

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

*In respect of*

**Proposed Mixed Use Development at The Former CIE  
Lands, 2-4 Carnlough Road, Cabra, Dublin 7**

*Prepared by*

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*On behalf of*

**Seven Cabra Real Estate Limited**

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## 1.0 INTRODUCTION

- 1.1. This report has been prepared to set out the justification on building height for the proposed use development at the former CIE Lands, 2-4 Carnlough Road, Cabra, Dublin 7. It should be noted that the proposed development is not considered to materially contravene the Dublin City Development Plan 2016-2022 in terms of building height having regard to the SPPR's as set out in the Urban Development and Building Height Guidelines and Section 28 of the Planning and Development Act 2000, as amended.
- 1.2. In addition, planning permission has been previously granted by An Bord Pleanála on the site Ref. SHD 300492-17. There is no change to the height of the development proposed as part of this application, therefore the height of the development is considered acceptable. A material contravention statement has however been included with this planning application should the board considered the height to be a material contravention.
- 1.3. The Development Plan sets out a maximum building height of 16m within the subject location. The proposed development ranges in height from part single / part 2 no. storeys to 8 no. storeys (c. 24m) which is in excess of the development plan height limits. Having regard to Section 37(2)(b) of the Planning and Development Act 2000 which 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”.*

- 1.4. 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.
- 1.5. 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”.*

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

- 1.7. 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”.*

- 1.8. It is respectfully requested that An Bord Pleanála have regard to the following justification for a material contravention of the development plan in terms of height on the basis that the policies and objectives stated in the Section 28 Government Guidelines, particularly *“Urban development and Building Height Guidelines 2018”* and *“National Planning Framework 2040”* enable increased building height and residential densities on sites adjacent to quality public transport routes and within existing urban areas.

- 1.9. 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, and *“Guidelines for Planning Authorities on Sustainable Residential development in Urban Areas (2009)”* enables greater heights above that stated in the Development Plan to be achieved on the site. In addition, it should be noted that permission has already been granted for development of the same height on the site under ABP Ref. 300492-17. The Inspectors Report on the previous application on the site stated the following in relation to height *“As advised in the paragraphs above, the proposed development would comply with those provisions. Therefore the board may and should grant permission for it despite the material contravention of the development plan by having regard to the objectives 3a and 13 of the National Planning Framework, and also section 5.8 of the sustainable urban residential guidelines, under section 27(2)(b)(iii) of the planning act without making the modifications to reduce the height of some of the buildings to comply with the city development plan in the manner advised by the city council”.*

- 1.10. There is no change in height proposed as part of this application, therefore the principle of 8 no. storeys at this location has already been established.

## **2.0 JUSTIFICATION**

- 2.1. Increased building heights of up to 8 no. storeys has already been established on the site in granting permission for the extant SHD permission Reg. Ref. ABP 300492-17. The proposed development seeks to retain the overall permitted building height and massing on the site. The proposed height at 8 no. storeys is therefore considered acceptable in principle.
- 2.2. Notwithstanding the extant permission on the site, there has been significant changes in National Planning Policy calling for increased heights and densities in urban areas.

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The Urban Development and Building Height 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.

- 2.3. 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”.*

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

*“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”.*

- 2.5. SPPR 1 of the Urban Development and Building Height Guidelines states:

*“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”.*

- 2.6. It is therefore considered that it is the intention of the Guidelines as a whole to promote increased building heights and densities in appropriate urban locations such as the subject site which is a city centre area well served by public transport.

- 2.7. The Guidelines also note that in assessing applications for increased heights the planning authority or the Board shall be a presumption in favour of buildings of increased height in urban locations with good public transport accessibility. Section 3.1 of the Guidelines states:

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2.8. *“In relation to the assessment of individual planning applications and appeals, it is Government policy that building heights must be generally increased in appropriate urban locations. There is therefore a presumption in favour of buildings of increased height in our town / city cores and in other urban locations with good public transport accessibility”.*

2.9. As such in applying the content of the guidelines to the subject site is wholly appropriate on the basis of increased height in urban areas well served by quality public transport.

