

Statement of Material Contravention

In respect of

**Proposed Residential Development at
Cookstown Road, Enniskerry,
Co. Wicklow**

On behalf of

Cairn Homes Properties Ltd

Prepared by



March 2021

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1.0 INTRODUCTION

- 1.1 On behalf of the applicant, Cairn Homes Properties Limited, 7 Grand Canal, Grand Canal Street Lower, Dublin 2, we hereby submit this Statement of Material Contravention, in respect of a Strategic Housing Development (SHD) proposal on lands at Cookstown Road, Enniskerry, Co. Wicklow.
- 1.2 In summary, the proposal comprises a strategic housing development on lands within the townland of Cookstown, Enniskerry, Co. Wicklow. The land under the ownership of Cairn comprises 6.27 hectares with additional areas for footpath and public lighting upgrade (including services upgrade along the Cookstown Road) of c. 0.33 ha, resulting an overall area of 6.6 hectares. The relevant letters of consent are included in the particulars with the SHD application.
- 1.3 The development will consist of the construction of 165 no. dwellings and associated ancillary infrastructure as follows:
- A) 105 no. 2 storey houses (49 no. 3 bedroom houses [House Types B, B1, & B2], 56 no. 4 bedroom houses [House Types A, D, E & E1];
 - B) 56 no. apartments/duplex apartments in 6 no. 3 storey buildings – (28 no. 2 bedroom apartments and 28 no. 3 bedroom duplex apartments) all with terrace;
 - C) 4 no. 1 bedroom Maisonette dwellings in a 2 storey building;
 - D) Part 2-storey and single storey creche (c. 510 sq. m - including storage);
 - E) Open space along southern boundary of c. 0.93 hectares [with pedestrian connections to boundary to 'Lover's Leap Lane' to the south and to boundary to the east and west], hard and soft landscaping (including public lighting) and open space (including boundary treatment), communal open space for duplex apartments; regrading/re-profiling of site where required [including import/export of soil as required] along with single storey bicycle/bin stores and ESB substation;
 - F) Vehicular access (including construction access) from the Cookstown Road from a new junction as well as 313 no. car parking spaces and 150 no. cycle spaces;
 - G) Surface water attenuation measures and underground attenuation systems as well as connection to water supply, and provision of foul drainage infrastructure (along the Cookstown Road to existing connection at junction with R760) and provision of underground local pumping station to Irish Water specifications;
 - H) 3 no. temporary (for 3 years) marketing signage structures [2 no. at the proposed entrance and 1 no. at the junction of the R760 and the Cookstown Road] and a single storey marketing suite (c. 81 sq.m) within site;
 - I) All ancillary site development/construction/landscaping works, along with provision of footpath/public lighting to Powerscourt National School pedestrian entrance and lighting from Powerscourt National School entrance to the junction of the R760 along southern side of Cookstown Road and pedestrian crossing across Cookstown Road.
- 1.4 The application site includes lands identified as Action Area Plan 3 (AA3) of the Bray Municipal District Local Area Plan 2018. A small portion of the subject site is outside the AA3 area (zoned CE) and includes a creche.
- 1.5 This statement outlines the justification for the proposed development which materially contravenes the Bray Municipal District Local Area Plan 2018 (BMD LAP), including Action Area Plan 3, in terms of density standard of and the number of residential units on the AA3 lands (core strategy nos.) and the associated Objective HD5 of the Wicklow County Development Plan 2016-2022. In addition, this statement outlines the justification for the inclusion of apartments in the proposed development in contravention of Objective HD13.

- 1.6 Further, in the event that the Board considers that the proposed development materially contravenes Action Area Plan 3 in the BMD LAP in relation to voluntary/sheltered housing, this statement outlines the justification for the proposed development.
- 1.7 In the event that the Board were to grant permission for the proposed development, the Board's "*reasons and considerations*" would have to reference to the matters in Section 37(2)(b) of the 2000 Act upon which it relies to justify the granting of permission in material contravention of the BMD LAP and Wicklow County Development Plan 2016-2022. It is apparent from section 10 (1)(3)(b) of the 2016 Act that such reasons and considerations must appear in the Board decision itself. Section 10(3) provides as follows:
- "(3) A decision of the Board to grant a permission under 9 (4) shall state-
(b) where the Board grants a permission in accordance with section 9(6)(a), **the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be**" (our emphasis)*
- 1.8 It is respectfully requested that An Bord Pleanála have regard to the following justification for the proposed development which demonstrates how the proposed development complies with national planning policy and guidelines. It is considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding the material contravention of the Bray Municipal District LAP and/or the Wicklow County Development Plan 2016-2022, by reference to Section 37(2)(b) of the 2000 Act.

