

Proposal for an SHD Development at City Block 9 -
ABP Ref. 306158-19

Material Contravention Statement

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Waterfront South Central, Dublin 1

Prepared for:

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Thursday, 28 January 2021

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The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Thursday, 28 January 2021

[By Hand]

Dear Sir / Madam

RE: **WATERFRONT SOUTH CENTRAL (RESIDENTIAL) – MATERIAL CONTRAVENTION STATEMENT**

1.0 INTRODUCTION

1.1 Purpose of Document – Addressing a Potential Material Contravention

Waterside Block 9 Developments Ltd¹ has retained Tom Phillips + Associates² (TPA) and a wider Design Team led by Henry J Lyons Architects³ (HJL) to apply for permission for development at a site of c. 1.1 hectares, located at City Block 9, North Wall Quay, Dublin 1. (See Figure 1.1, below.) (Further details are set out in Section 1.2 below.)

This Report constitutes the “*Material Contravention Statement*” required to support the Subject SHD Planning Application.

In addition, this *Material Contravention Statement* contributes to the response to Item No. 2 in An Bord Pleanála’s *Notice of Pre-Application Consultation Opinion*, dated July 2020⁴.

Item No. 2, referred to above, requires:

“Further consideration and / or justification of the documents as they relate to consistency with the North Lotts and Grand Canal SDZ Planning Scheme to include compliance with fixed parameters in relation to use mix; block layout and building lines, streets, open spaces, active frontages and building height.

Where the applicant considers that the proposed strategic housing development would materially contravene the relevant development plan, other than in relation to the zoning of the land, a statement should be included with the application indicating the objective(s) concerned and why permission should, nonetheless, be granted for the proposed development, having regards to the criteria in section 37(2)(b) of the Planning and

Development Act 2000. Notices published pursuant to Section 8(1)(a) of the Act of 2016 and Article 292 (a) of the Regulations of 2017, shall refer to any such statement in the prescribed format.”

As such, this document addresses the issues of:

- Building Height;
- Use Mix;
- Block Layout and Building Lines;
- Streets and Open Spaces; and
- Active Frontages.



Figure 1.1: Aerial photo showing the indicative boundary of the Subject Site outlined in red, with the balance of the City Block 9 outlined in blue. Source: Bing. Cropped and annotated by TPA, January 2021.

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⁴ Please note that while this document was received on 23 July 2020, the document itself is signed ‘July 2020’.

This document also addresses the proposed development, and its potential material contravention of the *North Lotts and Grand Canal Dock Planning Scheme, 2014*, the primary statutory planning policy document relating to the Subject Site.

1.2 Outline of the Development Proposed – Residential Development at City Block 9

Set out below is a synopsis of the proposal based on the statutory notices:

The subject site is principally bounded by: Mayor Street Upper to the north; North Wall Quay to the south; North Wall Avenue to the east; and the residual City Block 9 lands of 0.85 ha to the west.

The scheme, totalling 125,388 sq m, provides 22,499 sq m at basement levels, with 102,889 sq m from ground level upwards. The development will consist of the:

1. Construction of 1,005 No. residential units (with balconies and winter gardens on all elevations) arranged in 3 No. blocks ranging in height from 8 No. storeys to 45 No. storeys over a triple-level basement (including mezzanine plant level), the former comprising: Block A (8-14 No. storeys (including roof level terrace and extended access core); with an apartment mix of: 116 No. 1-bed; and 92 No. 2-bed; with landscaped terraces at Level 1 (south east elevation), Level 8 (south west elevation), Level 11 (south west elevation) and Level 14 (roof level)); Block B (8-41 No. storeys (including roof level terrace and extended access core); with an apartment mix of: 172 No. 1-bed; and 247 No. 2-bed; with landscaped terraces at Level 5 (south west elevation), Level 8 (north west elevation and south west elevation), Level 11 (north elevation), Level 12 (west elevation), Level 13 (east elevation), Level 14 (east elevation), and at Level 41 (roof level)); and Block C (11-45 No. storeys (including roof level terrace and extended access core); with an apartment mix of: 207 No. 1-bed; 168 No. 2-bed; and 3 No. 3-bed units; with landscaped terraces at Level 11 (north elevation), Level 24 (south, west and east elevation), Level 32 (south, west and east elevation), and Level 45 (roof level), incorporating a public viewing deck at Levels 44 and 45).
2. Provision of ancillary residential amenities and support facilities including: a residential study area (321 sq m), a gym/spa reception (52 sq m), a residents' games room (91 sq m), a residents' common room (110 sq m), a residents-only social space (193 sq m), a management office (96 sq m), a security office (50 sq m), concierge spaces (GFA of 369 sq m) all located at ground floor level; a residents' games room (122 sq m) located at Level 1 of Block B; a residents' common room (86 sq m) located at Level 14 of Block B; a residents' wellness club and common room (408 sq m) located at Level 24 of Block C;
3. Construction of a triple level basement, comprising two levels of basement and a mezzanine plant level (total basement area 22,499 sq m), accommodating: waste storage areas (659 sq

m), plant rooms (4,228 sq m), maintenance / management offices (GFA of 92 sq m), residents' courier / parcel rooms (GFA of 210 sq m), residents' laundry rooms (GFA of 138 sq m), ancillary residential storage (GFA of 291 sq m), residents' WCs (65 sq m), a residents' gym / spa (1,529 sq m) and ancillary gym storage room (100 sq m), residents' screening rooms (240 sq m), a residents' indoor plant cultivation room (356 sq m), 176 No. car parking spaces, 10 No. motorcycle parking spaces and 1,693 No. bicycle parking spaces, with vehicular access provided by ramp from North Wall Avenue.