2.10. SPPR 2 states:

*“In driving general increases in building heights, planning authorities shall also ensure appropriate mixtures of uses, such as housing and commercial or employment development, are provided for in statutory plan policy. Mechanisms such as block delivery sequencing in statutory plans<sup>2</sup> could be utilised to link the provision of new office, commercial, appropriate retail provision and residential accommodation, thereby enabling urban redevelopment to proceed in a way that comprehensively meets contemporary economic and social needs, such as for housing, offices, social and community infrastructure, including leisure facilities”.*

2.11. The proposed development seeks to provide for a mix of uses on the site including residential and commercial development. The proposal is therefore considered to be consistent with SPPR2.

2.12. 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. Subject to meeting with the relevant criteria the guidelines state that the planning authority shall apply SPPR3 under Section 28 of the Planning and Development Act.

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

2.13. In addition, 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”.*

2.14. SPPR3 states:

2.15. *“It is a specific planning policy requirement that where:*

*(A). 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”.*

*(B) In the case of an adopted planning scheme the Development Agency in connection with the relevant planning authority (where different) shall, upon the coming*

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*into force of these guidelines, undertake a review of the planning scheme, utilising the relevant mechanism as set out in the Planning and Development Act 2000 (as amended) to ensure that the criteria above are fully reflected in the planning scheme. In particular the Government policy that building heights be generally increased in appropriate urban locations shall be articulated in any amendments to the planning scheme”.*

- 2.16. In accordance with Part A of SPPR3, where a development complies with the relevant criteria and the planning authority agrees, then permission can be granted for the development notwithstanding conflicting development plan and local area plan policies. This application clearly sets out within the accompanying planning report and supporting documents how the proposed development complies with each of the criteria as set out in the Guidelines. It is therefore considered that the proposed height is appropriate in this instance.
- 2.17. 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.
- 2.18. 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 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.
- 2.19. 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.
- 2.20. The subject site is located within 500m walking distance of a bus stop and a proposed BRT route connecting Blanchardstown to UCD. The proposed development is also approximately 600m from the Cabra station on the Luas Cross City line and within the Section 49 levy area. The site is also served by a number of Busconnects routes, with 2 no. routes linking to the City Centre, every 20-25 minutes and 1 no. bus route to the city centre every 60 minutes directly accessible off Carnlough Road. The site is also within a 5 minute walk to a proposed spine route to the city centre with high frequency bus service every 10 – 15 minutes.
- 2.21. Restricting the height of the development at such a well served location under the Dublin City Development Plan 2016-2022 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.
- 2.22. The National Planning Framework 2040 seeks to increase densities and building heights in appropriate urban locations to consolidate urban sprawl and increase the sustainability of public transport networks. The NPF states that:
- “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”.*

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2.23. The proposed development is located within the inner suburbs in close proximity to the city centre and other major employment hubs at Blanchardstown and the City Centre. The proposed development is also consistent with the permitted building heights and building form already permitted on the site under Reg. Ref. ABP 300492-17. It is therefore considered that the subject site is an appropriate location for increased building heights and increased densities to support the objectives of the NPF.

2.24. The NPF targets a significant proportion of future urban development on infill/ brownfield development sites within the built footprint of existing urban areas. Objective 11 of the NPF states:

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

2.25. The proposed development provides for a mix of uses including residential, community and neighbourhood centre uses. The proposed uses will generate more jobs and activity within the existing area to meet appropriate planning standards and achieving targeted growth.

2.26. Objective 13 of the National Planning Framework also states that:

*“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”.*

2.27. 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”.*

2.28. 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. As such it is respectfully submitted that the proposed building height from single storey to 8 no. storeys is in line with government guidance and emerging trends for sustainable residential developments.

2.29. 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.

2.30. 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.

