominent and highly accessible location 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.
- 6.5 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.

Specific Assessments

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

Response

- 3.74 The application is accompanied by a Wind & Microclimate Assessment which is included as Chapter 11 of the EIAR. The assessment utilised detailed and repeated modelling of the scheme, with mitigation and design updates utilised to address instances of uncomfortable windspeeds wherever these were identified. Following the implementation of design-based mitigation, the model was updated and re-run, with further mitigation then introduced in any remaining instances of uncomfortable windspeeds, then remodelled and assessed further to ensure the efficacy of these measures.
- 3.75 The proposed development represents a landmark development, which is not adjoined by any other cluster of higher development. The scheme itself however represents a

cluster of higher development, which has been thoroughly assessed via robust modelling and assessment methods in the wind / microclimate assessment included as part of the EIAR.

- 2) *In development locations in proximity to sensitive bird and/or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight lines and/or collision.*

Response

- 3.76 This SHD application is accompanied by a AA Screening Report prepared by Scott Cawley and an EIAR, including Chapter 5 Biodiversity, which demonstrates that the proposed building heights do not have the potential to adversely impact on the biodiversity of the area. As outlined in the AA Screening, the development site does not provide suitable habitat for ex situ bird species. Also, no bat roosts have been identified on site and mitigation is provided within the Biodiversity chapter of the EIAR to ensure that no significant impact on bats will arise.
- 3.77 The EIAR Biodiversity chapter states the following in relation to the interaction of the development with bats:

Regarding the proposed buildings' height and the potential for this to pose a collision risk to local bats, the proposed development site is not considered to be a particularly sensitive site for bats- it is not part of any important migratory route used by bats and, based on the results of bat surveys undertaken, it supports low numbers of common bat species only. Recent studies, investigating the cause of bat collisions with buildings found that building material is an important factor to be considered (Greif et al., 2017) and that smooth vertical surfaces such as glassy exteriors and windows can be particularly problematic (Timm, 1989; Greif et al., 2017). Whilst the design of the facades of the proposed buildings does include large areas of glazing, it should be noted other materials are also proposed on the external surfaces of the buildings. For example, in Block BO, the tallest building in the proposed development, large expanses of glazing are proposed but the mullions and transoms of these windows will be composed of natural anodized aluminium. Pale bricks will also form part of the external finish of the building. The inclusion of these other materials will help to break up the glazing, making the building more detectable to bats. Irish bat species navigate largely by echolocation calls, and fixed structures such as those proposed as part of the proposed development present a low risk in terms of collision. In the absence of mitigation there could be a low level of mortality attributable to bat collision with glazing of the proposed building, however this impact is unlikely to cause any significant effect at a local scale.

- 3.78 With regard to the interaction of the proposed development with bird flight, the EIAR Biodiversity chapter prepared by Scott Cawley states:

"With regards to the height and location of the buildings, the site is not regarded to be a particularly sensitive site for breeding birds - based on the surveys undertaken, the site supports low numbers of common passerine species only. It is not located along an important migratory route for bird species, and the proposed development does not pose a significant collision risk for bird species.

From a review of available literature on the subject, bird collisions with man-made structures are common and well documented (Banks, 1979; Klem, 1990; Jenkins et al., 2010; Erickson et al., 2005; and; Erickson et al., 2001) with migratory passerine species the most prevalent collision victims (Bing et al., 2012; and; Longcore et al., 2013). Bird collision with buildings is generally associated with reflective material such as windows or large surfaces of glass which create a mirror and appear to show the continuation of the sky or surrounding landscape, an effect that can be exacerbated by lighting (Sheppard & Phillips, 2015). Whilst the design of the facades of the proposed buildings does include large areas of glazing, it should be noted other materials are also proposed on the external surfaces of the buildings. For example, in Block BO, the tallest building in the proposed development, large expanses of glazing are proposed but the mullions and transoms of these windows will be composed of natural anodized aluminium. Pale bricks will also form part of the external finish of the building, As well as creating a strong architectural identity, the use of different materials here interrupts the glazing, making the building more detectable to birds. In the absence of mitigation there could be a low level of mortality attributable to bird collision with glazing on the lower levels of the proposed building, however this impact is unlikely to cause any significant effect at a local scale."

3.79 Having regard to the foregoing, notwithstanding that the proposed development is not in close proximity to sensitive bird / bat locations, the impact of the proposed development, and the height of the proposed development has been considered in terms of its impacts on birds and bats, including their flight paths and risk of collision. As confirmed above, the impact of the proposed development is not likely to be significant in this regard.

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

Response

3.80 We refer the Board to the telecommunications assessment prepared by Charterhouse which forms part of the current application. The assessment notes that any blockages to existing telecommunications channels will not impact on the retention of such channels, as these channels can be simply triangulated around the sites having regard to the location of other telecommunications arrays in the vicinity. Consultation with operators confirmed that there would be one blocked link for Vodafone and one for EIR. However, the report confirms that the development will not result in any meaningful disruption to microwave link connectivity between nearby telecommunications base stations. Where disruption occurs, the report confirms that the effect will be minor and can be rectified at negligible cost.