4. Provision of 4,307 sq m of "other uses" as defined by the *Planning and Development (Housing) and Residential Tenancies Act 2016*, comprising: a childcare facility (450 sq m), a restaurant (110 sq m), an indoor Farmers' Market/foodhall (299 sq m), and 3 No. café units (110 sq m, 167 sq m and 261 sq m, respectively), all located at ground floor level; a restaurant (609 sq m) located at Level 32 of Block C; office use (1,894 sq m) from Levels 41 to 43 inclusive at Block C; and a public bar / function room (407 sq m) located at Level 44 of Block C.
5. Provision of 84 No. surface-level bicycle parking spaces, a pocket park, an external market area, a winter garden/seating area, and new pedestrian lanes from North Wall Quay, North Wall Avenue and Mayor Street Upper to the centre of the site.
6. All enabling and site development works, landscaping (including living walls), lighting, services and connections, waste management, interim site hoarding, and all other ancillary works above and below ground including the use of existing secant piling permitted under Reg. Ref. DSDZ3779/17 and DSDZ3780/17 (as amended by DSDZ3042/19).

[Public realm works (inclusive of parking and loading bays) external to the planning application site boundary will be subject to agreement with Dublin City Council.]

1.3 This Document addresses Potential Material Contravention Issues

1.3.1 North Lotts and Grand Canal Dock Planning Scheme, 2014 – City Block 9

This document seeks to address the issues of potential material contraventions of the North Lotts & Grand Canal Dock Planning Scheme 2014, as required under SHD legislation.

The North Lotts & Grand Canal Dock Planning Scheme, 2014 stipulates the following at City Block 9:

- **Building Heights:** “Building heights to range from 5-storey commercial (6-storey residential) to 8-storey commercial (10-storey residential) to allow for residential amenity and appropriate transition in scale, as well as sufficient enclosure onto main streets, and appropriate scale fronting quays.”

The proposed development would contravene the provisions of the *Planning Scheme* with regards to building heights at CB9, as taller elements (extending to a maximum of 46-storeys) are proposed as part of the Waterfront South Central SHD proposal.

In our opinion, the existing height limitation of the *Planning Scheme* - adopted in May 2014 - is not in accordance with strategic planning policy at National level, particularly with the *National Planning Framework, Project Ireland 2040* (2018) (NPF) and of the *s.28 Urban Development and Building Height Guidelines* (December 2018).

As demonstrated in the accompanying *Statement of Consistency*, dated Thursday, 28 January 2021 and prepared by Tom Phillips + Associates, the proposed development, is in our town planning opinion, compliant with both the NPF and the *Urban Development and Building Height Guidelines*.

In December 2018, the Minister issued the *Urban Development and Building Height Guidelines for Planning Authorities* under section 28 of the *Planning and Development Act 2000* (as amended).

The *Guidelines* set out planning criteria for considering increased building heights and include SPPR No. 3, Part B of which required a review of established SDZ *Planning Schemes* in relation to building heights.

Dublin City Council sought to amend the 2014 *Planning Scheme* and those amendments are currently with An Bord Pleanála (ABP Ref. PL29N304604.)

- **Use Mix:** “For City Block 9, it is **an objective** to secure the 50:50 residential: commercial use mix.”

[Our emphasis.]

The stated objective of the *Planning Scheme* is to secure a 50:50 residential / commercial use mix within City Block 9.

The *Planning Scheme* specifies that land mix ratios are to be calculated using site areas.

Section 4.13.2 of the *Planning Scheme* notes that:

“[T]he Docklands Masterplan 1997 had a key objective that 60% of the [overall Docklands] **site area** of new development should be residential and 40% commercial.

The 60 Residential:40 Commercial mix has continued as policy and practice [...]”

[Our emphasis.]

It is noted within the *Planning Scheme* that neighbourhood retail and community facilities will be considered ‘Residential’ for the purposes of the ratio.

This mix will broadly be achieved at City Block 9 through the provision of a commercial development on the western portion (c. 0.85 ha, excluding the common pocket park of 0.071 ha), and an SHD (primarily) residential development on the eastern portion (c. 1.029 ha, excluding the common pocket of 0.071 ha) of the site.

Thus, a site area ratio of 1.0:0.84 or 50:41.5 (residential / commercial) is achieved.

Section 4.13.4 of the *Planning Scheme* notes that:

“Variations on the 50:50 ratio and the ratios set out in the City Block Objectives [...] may be considered, subject to a minimum of 30% residential or 30% commercial within each City Block” [...]

As such, we contend that the *Planning Scheme* allows for a reasonable amount of flexibility in this parameter, and that both commercial and residential use elements proposed at City Block 9 exceed the 30% minimum indicated in the *Planning Scheme*.

With regards to the floorspace provided through the proposals, the residential / commercial ratio achieved is c. 2.4:1.

The spatial distribution of the required ratio of commercial to residential uses across the City Block achieves a co-ordinated and rationalised pattern of land use, and a mono-use environment is avoided.

The provision of retail and other socio-cultural amenities (including, *inter alia*, an art gallery and exhibition space, a childcare facility, restaurants, cafes, and landscaped public open space) at ground floor level throughout the City Block provides the rational impetus

for a vibrant and seamless interplay between the two main uses on the site.

The location of the proposed public open space, within the City Block itself, and with sight lines provided through to the quays and Mayor Street, respectively, will invite the public into the City Block, further establishing the area as a central mixed-use urban quarter of excellence within the North Lotts, the Docklands and, more generally, Dublin City.