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- 2.31. 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'*.
- 2.32. 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 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...'*
- 2.33. Having regard to the above, the subject infill greenfield site is zoned Z1 and Z3 within 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.
- 2.34. 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 provides retail / café / restaurant and local supermarket at ground floor level. In addition a creche will be provided within the development and a residential amenity building which will be made available to the wider community on a bookable basis. The proposed land uses will form part of the neighbourhood centre in accordance with the Z3 zoning objective on the site.
- 2.35. 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.125 no. units per hectare.
- 2.36. 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 existing district centre 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.
- 2.37. 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.
- 2.38. The site is served by a number of Busconnects routes, with 2 no. routes linking to the City Centre, every 20-25 minutes and 1 no. bus route to the city centre every 60 minutes directly accessible off Carnlough Road. The site is also within a 5 minute walk to a proposed spine route to the city centre with high frequency bus service every 10 – 15 minutes.
- 2.39. The proposed Busconnects service that is provided adjacent to the site will be as efficient and direct form of public transport and is therefore considered to provide a significant increase in the availability of the public transport services surrounding the site.

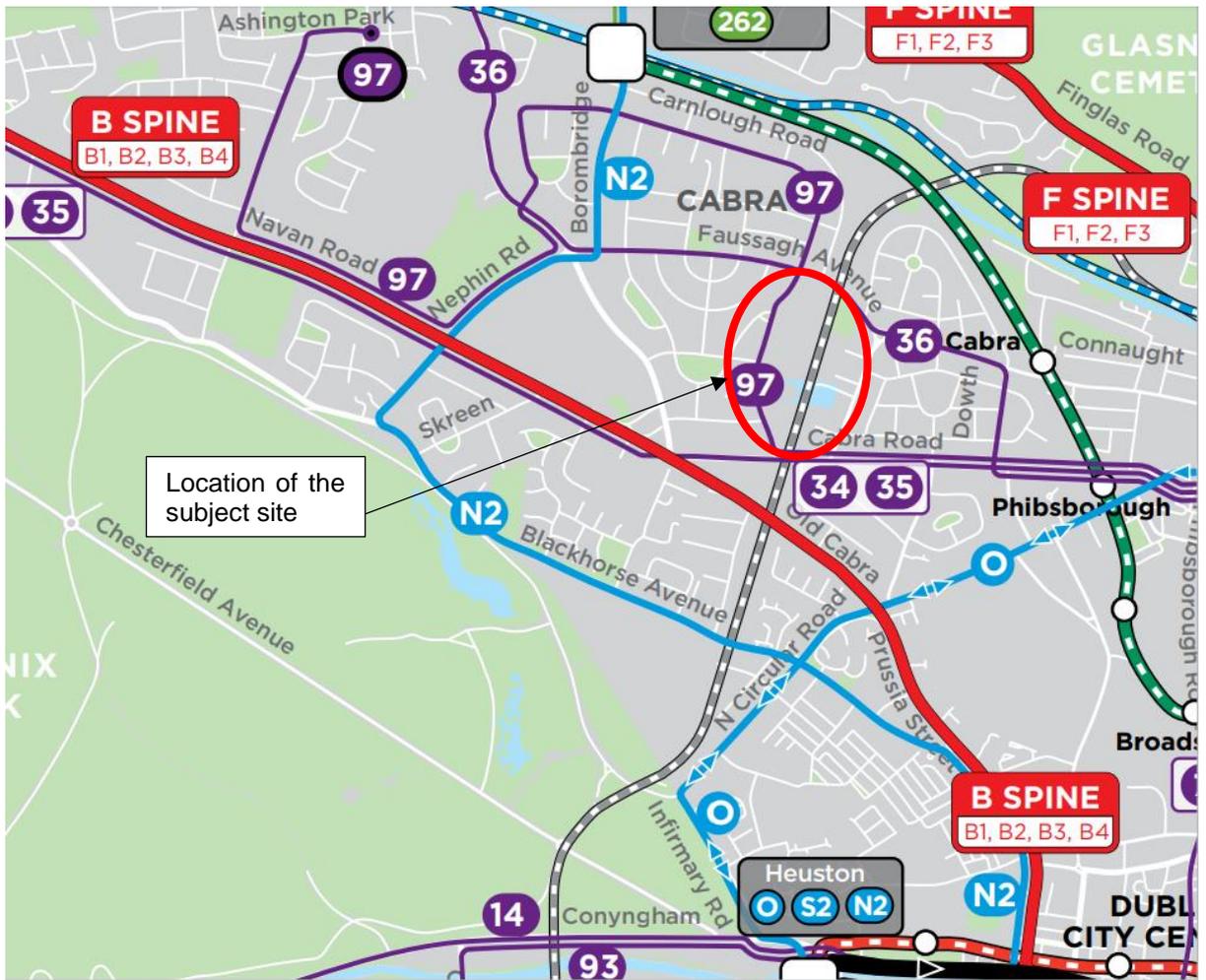


Figure 1: Proposed Bus Connects Routes in proximity of the subject site.

- 2.40. The subject development fits within this criterial, therefore is considered appropriate for higher densities.
