

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

*In respect of*

**Proposed Residential Development at Spencer Dock, Block  
2, Dublin 1**

*Prepared by*

**John Spain Associates**

*On behalf of*

**Spencer Place Development Company Ltd.**

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## 1.0 INTRODUCTION

- 1.1. This statement has been prepared to set out the justification on building height for the proposed residential development at Spencer Dock, Block 2, Dublin 1. This statement provides for a justification on the potential material contravention of the Dublin City Development Plan 2016-2022 in terms of building height having regard to the height restriction set out in the North Lotts and Grand Canal Dock Planning Scheme.
- 1.2. It is noted that it is ultimately the decision of An Bord Pleanála as to whether the proposed development represents a material contravention of the Dublin City Development Plan 2016-2022 and if minded to do so, grant permission for the proposed development by reference to the provisions of Section 37(2)(b) of the Planning and Development Act 2000 (as amended).
- 1.3. The Dublin City Development Plan identifies a number of locations in the city capable of facilitating high rise buildings of 50+ metres. The Docklands area is identified as one of these locations. The Docklands area is also part of the North Lotts and Grand Canal Dock SDZ Planning Scheme area which is also considered to for part of the Development Plan.
- 1.4. Section 169 (9) of the Planning and Development Act 2000 (as amended) states that:

*“A planning scheme made under this section shall be deemed to form part of any development plan in force in the area of the scheme until the scheme is revoked, and any contrary provisions of the development plan shall be superseded”.*
- 1.5. In this regard it is considered appropriate to submit a material contravention statement of the Dublin City Development Plan in relation to building heights as set out in the North Lotts and Grand Canal Dock Planning Scheme.
- 1.6. In addition, Section 9 of the Planning and Development (Housing) and Residential Tenancies Act, 2016, confers power on An Bord Pleanála to grant permission for a development which is considered to materially contravene a Development Plan or Local Area Plan, other than in relation to the zoning of land, is as follows:

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

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

*(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if Section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development’.*
- 1.7. The Planning Scheme sets out specific limits in terms of building heights. As previously mentioned, An Bord Pleanála are not bound by the Planning Scheme in making their decision and As such, having regard to the Planning Scheme forming part of the Development Plan, it is considered that a material contravention statement on the Dublin City Development Plan should be prepared in this regard.

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1.8. Notwithstanding the purpose of this Material Contravention Statement, it should be noted that under Section 170 (1) and (2) of the Planning and Development Act 2000, as amended, An Bord Pleanála are not bound by the same provisions as the Planning Authority under Section 34 for a development within an SDZ area as this is not an application made under Section 34 of the Planning and Development Act 2000, as amended and it is an application made under Section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016 and An Bord Pleanála therefore can grant permission for the proposed development. A legal opinion prepared by Eamon Galligan SC has also been prepared and is submitted as part of this application in this regard.

1.9. In addition, having regard to Section 37(2)(b) of the Planning and Development Act 2000 the board shall grant permitted having regard to regional guidelines for the area, Guidelines under Section 28 and Policy directives under Section 29.

1.10. Section 37(2)(b) states:

*“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— the proposed development is of strategic or national importance, 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 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**

*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”.*

1.11. The Urban Development and Building Height Guidelines were adopted on 7th December 2018 under Section 28 of the Planning and Development Act 2000. The Guidelines set out 4 no. specific planning policy requirements (SPPR) objectives for the assessment of building height.

1.12. Section 28 (1) of the Planning and Development Act states that:

*“The Minister may, at any time, issue guidelines to planning authorities regarding any of their functions under this Act and planning authorities shall have regard to those guidelines in the performance of their functions”.*

1.13. It is therefore the duty of the planning authority and the Board to have regard to the Section 28 Ministerial Guidelines in applying their functions under legislation. The guidelines contain a number of SPPRs. Section 28(1)(C) of the 2018 Act states that:

*“Without prejudice to the generality of subsection (1), guidelines under that subsection may contain specific planning policy requirements with which planning authorities,*

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*regional assemblies and the Board shall, in the performance of their functions, comply”.*  
(emphasis added)

- 1.14. In this case, the Section 28 Guidelines specifically promote the increase in building heights in appropriate urban locations and as such the policies set out in the Guidelines should be applied to the SDZ Planning Scheme area in this regard. Section 1.14 of the Guidelines clarifies this position further stating:

*“Accordingly, where SPPRs are stated in this document, they take precedence over any conflicting policy and objectives of development plans, local area plans and strategic development zone planning schemes”.*

- 1.15. It is respectfully requested that An Bord Pleanála have regard to the following justification for increased height above that set out in the development plan on the basis that the policies and objectives stated in the Section 28 Government Guidelines, particularly the *“National Planning Framework 2040”*, *“Guidelines for Planning Authorities on Sustainable Residential development in Urban Areas (2009)”*, the and the *“Urban Development and Building Height Guidelines 2018”* enable increased building height and residential densities on sites adjacent to quality public transport routes and within existing urban areas.