It is expected that the provision of an art gallery and exhibition space in the vicinity of the proposed bridge crossing between Castleforbes Road and Sir John Rogerson's Quay will encourage pedestrian movement through the City Block from the LUAS stop on Mayor Street to the Liffey at North Wall Quay, through the extension of the cultural and amenity uses that are currently proposed internally.

➤ Block Layout and Building Lines:

The proposed development adheres to the fixed (broadly speaking, the outward-facing elements) and the flexible (inward-facing) building lines set out in Section 5.5.9 of the *Planning Scheme*. (See Figure 1.2, below.)

Further detail on that consistency is provided in Section 5.2 of the *Statement of Consistency*, prepared by Tom Phillips + Associates, that accompanies this Application. See also Section X.X of HJL's *SHD Design Statement*, dated December 2020.



Figure 1.2: Indicative drawings showing the general adherence of the proposed design to that prescribed by the Planning Scheme. Source: (a) Page 27, *Design Statement – Waterfront South Central – SHD Proposal*, prepared by HJL and dated January 2021. (b) Figure 35, *North Lotts and Grand Canal Dock Planning Scheme*. Cropped and annotated by TPA, January 2021.

➤ Streets and Open Spaces:

- “New central civic space with SUDS features.”
- “New north-south and east-west connections within block.”
- “New north-south street between City Blocks 9 & 10.”
- “View lines through City Block to include central civic space.”

The proposed development provides each of the public realm objectives specified in Section 5.5.9.b.3 of the *Planning Scheme*. (See Figure 1.4.)



Figure 1.3: Extract of Dwg. No. C0096 L1000 (Rev. 3), ‘Landscape Illustrative Masterplan – SHD’, prepared by Cameo & Partners, showing the Proposed Site Layout Plan for City Block 9. Source: Cameo & Partners, January 2021. Cropped by TPA, January 2021.

- **Active Frontages:** “Ground floor active uses onto Mayor Street and North Wall Quay with a particular emphasis on quality active uses including retail, cultural and amenity uses in the vicinity of the proposed bridge crossing between Castleforbes Road and Sir John Rogerson’s Quay.”

The proposed development is characterised by a particularly active ground floor level. Its uses include, *inter alia*: a restaurant; a childcare facility; a food hall; café units; and live/work suites.

As part of a contemporaneous SDZ commercial scheme Application, a sculptural feature is proposed for the junction of Castleforbes Road and North Wall Quay, opposite The Mayson Hotel. This will complement the proposed gallery space in Block 2 & 3 of that proposal, shown here for explanatory purposes only.

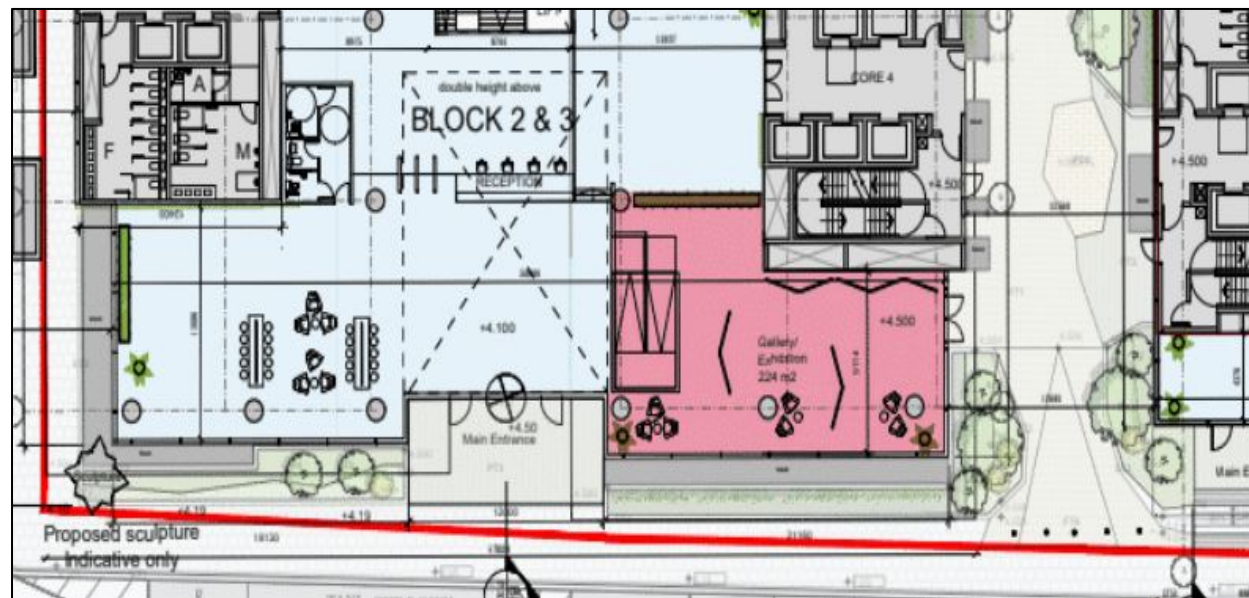


Figure 1.4: Extract of Dwg. No. Z1010 (Rev. 6), ‘Ground Floor Plan’, prepared by HJL, showing location of gallery / exhibition space at North Wall Quay. Cropped by TPA, January 2021. This drawing is included as Appendix D in the Waterfront South Central – SHD Proposal – Assorted Appendices, prepared by TPA and dated Thursday, 28 January 2021.

1.4.2 The Legislative Context

The *Planning and Development (Housing) and Residential Tenancies Act, 2016* (as amended) states the means by which An Bord Pleanála may grant permission for a development that materially contravenes a Development Plan or Local Area Plan, other than in relation to the zoning of land. It is stated:

“(9)(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 a 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 a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the 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”.