- 2.41. 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 densities for residential development within existing urban areas, within increasing urban sprawl then increased heights must be considered in appropriate locations.
- 2.42. In response to the national policy initiatives, the proposed development provides for an appropriate density at c. 125 no. units per hectare which can only be achieve through the provision of increased building heights up to 8 no. storeys, c. 24m. It is considered that if the proposed development should comply with the national policies for increased densities in close proximity to public transport nodes, then an increased height up to 24m in accordance with the Building Height objective for Rail nodes within the Dublin City Development Plan should also be applied. As such, it is considered that the proposed building height of up to 24m, 8 no. storeys and density of 120 no. units per hectare proposed is appropriate for the subject site and in compliance with National Policy.
- 2.43. Dublin City Council Height Strategy sets out a building height of 16m for residential development in the outer city. Blocks B, C, E, and G are 4 no. storeys and approximately

12m in height which is in accordance with the height policy for the area. Block H is part single part 2 no. storeys and approximately 7m in height which is also in accordance with the height policy.

2.44. The remainder of the buildings on site range in height from 2 no. storeys to 8 no. storeys, approximately 24m. Block A ranges in height from 4 no. storeys to 8 no. storeys, c. 24m, Block D ranges in height from 2 no. storeys to 8 no. storeys, c. 24m and Block F ranges in height from 2 no. storeys to 8 no. storeys, c. 24m.

2.45. The development plan sets out that building height up to 24m will be permitted in areas within 500m of existing and proposed Luas, mainline, DART, DART Underground and Metro Stations. The subject site is located approximately c.600m from the Cabra stop on the Luas Cross City Line, which is just outside the 500m catchment.