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

Response

3.81 The application site is not located in proximity to any airports or airfields and it is considered that the proposed development does not have the potential to impact on air navigation as a result of the height increase proposed on site. A technical note has been prepared by DBFL which notes that the proposed development does not fall within any

obstacle free zone associated with any airport or airfield. Measures are set out to ensure that the development adheres to the requirements of the Irish Aviation Authority Act. On this basis the proposal will maintain safe air navigation.

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

Response

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

- 1) Architectural Design Statement prepared by HJL Architect
- 2) Landscape and Visual Impact Assessment prepared by Chris Kennett and Photomontage Views Brochure, included in Chapter 6 of the EIAR, prepared by Visual Lab
- 3) Archaeological and Cultural Heritage Chapter included within the EIAR
- 4) Landscape Report prepared by Cameo Landscape Architects

3.83 As outlined in the Design Statement and Statement of Consistency / Planning Report, the surrounding area is characterised by a mix of uses. The proposed development has been designed to respect and enhance the surrounding character of the area. The proposed layout of the development appropriately responds to the site's context and character. There are no historic buildings or protected structures in the vicinity of the proposed development.

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

Response

3.84 As noted above, this SHD application is accompanied by an AA Screening Report and EIAR. The EIAR was prepared / coordinated by JSA with an experienced environmental consultancy team, with the AA Screening Report prepared by Scott Cawley.

Specific Planning Policy Requirement 3

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

3.86 As demonstrated above, the proposed building heights are appropriate within the context of the above development management criteria.

3.87 Having regard to the detailed analysis set out above, the applicant has demonstrated that the criteria set out under Section 3.2 of the Guidelines have been appropriately incorporated into the development proposal, as required under SPPR3 (a) which states the following:

“It is specific planning policy requirement that where:

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

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

Density

- 3.88 The Urban Development and Building Height Guidelines, through the promotion of increased building heights, consequently support the densification of locations which are appropriate for higher development. The Guidelines state:

*“A key objective of the NPF is therefore to see that greatly increased levels of residential development in our urban centres and significant increases in the building heights **and overall density** of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels.*

Increasing prevailing building heights therefore has a critical role to play in addressing the delivery of more compact growth in our urban areas, particularly our cities and large towns through enhancing both the scale and density of development and our planning process must actively address how this objective will be secured.”

- 3.89 The proposed development accords with these principles in that it will deliver both increased building height and higher density at an appropriate location.
- 3.90 The proposed development is also supported by SPPR1 of the Guidelines, which supports both increased height and density in locations with good public transport accessibility.

3.0 CONCLUSION

- 3.1 It is submitted that the proposed development constitutes a material contravention of the DLR County Development Plan 2016-2022, and specifically Section 8.2.3.3 (iii) Mix of Units or Policy UD6 relating to building height. It is further submitted that the Board may determine that the proposed development constitutes a material contravention of policy BELAP RES2 of the Ballyogan and Environs Local Area Plan 2019-2025.
- 3.2 However, for the detailed reasons set out in this statement, the Board may decide to grant permission for the proposed development pursuant to subsection 9(6) of the 2016 Act, as the material contravention does not relate to the zoning of land. Moreover, a number of criteria identified in section 37(2)(b) of the 2000 Act are satisfied. Firstly, the proposed development is a strategic development. The statement also demonstrates that the proposed unit mix for this SHD application accords with the provisions of SPPR1 under the Apartment Guidelines 2018, which in turn are referenced in the Ballyogan and

Environs LAP. The statement also provides a robust justification for the proposed building heights having regard to SPPR 3 of the Urban Development and Building Height Guidelines 2018 and the associate criteria. The statement further demonstrates that the proposed density of the development accords with the provisions of the Apartment Guidelines 2018 and the Urban Development and Building Height Guidelines 2018. Both these guidelines were made under section 28 of the 2000 Act and both contain SPPRs which, in circumstances of conflict, apply instead of the relevant provisions of the development plan.

- 3.3 This statement has outlined how the proposal meets all criteria outlined in national planning policy and S.28 Guidelines, particularly the Apartment Guidelines 2018 and the Urban Development and Building Height Guidelines 2018.
- 3.4 Thus, there is ample justification for An Bord Pleanála to decide to permit the proposed development notwithstanding the material contravention of the Development Plan, specifically, Section 8.2.3.3 (iii) Mix of Units and/or Policy UD6 relating to building height. There is also ample justification for An Bord Pleanála to permit the proposed development notwithstanding the material contravention of the Ballyogan and Environs LAP, specifically Policy BELAP RES4.
- 3.5 In the event that the Board concludes that there is a material contravention, but nonetheless proceed to grant permission in accordance with section 9(6) of the 2016 Act, section 10(3) provides that the Board must state the main reasons and considerations for contravening materially the Dun Laoghaire Rathdown County Development Plan 2016- 2022 and / or the Ballyogan and Environs Local Area Plan 2019-2025 and therefore acted contrary to the requirements of s.10(3) of the 2016 Act. Accordingly, the Board is requested to state the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be, in addition to the main reasons and considerations on which the decision is based and to recite those reasons within the Board's Order. In addition, we would respectfully ask the Board to set out its reasons if, and the extent to which, it disagrees with any conclusions reached by the Inspector on the question of material contravention and to recite those reasons within the Board's Order.