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

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

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”

2.0 SITE LOCATION AND CONTEXT

2.1 Site Location – City Block 9 – Last Riverfront Site in Docklands

The Subject Sites, subject to two distinct, standalone, but complementary, Planning Applications lodged to DCC and ABP, respectively, are located at City Block 9, North Wall Quay, Dublin 1 in the North Lotts. The lands subject to these two Planning Applications comprise the entirety of “City Block 9”, as identified in the SDZ *Planning Scheme* for the North Lotts and Grand Canal Dock.

City Block 9 extends to approximately 1.99 ha, and is bounded by North Wall Quay to the south, North Wall Avenue to the east, Mayor Street to the north and Castleforbes Road to the west. (See Figure 2.1.) That 1.99 ha includes a sliver of land on North Wall Avenue (0.03 ha) – the City Block is 1.96 ha, approximately.



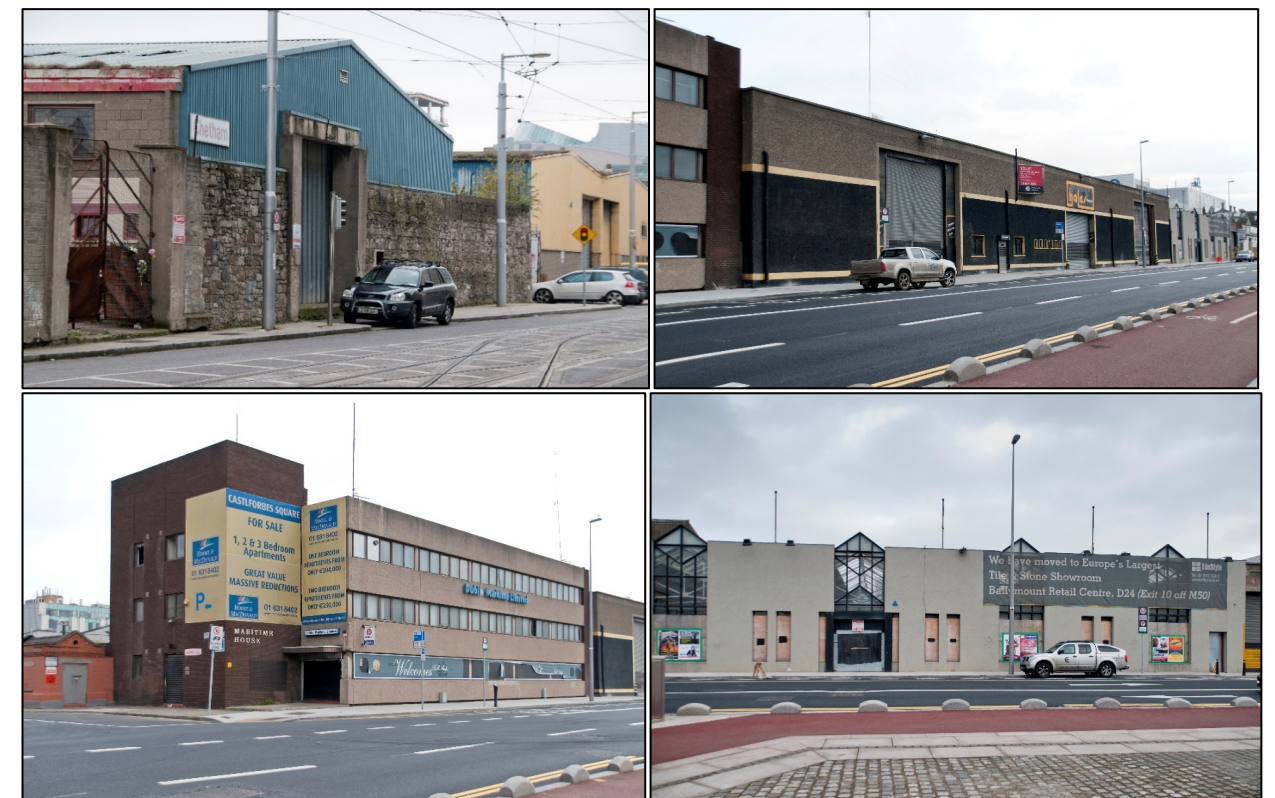
Figure 2.1: Aerial photo showing the context of the Subject Site. Source: Bing. Cropped and annotated by TPA, January 2021.

The site was previously used as warehousing / industrial use. These warehouses have since been demolished, as permitted by Reg. Ref. DSDZ2242/16 (see Figures 2.2-2.6), and the site is currently vacant.

The area is changing rapidly, with a number of developments permitted nearby, and others in progress.



Figure 2.2: Aerial view showing the structure previously located at City Block 9. Source: North Lotts and Grand Canal SDZ *Planning Scheme* 2014, pg. 195. Cropped by TPA, January, 2021.



Figures 2.3-2.6: Photographs showing the structures previously located at City Block 9. Source: TPA, March 2013. Collated by TPA, January 2021.

The two detached single storey electricity substations, built c. 1900, external to the site on Castleforbes Road, are still in situ (see Figures 2.7 and 2.8).



Figure 2.7: Detached single storey electricity substations external to the site on Castleforbes Road.
(Source: TPA, May 2020.)



Figure 2.8: Detached single storey electricity substations external to the site on Castleforbes Road.
(Source: TPA, May 2020.)

The architectural and historical significance of these structures, and the potential impact of the proposed development of City Block 9 on their heritage value is the subject of an architectural conservation report, dated October 2020 and prepared by Slattery Conservation Architects.