2.0 LOCAL POLICY

2.1 Bray Municipal Local Area Plan 2018-2024

2.1.1 Population & Housing growth targets

- 2.1 The 2022, 2025 and 2028 population targets for the settlements in the Bray MD are provided in the Core Strategy of the County Development Plan – the County Development Plan does not provide a target for the overall MD or for rural areas.
- 2.2 Table 2.1 below illustrates the population history and predictions for Enniskerry within the LAP. This predicted 21.3% growth in population is expected to require an additional 472 houses in total in Enniskerry by 2025 (as per Table 2.7 of the LAP).

Table 2.1 – Projected Population Change for Enniskerry. Source: BMD LAP

	Number of Persons		
	2011	2016	2025
Enniskerry	1,811	1,889	2,401
% Population Increase	-3.9%	4.1%	21.3%

- 6.1 Table 3.2 of the LAP sets out the potential housing yield for various locations in Enniskerry. Table 3.2 provides that there is a potential housing yield of 105 units for "*Action Area Plan 3 – Cookstown*". The application site includes c. 64% of the lands identified as Action Area Plan 3 (AA3) of the Bray Municipal District Local Area Plan 2018.
- 2.3 It is noted the adjoining site to the west (located in the AA3 lands) has an extant permission for 27 no. dwellings (Planning Reg. Ref. 19/871). There are no further lands

available within the AA3 for future development. From a review of the main landbanks in the Enniskerry LAP (table 3.2 of the LAP refers), it is further noted there is a proposal on lands at Kilgarron Hill (on the AA2 lands), which is at consultation stage with An Bord Pleanála (lodged 17th November 2020) for 219 no. dwellings. It is noted the SLO10 lands, permission was granted for 12 no. detached dwellings on the 18/4/2020 by An Bord Pleanála (PL27.248914 WCC Ref. 17/15). The Powerscourt Demesne landbank has an extant permission for 47 no. dwellings. There are no recent applications on the Monastery Grove, on the lands to the east of AA3, or SLO11 Kilgarron lands. The remainder of the lands identified are infill sites which would not contribute much (indicated as c. 45 units). From the above there is planning permission for 59 no. units which is substantially below the 475 no. dwellings indicated in Table 3.2.

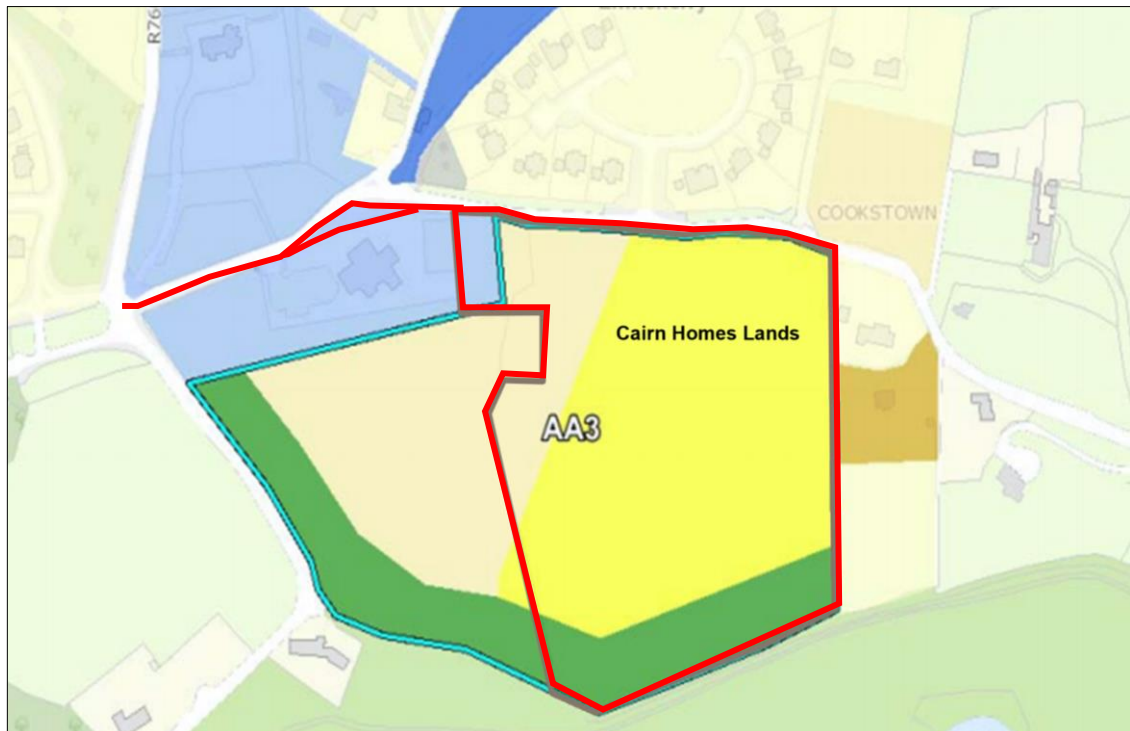
- 2.4 The LAP provides for density standards of 10 and 20 dwellings-per-hectare (dph) on lands zoned R10 New Residential and R20 New Residential respectively.
- 2.5 The operational phase of the proposed development will result in the provision of 165 residential units and a creche. This will provide accommodation for approximately 454 persons, based upon the existing average occupancy rate of 2.75 persons per household.
- 2.6 The provision of 165 units on the subject site, which includes approximately half of the Action Area Plan 3 (AA3) lands, is not consistent with the potential housing yield of 105 units for “*Action Area Plan 3 – Cookstown*” indicated in Table 3.2 of the LAP.
- 2.7 In addition, the proposed development provides a density of 31.9 units per hectare on the lands zoned R10 New Residential and R20 New Residential (excluding the CE zoned lands and the OS1 zoned lands), based on a site area of 5.17 hectares. Accordingly, the proposed development contravenes the density standards in the LAP.
- 2.8 As set out in the Statement of Consistency and the Opinion from Eamon Galligan SC enclosed in Appendix 3 of the Statement of Consistency, the contravention of density standards does not constitute a material contravention of the land use zoning objective which is for residential purposes.
- 2.9 We would however note that the densities prescribed in the LAP are not reflective of the aims and objectives of the National Planning Framework and Section 28 Guidelines, as set out in the following sections of this report.