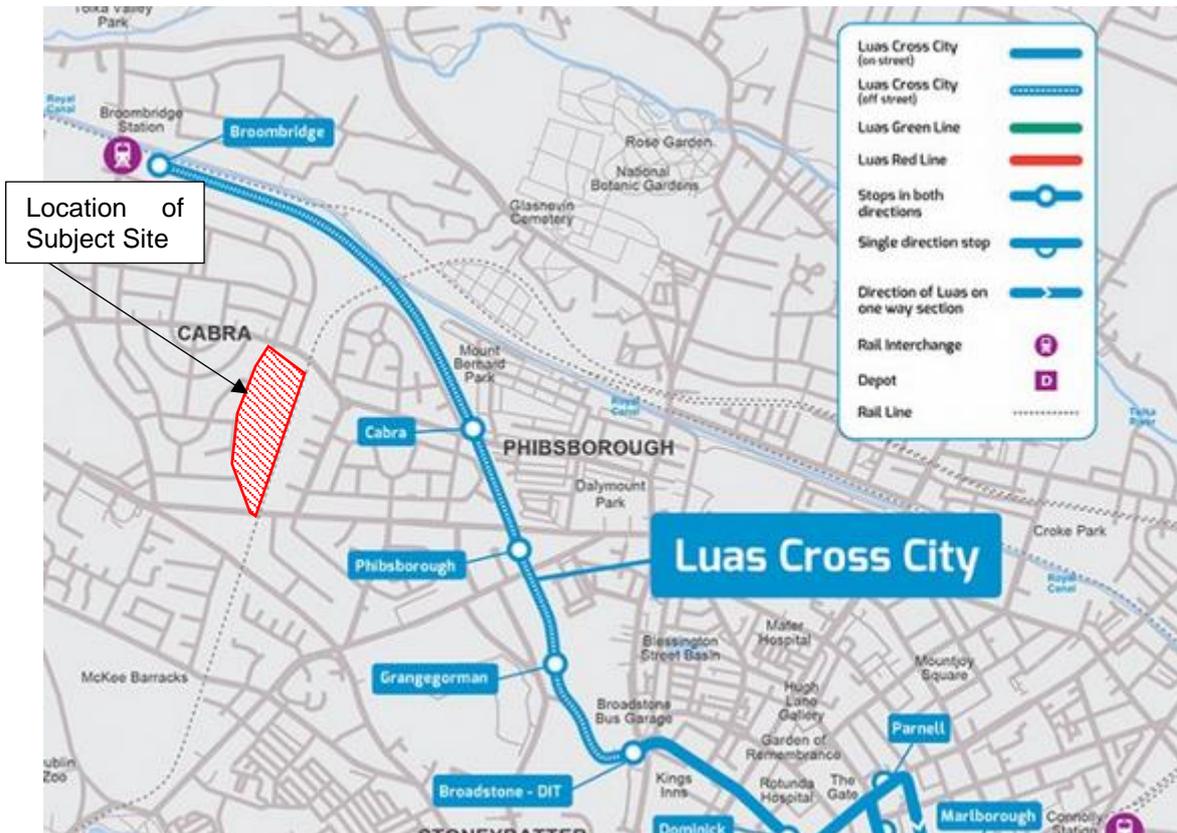


Figure 2: Extract from Luas Cross City route map

2.46. In addition, the proposed development is located approximately 1.9km from the proposed Metrolink Station at Glasnevin which will be the only interchange between the commuter rail line and the Metrolink in the city. The proximity of the site in connection to the proposed MetroLink is also a significant benefit to the development and emphasises further the strategic location of the site and the excellent availability of public transport links.