- 1.16. It is considered that based on the policies and objectives stated in the Section 28 Government Guidelines, particularly the National Planning Framework 2040, the Urban Development and Building Height Guidelines 2018, the Apartment Guidelines 2018 and *“Guidelines for Planning Authorities on Sustainable Residential development in Urban Areas (2009)”* that due to the location of the site to the City Centre and to quality public transport routes that the proposed development should be considered by An Bord Pleanála.

## **2.0 JUSTIFICATION FOR BUILDING HEIGHT**

- 2.1. The proposed development seeks to provide for a building height of up to 13 no. storeys as part of this planning application. The Dublin City Development Plan sets a building height of 50 metre plus for the Docklands area with specific height limits subsequently set out in the Planning Scheme with a maximum height of 7 no. storeys residential for the subject site.
- 2.2. Dublin City Council together with the Development Agency have proposed amendments to the North Lotts and Grand Canal Dock SDZ Planning Scheme. In relation to the subject site, the proposed amendments seek to increase the height of Block 2 to 12 no. storeys in part. The proposed height does not address adequately the strategic nature of the subject site and the capability to achieve much greater heights and densities at this location.
- 2.3. The precedent for increased building heights in excess of that set out in the Development Plan has already been established in the immediate vicinity of the site with building height of up to 12 no. storeys already constructed. Therefore, it is considered that the proposed development at 11 no/ 13 no. storeys is in keeping with the wider context of development in the area and is in keeping with urban design principles.
- 2.4. In addition, recent SHD permissions including Reg. Ref. ABP 300492-17 and ABP 304196-19 have achieved heights in excess of that set out in the Development Plan and Planning Scheme. These applications were considered acceptable by the Board having regard to Section 28 guidelines and the overarching national planning policy principles

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which calls for increased heights and densities at appropriate urban locations. The Bord did not consider these applications to materially contravene the development plan.

- 2.5. In this regard it is considered that the principle of increased height as submitted as part of the proposed development is acceptable, and An Bord Pleanála can grant planning permission in this regard. Therefore, the precedent is already set for the Board to grant permission for increased heights above the height limits set out for that relevant areas and as such permission should be granted in this regard.
- 2.6. In the event that the Board considers that the proposed development constitutes a material contravention of the Development Plan by virtue of the height of the proposed development, a justification for such a material contravention is set out below, under the relevant parts of section 37(2)(b) of the 2000 Act.

**(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**

- 2.7. The following section shall demonstrate how the proposed height and quantum of development is justified in the context of recent National Planning Policy and Section 28 Government Guidelines, which seek to increase residential densities on zoned services lands adjacent to public transport corridors. These include:
- Project Ireland: National Planning Framework 2040;
  - Urban Development and Building Heights, Guidelines for Planning Authorities (2018);
- 2.8. It should also be noted that the National Planning Framework and the Urban Development and Building Height Guidelines 2018 promote increased heights and densities in appropriate urban locations well served by quality public transport. The guidelines are intended to set out national planning policy guidelines on building heights in relation to urban areas, as defined by the census, building on the strategic policy framework set out in Project Ireland 2040 and the National Planning Framework.

### **National Planning Framework (NPF) 2040**

- 2.9. The National Planning Framework 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. Compliance with the National Planning Framework is set out in detail in the statement of consistency submitted with this application. A summary of the key points is set out below.
- 2.10. As a strategic development framework, Ireland 2040 sets the long-term context for our country's physical development and associated progress in economic, social and environmental terms and in an island, European and global context.
- 2.11. National investment planning, the sectoral investment and policy frameworks of departments, agencies and the local government process will be guided by these strategic outcomes in relation to the practical implementation of Ireland 2040. The NPF sets out the importance of development within existing urban areas by "*making better use of under-utilised land including 'infill' and 'brownfield' and publicly owned sites*

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*together with higher housing and job densities, better services by existing facilities and public transport”.*