That report, the *Report on the Architectural / Historic Significance of the Former Electrical Substation and Pump House, Castleforbes Road, Dublin 1*, accompanies the Planning Application made to DCC in respect of the proposed commercial development, and is included as Appendix A in the *Waterfront South Central – SHD Proposal – Assorted Appendices*, prepared by TPA and dated Thursday, 28 January 2021.

The retention of the two Victorian buildings in the local townscape will help to establish a tangible link to the locality's industrial heritage, and will contribute to the enduring character of the Dublin Docklands.

The alignment of the Luas (Red Line) lies to the north of the site along Mayor Street Upper. The north-eastern edge of the site is located within 25m of 'The Point' Luas stop (see Figure 2.9). The site is also served by the Dublin Bus Services Nos. 33D, 33X, 41X, 53A, 142 and 151.



Figure 2.9: The view from Mayor Street Upper looking eastwards to the Exo Building, under construction, with the LUAS stop in the middle ground. (Source: TPA, May 2020.)

2.2 North Lotts & Grand Canal Dock SDZ Planning Scheme, 2014

The Subject Site (City Block 9) is part of the North Lotts and Grand Canal Dock Strategic Development Zone (SDZ) – one of Ireland’s 11 No. SDZs. (See Figure 2.10.)

The *North Lotts and Grand Canal Dock Planning Scheme 2014* (the ‘*Planning Scheme*’) is the statutory plan that guides future development of the area.

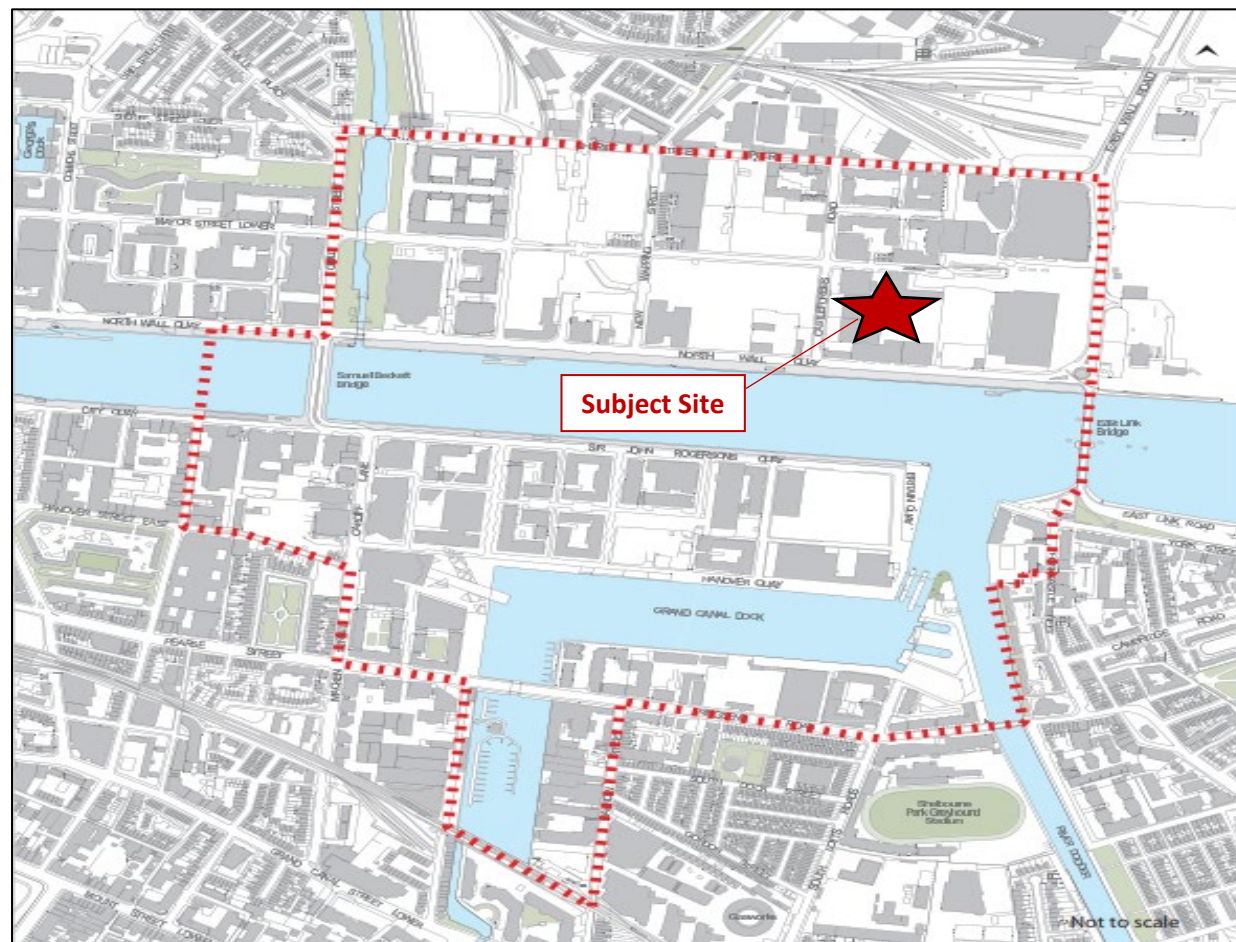


Figure 2.10: Map showing the extent of the Docklands SDZ area, with the location of the Subject Site shown. Source: *North Lotts and Grand Canal Dock Planning Scheme, 2014, Figure 1*. Cropped and annotated by TPA, January 2021.