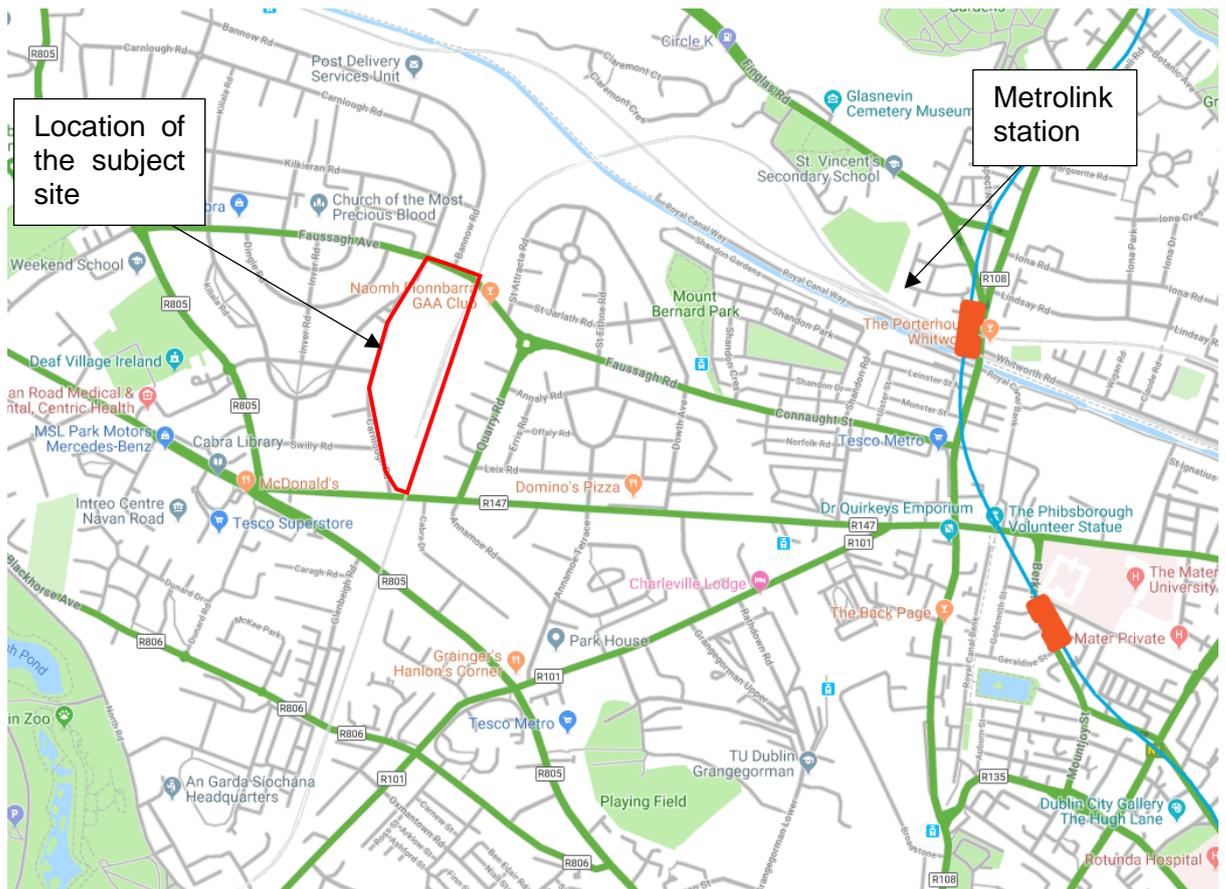


Figure 3: Proposed Metrolink station in relation to the subject site

- 2.47. However, it should be noted that the Section 49 Special Development Contribution Scheme for the Luas Cross City applies to areas within a 1km catchment of the proposed Luas line. It is considered that if the proposed development is within the catchment to which the development contribution applies to facilitate for the Luas Cross City, then the same policies should apply to the site as areas within the Rail Hub catchment which would allow a height of up to 24m at this location.
- 2.48. There is a clear contradiction between Dublin City Council's view that a site can benefit from being proximate to a rail line (within 1km), thus should be subject to the Section 49 Special Development levies but cannot benefit from the increased heights permissible in locations proximate to light rail stations within 500m.
- 2.49. As such it is considered that consistency should be carried throughout the designation of such areas in Dublin City Council and development sites within 1km should benefit from all enchantments including building height.