- 2.12. Objective 4 states “*ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well being*”.
- 2.13. Objective 11 of the National Planning Framework states that “*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*”.
- 2.14. The proposed development will provide for high density residential development in an existing urban area adjacent to existing and proposed public transport facilities including the Luas and the proposed Dart Underground. The subject site is therefore strategically located and capable of achieving increased heights and densities in accordance with the NPF.
- 2.15. Objective 13 of the National Planning Framework also states that:
- 2.16. “*In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria enabling alternative solutions that seek to achieve well-designed high quality and safe outcomes in order to achieved targeted growth and that protect the environment*”.
- 2.17. The NPF also states that that “*to avoid urban sprawl and the pressure that it puts on both the environment and infrastructure demands, increased residential densities are required in our urban areas*”. Objective 35 states that it is an objective to:
- “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”.*
- 2.18. 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. The subject site is located within walking distance of the City Centre, in an area of employment, and adjacent to high quality public transport services including the Luas, Rail line and proposed Dart underground station. As such it is respectfully submitted that the proposed building height up to 13 no. storeys is in line with government guidance and emerging trends for sustainable residential developments.

### **Urban Development and Building Height Guidelines 2018**

- 2.19. The Urban Development and Building Height Guidelines (‘Guidelines’) 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 and draft Regional Spatial and Economic Strategy. Compliance with the Urban Development and Building Height Guidelines is set out in detail in the statement of consistency. A summary of the key points are set out below.
- 2.20. The Guidelines in effect seek denser development at public transport nodes. The Guidelines state that it is Government policy to promote increased building height in locations with good public transport services.

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2.21. The Guidelines emphasise the policies of the NPF to greatly increase levels of residential development in urban centres and significantly increase building heights and overall density and to ensure that the transition towards increased heights and densities are not only facilitated but actively sought out and brought forward by the planning process and particularly at Local Authority level and An Bord Pleanála level.

2.22. In relation to redevelopment and enhancement of the city core, the guidelines state that *“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”*.

2.23. The Guidelines also place significant emphasis on promoting development within the existing urban footprint utilising the existing sustainable mobility corridors and networks.

*“In order to optimise the effectiveness of this investment in terms of improved and more sustainable mobility choices and enhanced opportunities and choices in access to housing, jobs, community and social infrastructure, development plans must actively plan for and bring about increased density and height of development within the footprint of our developing sustainable mobility corridors and networks”*.

2.24. The Guidelines further states 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”*.

2.25. The proposed development is located at a strategic location along an existing and proposed Public Transport Corridor including the red line Luas and the proposed Dart Underground. The proposed development therefore represents an opportunity to provide for increased building heights and densities at this location.

2.26. The Guidelines recognise the importance of increasing building height and compact urban development in existing urban areas and promote increased densities and heights. Section 1.4 of the guidelines state:

*“However, in recent years, local authorities, through the statutory development and local area plan process, have begun to set generic maximum height limits across their functional area. 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 for 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”*.

2.27. Section 1.20 and 1.21 of the Guidelines also acknowledge the importance of increased height and densities stating:

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*“A key objective of the NPF is therefore to see that greatly increased levels of residential development in our urban areas 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 process 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 area, 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”.*

- 2.28. The Guidelines set out a number of criteria for the assessment of increased building heights, at the scale of the relevant city / town, at the scale of district / neighbourhood / street and at the scale of site/ building.
- 2.29. The proposed development has been assessed against the development criteria as set out in the Urban Development and Building Height Guidelines. As full assessment of this is set out in the Statement of Consistency submitted with this application.
- 2.30. It is noted that paragraph 2.15 of the guidelines also require planning authorities to review and where appropriate bring forward variations to development plans and local areas plans in addition to planning schemes.
- 2.31. Based on the assessment of the Guidelines in their totality taking account of the development management criteria, the legislative changes in planning policy, the overarching principles of the National Planning Framework and the SPPRs it is concluded that the proposed height is appropriate notwithstanding the policies and objectives of the current Development Plan and subsequently the North Lotts and Grand Canal Dock SDZ Planning Scheme subject to compliance with the assessment criteria and in accordance with the relevant objectives for increased heights and densities in existing urban locations well serviced by public transport services.

### **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)**

- 2.32. The role of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas is to ensure the sustainable delivery of new development throughout the country.
- 2.33. The Guidelines provide guidance on the core principles of urban design when creating places of high quality and distinct identity. The Guidelines recommend that planning authorities should promote high quality design in their policy documents and in their development management process. In this regard, the Guidelines are accompanied by a Design Manual discussed below which demonstrates how design principles can be applied in the design and layout of new residential developments, at a variety of scales of development and in various settings.
- 2.34. These Guidelines support a plan-led approach to development as provided for in the Planning and Development Act 2000. Section 2.1 of the Guidelines note that *‘the scale, location and nature of major new residential development will be determined by the development plan, including both the settlement strategy and the housing strategy’*.
- 2.35. The Guidelines reinforce the need to adopt a sequential approach to the development of land and note in Section 2.3 and *‘the sequential approach as set out in the Departments Development Plan Guidelines (DoEHLG, 2007) specifies that zoning shall*