Chapter 3 of the *Planning Scheme* illustrates a ‘Vision’ for the SDZ area, as well as related ‘High-Level Themes’. Additionally, the *Planning Scheme* stipulates certain acceptable parameters of development, including for elements such as:

- Quantum of development;
- Overall use ratio;

- Location, quantum and quality of the public realm;
- Block building line;
- Height;
- Density and plot ratio; and
- Heritage and Protected Structures.

As such, the *Planning Scheme* has guided the design process.

The following Sections will examine the *Planning Scheme* in more detail, with particular regard to the Subject Proposal and the overall projected development of City Block 9.

3.0 STATEMENT IN RELATION TO MATERIAL CONTRAVENTION OF DEVELOPMENT PLAN

3.1 The Site Comprises City Block 9 as per the Planning Scheme

The Subject Site forms the City Block 9 in accordance with the terminology used in the *North Lotts & Grand Canal Dock Planning Scheme 2014* to define each of the Blocks that form the strategy for the redevelopment of the SDZ area.

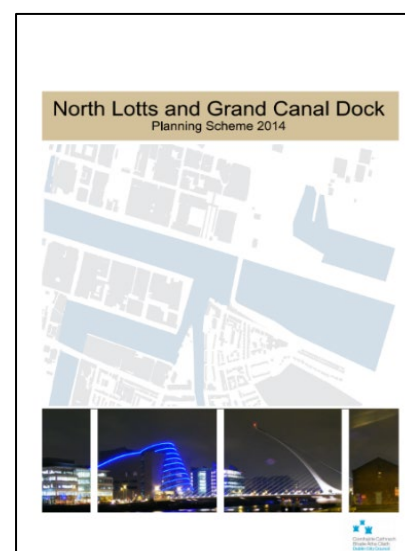


Figure 3.1: Extract of the diagram included in Page 194 of the Planning Scheme identifying City Block 9. (Source: *North Lotts and Grand Canal Dock Planning Scheme, 2014*. Cropped by TPA, December 2020)

3.2 The Proposal is Largely Compliant with the 2014 Planning Scheme

As demonstrated in the accompanying *Statement of Compliance with the North Lotts and Grand Canal Dock Planning Scheme 2014 – Proposal for an SHD Development at City Block 9* prepared by Tom Phillips + Associates, dated Thursday, 28 January 2021, the proposed development generally follows the provisions of the *Planning Scheme*.

Overall, the design of the proposed development responds to the CB9 layout set out in the *Planning Scheme*, as shown in Figure 3.2. The subject scheme will deliver the block structure, including the pedestrian routes traversing across the block in north-south and east-west directions and the pocket park to the centre of the Block.



See also *Design Statement – Waterfront South Central – SHD Application to An Bord Pleanála* prepared by Henry J Lyons, dated Friday, 15 January 2021.



Figure 3.2: Indicative drawings showing the general adherence of the proposed design to that prescribed by the Planning Scheme. Source: (a) Page 27, *Design Statement – Waterfront South Central – SHD Proposal*, prepared by HJL and dated January 2021. (b) Figure 35, *North Lotts and Grand Canal Dock Planning Scheme*. Cropped and annotated by TPA, January 2021.

3.3 The Proposed Development Breaches the Building Heights Established in the Planning Scheme

The *North Lotts & Grand Canal Dock Planning Scheme, 2014* establishes the following in terms of Building Height at City Block 9:

- “Building heights to range from 5-storey commercial (6-storey residential) to 8-storey commercial (10-storey residential) to allow for residential amenity and appropriate transition in scale, as well as sufficient enclosure onto main streets, and appropriate scale fronting quays.”

The Subject Proposal does not comply with the Planning Scheme with regards to building heights as it is submitted that taller buildings than those envisaged in the 2014 Planning Scheme would be more appropriate for the redevelopment of CB9.

Section 5 (6) of the *Planning and Development (Housing) and Residential Tenancies Act 2016* states that:

“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 statement provided for the purposes of subsection (5)(b)(i)

shall indicate why, in the prospective applicant's opinion, permission should nonetheless be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000."

The zoning on the land under the *Development Plan* and the *Planning Scheme* permits the proposed residential, retail, non-retail services, childcare and office uses.

However, in terms of height the proposed Scheme materially contravenes the *Planning Scheme*. Therefore, we submit that the Board is not precluded in principle from granting permission for the proposed development.

While it is acknowledged that there is a material contravention of the heights currently permitted at the subject site, the Applicant and their Design Team have worked to ensure that the height of the proposed development is not physically or visually overbearing at a range of scales.

In particular, please refer to Volume 2 of the EIAR submitted as part of this SHD Planning Application, the *Heritage, Townscape, Landscape and Visual Impact Assessment – Waterfront South Central – Proposed SHD Scheme* prepared by City Designer, dated January 2021, and also HJL's *Design Statement*, dated Friday, 15 January 2021, which provide justification in that regard.

According to Section 37(2)(b)(iii) and (iv) of the *Planning and Development Act 2000* (as amended) the Board may 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, where it considers that:

- iii. *permission for the proposed development should be granted having regard to regional planning guidelines 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."*

3.3.1 The Proposal is in Compliance with National Planning Policy

The *National Planning Framework (Ireland 2040 – Our Plan)* (NPF) is the Government's plan to cater for the extra one million people that will be living in Ireland, the additional two thirds of a million people working in Ireland and the half a million extra homes needed in Ireland by 2040.

As a strategic development framework, the NPF sets the long-term context for Ireland's physical development and associated progress in economic, social and environmental terms and in an island, European and global context.

Under the heading of 'Compact Growth', the NPF is:

"Targeting a greater proportion (40%) of future housing development to happen within and close to existing built-up areas. Making better use of under-utilised land, including 'infill' and 'brownfield' and publicly owned sites together with higher housing and jobs densities, better serviced by existing facilities and public transport".