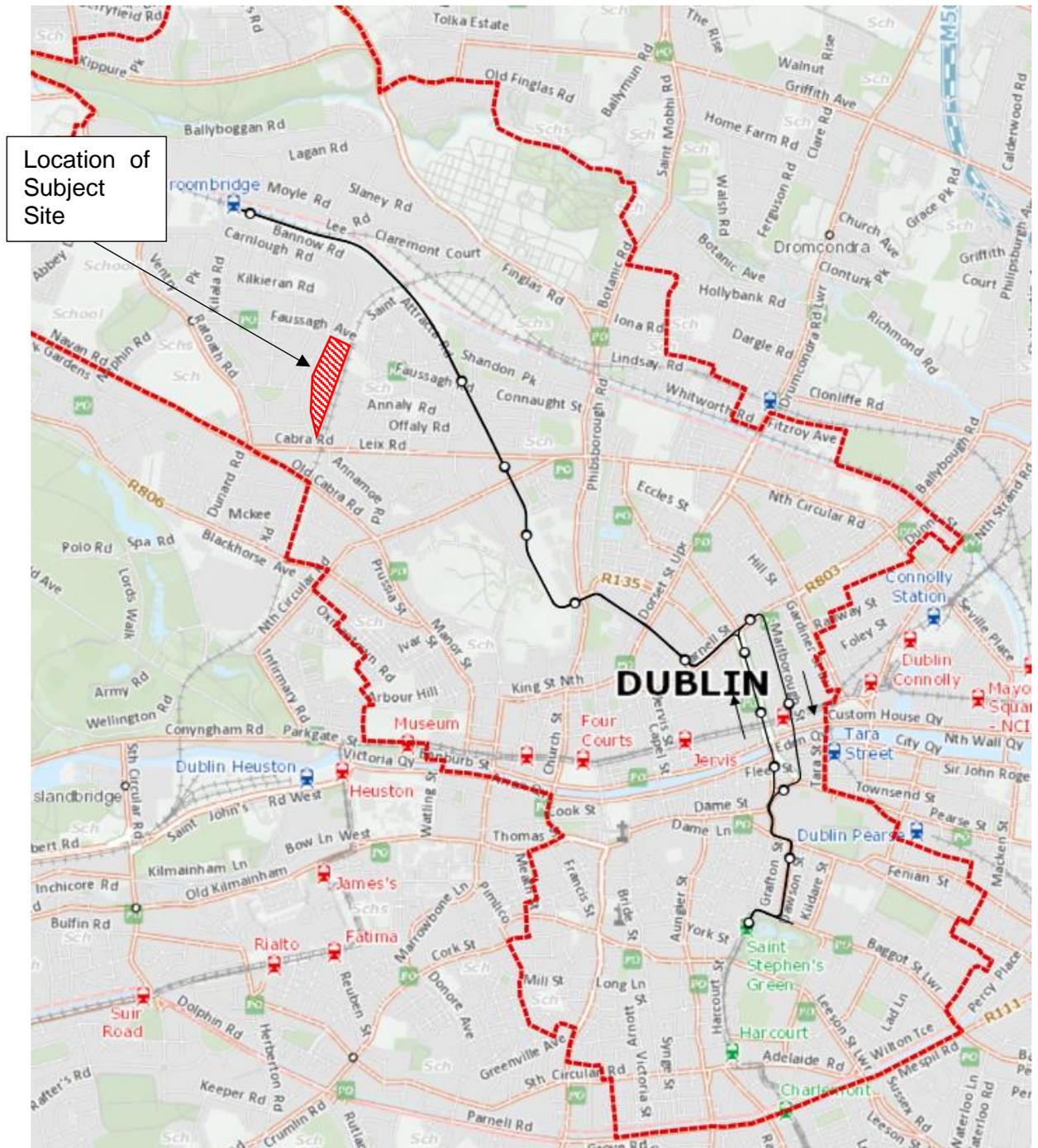


Figure 4: Extract from the DCC Section 29 Luas Cross City Development Contribution Scheme Map

2.50. As such, it is considered that due to the abundance of public transport services within the proximity of the site, the location of the site within the Section 49 Development Contribution catchment, and the clear directive in Government Policy to provide for increased densities in location adjacent to quality public transport nodes, that the proposed building height of 24m is appropriate for this location.

### 3.0 CONCLUSION

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- 3.1. It is respectfully submitted that the justification set out within this statement clearly demonstrates that the proposed development should be considered for increased building heights due to the location of the subject site adjacent to quality public transport corridors and the policies and objectives set out within the Section 28 Guidelines in particular the Urban Development and Building Height Guidelines, and the National Planning Framework.
  - 3.2. As such it is respectfully requested that An Bord Pleanála have regard to the justification set out within this statement and permit the proposed height contravention of the Dublin City Development Plan 2016-2022.