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*extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, encouraging infill opportunities...’.*

- 2.36. The subject lands are located adjacent to ‘Public Transport Corridors’ in the context of the densities required under the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009). These areas are defined as being located within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station.
- 2.37. The subject site is located within 500m walking distance of a bus stop and the Docklands rail station. The site is also adjacent to the Luas Station at Spencer Dock and the proposed Dark Underground Station at Station Square to the south of the site.
- 2.38. Restricting the height of the development at such a well served location under the Dublin City Development Plan 2016-2022 and the North Lotts and Grand Canal Dock SDZ Planning Scheme is a direct contravention of National policy which promotes increased densities at well served urban sites, and discourages universal height standards in certain urban areas, such as the subject site.
- 2.39. Having regard to the above, the subject brownfield site is zoned Z14 in the Dublin City Development Plan 2016-2022. The Development Plan adopted a sequential approach when zoning the land for development therefore the location of the site and the zoning pertaining to the development is appropriate for the subject proposal relating to this planning application.
- 2.40. Sustainable neighbourhoods require a range of community facilities, and each district/neighbourhood will need to be considered within its own wider locality, as some facilities may be available in the wider area while others will need to be provided locally. The proposed development will provide for a residential development with its own community facilities such as internal communal spaces and booking spaces to cater for events of the future resident population.
- 2.41. Section 5.8 of the Guidelines recommends that *‘in general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes’*. The proposed density of the site is c.368 no. units per hectare.
- 2.42. The proposed density is in excess of the recommended minimum of 50 units per hectare. The subject site is located on a high quality public transport route and is located within an urban area therefore has the capacity to achieve higher densities to complement the surrounding services. The proposed density is therefore considered appropriate due to the location adjacent to high quality public transport provision, the existing urban environment and context of the site.
- 2.43. The guidelines clearly state that increased densities should be provided on site within 500m of a bus stop and within 1km of a proposed light rail stop. The subject development fits within this criterial, therefore is considered appropriate for higher densities.
- 2.44. It is clear that it is national policy to promote increased densities in excess of 50 no. units per hectare on zoned lands adjacent to public transport corridors. To achieve this increased density in a sustainable manner requires increased building heights to make the most of the zoned residential lands. As such, in order to sustainably deliver increased

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densities for residential development within existing urban areas, within increasing urban sprawl then increased heights must be considered in appropriate locations.

- 2.45. In response to the national policy initiatives, the proposed development provides for an appropriate density at c. 368 no. units per hectare which can only be achieved through the provision of increased building heights up to 13 no. storeys. It is considered that if the proposed development would therefore comply with the national policies for increased densities in close proximity to public transport nodes. As such, it is considered that the proposed building height of up to 13 no. storeys and a density of 368 no. units per hectare proposed is appropriate for the subject site and in compliance with National Policy.

### **3.0 CONCLUSION**

- 3.1. As set out in Section 37(2)(b) and Section 28(1)(C) of the Planning and Development Act 2018 (as amended), An Bord Pleanála may materially contravene a development plan where national planning policy objectives take precedence. In particular, under Section 9(3)(b) of the 2016 Act, as amended, provides that to the extent that they differ from the provisions of the Development Plan, the provisions of SPPRs must be applied instead.
- 3.2. In addition, under Section 170 (a) and (b) of the Planning and Development Act as amended, An Bord Pleanála are not bound by the same provisions of the Planning Authority in this application as it is not a Section 34 application. An Bord Pleanála can therefore grant permission for the development having regard to the Section 28 Guidelines and National Planning Policy.
- 3.3. It is respectfully submitted that should An Bord Pleanála consider the proposed development is a material contravention of the Dublin City Development Plan 2016-2022 that an appropriate justification is set out within this statement demonstrating that the proposed development should be considered for increased building heights on the subject site, the overall context of the wider development at 12 no. storeys, adjacent to quality public transport corridors and the policies and objectives set out within the National Planning Framework and Urban Development and Building Heights Guidelines 2018.
- 3.4. In particular, it is considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the Local Area Plan and County Development Plan, by reference to sub-paragraphs (iii) and (iv) of Section 37(2)(b) of the 2000 Act, as amended, for the reasons set out above.
- 3.5. Having regard to the justification set out within this statement, it is respectfully submitted that this is an appropriate case for the Board to grant permission for the proposed development in accordance with national policy and guidelines.



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