[Our emphasis.]

A recurring theme in the NPF is the requirement to ensure that the future growth of Dublin occurs within its Metropolitan limits. The NPF estimates that Dublin City and suburbs will grow by c. 264,000 people in the period to 2040.

Ireland 2040 targets a significant proportion of future urban development on infill/brownfield development sites within the built envelope of existing urban areas. This is applicable to all scales of settlement, from the largest city, to the smallest village.

The NPF further notes in National Policy Objective 11:

"There will be a presumption in favour of development that encourages more people, jobs and activity within existing urban areas, subject to development meeting appropriate planning standards and achieving targeted growth".

[Our emphasis.]

In particular, National Policy Objective 13 identifies building height as an important measure for urban areas to deliver and achieve compact growth as required:

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

[Our emphasis.]

The NPF states that the key test is meeting appropriate planning standards. These should be performance-based to ensure well-designed, high quality outcomes, rather than absolute in all cases.

Although sometimes necessary to safeguard against poor quality design, the NPF notes that planning standards should be flexibly applied in response to well-designed development proposals that can achieve urban infill and brownfield development objectives in settlements of all sizes.

The *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, March 2018* seek to promote high density apartment development on residentially-zoned land in appropriate locations in line with the above referenced NPF overarching policies in relation to encouraging residential development within existing urban settlements.

Section 2.23 of the *Guidelines* note that publication of the *National Planning Framework* (NPF) has signalled a move away from rigidly-applied, blanket planning standards in relation to building design, in favour of performance-based standards to ensure well-designed high-quality outcomes. In particular, general blanket restrictions on building height or building separation distance that may be specified in Development Plans, should be replaced by performance criteria, appropriate to location.

Section 3.2 of the *Guidelines* sets out a wide range of development criteria which the proposed development should satisfy. These criteria are spread across a range of physical scales from the scale of the city/town; district/neighbourhood/street; and site/building, The *Statement of Consistency* provided by Tom Phillips + Associates which accompanies this submission comprehensively discusses the way in which the proposal complies with the identified performance criteria.

In addition, under the *Review of Delivery Costs and Viability for Affordable Residential Developments*, published by the Department in April 2018 under the *Rebuilding Ireland Action Plan For Housing and Homelessness*, it is stated in Section 6.6.3 that:

*“...to avoid the tendency towards urban sprawl, while achieving a relatively economic delivery cost objective, there is a strong case that base heights in Dublin and regional cities of at least 6 storeys should be set in locations, which can accommodate this volume. **Furthermore, appropriate areas should be targeted for 7 to 10 storeys (30m height level) and above as part of larger strategic landmark development sites, while allowing for a graded approach in density of delivery across the site.**”*

[Our emphasis.]

City Block 9 is both part of the Strategic Development Zone (SDZ) (designated by Government) and a ‘Strategic Development and Regeneration Area’ under *Dublin City Development Plan 2016-2022*.

Importantly, the *Urban Development and Building Heights Guidelines for Planning Authorities*, December 2018 outline wider and strategic policy considerations and a more performance-driven approach for how Local Authorities should address height in relevant statutory plans in accordance with securing the outcomes for the NPF.

Section 1.4 of the *Guidelines* recognises that:

*“...in recent years, local authorities, through their statutory development and local area plan processes, have begun to set generic maximum height limits across their functional areas. Frequently, such limits have resulted from local-level concerns, like maintaining the character of an existing built-up area, for example. **However, such limits, if inflexibly or unreasonably applied, can undermine wider national policy objectives to provide more compact forms of urban development as outlined in the National Planning Framework and instead continue an unsustainable pattern of development whereby many of our cities and towns continue to grow outwards rather than consolidating and strengthening the existing built up area.** Such blanket limitations can also hinder innovation in urban design and architecture leading to poor planning outcomes.”*

[Our emphasis.]

Section 2.3 of the *Guidelines* outline that:

*“While achieving higher density does not automatically and constantly imply taller buildings alone, **increased building height is a significant component in making optimal use of the capacity of sites in urban locations where transport, employment, services or retail development can achieve a requisite level of intensity for sustainability.** Accordingly, the development plan must include the positive disposition towards appropriate assessment criteria that will enable proper consideration of development proposals for increased building height linked to the achievement of a greater density of development”.*

[Our emphasis.]

Accordingly, and as also demonstrated in the *Statement of Consistency – Proposal for an SHD Development at City Block 9* prepared by Tom Phillips + Associates, dated Thursday, 28 January 2021, the proposed Scheme is fully aligned with National Policy.

3.3.2 A Significant Number of Documents that Framed the 2014 North Lotts & Grand Canal Dock Planning Scheme are Out-of-Date

An Bord Pleanála approved the making of the *North Lotts and Grand Canal Dock SDZ Planning Scheme, 2014* on 16th May 2014. The SDZ Area comprises some 66 ha of the overall 520 ha of the Dublin Docklands illustrated in the *Dublin Docklands Masterplan 2008*.

The *Planning Scheme* was prepared in response to an environment of an acute economic downturn. It is under that economic context that the Planning scheme was prepared and geared “to unlock the current set of difficulties and provide a blueprint for the years ahead⁵.”

Consequently, the 2014 *Planning Scheme* can be construed to be a tool to facilitate and promote the regeneration of the Docklands in a situation of very limited resources. The vast majority of the policy and design decisions that were ultimately crystallised in the *Planning Scheme* were made in the midst of the Recession.

The *Planning Scheme* has, in these six years, been a very successful document insofar as it has enabled the Docklands’ evolution into a key city location, currently accommodating a variety of uses including, but not limited to: residential, office, retail or cultural/entertainment.

Nonetheless, the environment has changed. Ireland’s economic performance has significantly improved in the last few years.

However, the *North Lotts and Grand Canal Dock SDZ Planning Scheme* has not been materially updated since in order to be able to respond adequately to the current climate and support the city’s response to the challenges that Dublin, and Ireland, is facing ahead (including Brexit, the EU’s economic deceleration or the ongoing impacts of the measures taken to counteract the effects of Covid19).

In our opinion, the proposed amendments currently before the Board for Decision (Ref. PL29N.3046040) are relatively minor. They neither reflect current economic circumstances, nor, more importantly reflect current national planning policy aspirations.

Table 1, below, provides an overview of the current situation of the policy context that framed the *North Lotts and Grand Canal Dock SDZ Planning Scheme, 2014*.

That table illustrates that most of the policy documents that the that the *North Lotts and Grand Canal Dock SDZ Planning Scheme, 2014* was based on have either been superseded by new policy or, when they have not been updated, they are more than 6 years old.

This raises questions as to whether the *Planning Scheme* can adequately capture the current circumstances and respond to the City and the Country’s mid and long-term needs in terms of the further development of the North Lotts and Grand Canal Dock SDZ?

Policy Document	Has this been superseded?	Current Policy Document
<i>The National Spatial Strategy 2002 - 2020</i>	Y	<i>Project Ireland 2040 National Planning Framework</i>
<i>The National Development Plan 2007 - 2013</i>	Y	<i>The National Development Plan 2018 - 2027</i>
<i>The Regional Planning Guidelines for the Greater Dublin Area 2010 - 2022</i>	N ⁶	See footnote 2 below.
<i>Transport 21 and Smarter Travel – A Sustainable Transport Future 2009 - 2010</i>	Y	<i>Greater Dublin Area Transport Strategy 2016-2035</i>
<i>Dublin City Development Plan 2011 - 2017</i>	Y	<i>Dublin City Development Plan 2016-2022</i>
<i>Dublin Docklands Area 2008-2013 Master Plan</i>	N	Whilst not replaced by a new policy document, the <i>Masterplan</i> expired some 6 years ago
<i>Dublin Port Masterplan 2012-2040</i>	Y	<i>Dublin Port Masterplan 2040 – Reviewed 2018</i>
<i>The River Regeneration Strategy, 2001</i>	N	Whilst not replaced by a new policy document, the <i>Strategy</i> was published some 19 years ago
<i>The Campshire Vision, 2007</i>	N	Whilst not replaced by a new policy document, the <i>Vision</i> was published some 13 years ago
<i>The City Canals Plan, 2010</i>	N	Whilst not replaced by a new policy document, the <i>Plan</i> was published some 10 years ago
<i>The Cruise Traffic & Urban Regeneration of City-Port Heritage - Local Action Plan for Dublin, 2011</i>	N	Whilst not replaced by a new policy document, the <i>Local Action Plan</i> was published some 9 years ago

Table 3.1: Assessment of the relevance of the planning policy that framed the preparation of the North Lotts and Grand Canal Dock Planning Scheme, 2014. (Source: TPA, 2020.)

⁵ Chapter 1 of the *North Lotts and Grand Canal Dock SDZ Planning Scheme, 2014*.

⁶ Whilst the *Regional Planning Guidelines for the GDA 2010-2022* have not been superseded, we note that the Eastern and Midland Regional Assembly adopted the *Regional Spatial and Economic Strategy* in June 2019.

Furthermore, certain more recently planning policy and guidance documents issued in recent years by the Department of Housing, Planning and Local Government have not been incorporated into the current *2014 Planning Scheme*, namely the:

- *Sustainable Urban Housing: Design Standards for New Apartments, (March 2018); and*
- *Urban Development and Building Heights Guidelines for Planning Authorities (December 2018).*

As previously noted, the proposed amendments to the *Planning Scheme*, in our opinion, also fail to deliver the principles set in the above national policy documents.

Accordingly, we ask the Board to determine the merits of the proposed development on its own instead of the out-of-date blanket and outdated building height criteria established in the *2014 Planning Scheme* or in DCC's proposed amendments to same.

4.0 CONCLUSION

4.1 Why, in the Applicant's Opinion, Permission Should Be Granted, Notwithstanding a Material Contravention of the *Planning Scheme*

In summary, we submit that permission should be granted for the proposed development despite exceeding the building height provisions of the *North Lotts & Grand Canal Dock Planning Scheme, 2014*.

It is our opinion that permission should be granted for the proposed development on the basis of: current national planning policy; the pattern of development in the area; and previous Board's positive decisions in relation to SHD Applications on the *Planning Scheme* area.

We respectfully submit that permission for the proposed development should be granted having regard *inter alia* to the following:

1. Location.
2. Subject lands can help solve the housing crisis.
3. National Policy emphasis on high density on central locations.
4. National Policy specifically seeks to avoid blanket height restrictions.
5. The *2014 Planning Scheme* is out of date and does not adequately respond to current national and international circumstances.
6. The Pattern of Development in the Area.

In consideration of the fact that the subject site meets many, if not all, criteria set out by National Policy in terms of suitability for a high-density development incorporating taller buildings, it is submitted that there is ample justification for An Bord Pleanála to permit a material contravention of the *Development Plan* and *Local Area Plan* in terms of allowable heights having regard to Section 37(2)(b)(ii) and Section 37(2)(b)(iii) of the *Planning and Development Act, 2000 (as amended)*.

Signed:



Tom Phillips
Managing Director
Tom Phillips + Associate