2.1.2 Action Area Plan

- 2.10 Action Area Plan 3 (AA3) in the BMD LAP outlines that the full 9.4ha site (of the AA3) is to provide a “*maximum of 105 housing units... with density not exceeding 10/ha on the lands zoned R10, and the remainder may be developed at a higher density but not exceeding 20/ha.*”
- 2.11 The proposed development provides for 165 residential units on the subject lands zoned R10 New Residential and R20 New Residential, at a density of 31.9 units per hectare gross based on a site area of 5.17 hectares. It is noted the adjoining site has a final grant of permission for 27 no. dwellings (Planning Reg. Ref. 19/871).
- 2.12 Accordingly, the proposed development is not consistent with the maximum of 105 housing units on AA3 lands or the density standards in Action Area Plan 3.

- 2.13 Action Area Plan 3 also provides that “a minimum area of 0.4ha shall be provided for voluntary / sheltered housing, of a type to be agreed with the Local Authority, as part of any Part V obligations”. The Board may consider that the proposed development materially contravenes the Action Area Plan in this regard, and this is considered further in section 4.0.
- 2.14 A draft Action Area Plan (AAP) for the AA3 lands was submitted to Wicklow County Council during pre-application consultation and was approved by Wicklow County Council by letter dated 30 June 2020. The letter dated 30 June 2020 stated that “planning applications may be submitted in relation to this area”.

Figure 2.1 – Map of Action Area Plan 3, Bray Municipal District Local Area Plan 2018



(red line approx.)

2.2 Wicklow County Development Plan 2016-2022

- 2.15 Objectives HD5 and HD13 in the Wicklow County Development Plan 2016-2022 state as follows:

“HD5 In order to make best use of land resources and services, unless there are cogent reasons to the contrary, new residential development shall be expected to aim for the highest density indicated for the lands¹. The Council reserves the right to refuse permission for any development that is not consistent with this principle.

(¹ Unless specific in the relevant local plan, the density objective for any particular lands shall be drawn for the principles set out in the Development and Design Standards appended to this plan.)”

“HD13 Apartments generally will only be permitted within the designated centres in settlements (i.e. designated town, village or neighborhood centres), on mixed use designated lands (that are suitable for residential uses as part of the mix component) or within 10 minutes walking distance of a train or light rail station.”

2.16 As outlined above, the proposed development is not consistent with the density standards in the BMD LAP and therefore is not consistent with the associated Objective HD5 of the Wicklow County Development Plan 2016-2022 relating to the density indicated in LAPs.

2.17 In relation to Objective HD13, the site is not located within a designated centre, mixed-use designated lands or within 10 minutes walking distance of a train or light rail station.

3.0 MATERIAL CONTRAVENTION JUSTIFICATION IN RELATION TO DENSITY, NO. OF DWELLINGS (CORE STRATEGY) AND INCLUSION OF APARTMENTS

3.1 Introduction

3.1 As stated above the Bray Municipal District LAP indicates a density standard of 10 units per ha. on lands zoned R10 and 20 units per ha. on lands zoned R20, and an overall maximum no. of 105 units across the 9.4 hectares (within the AA3). The proposed development provides 31.9 units per hectare (based on 5.17 hectares of residential zoned land (relating to Cairn lands). The proposed development also exceeds the maximum of 105 housing units on AA3 lands. As outlined above the proposed development is not consistent with Objective HD5 and HD13.

3.2 Notwithstanding this, it is respectfully suggested that permission for the proposed development should be granted pursuant to the provisions of Section 9(6) of the 2016 Act. Section 9(6) of the 2016 Act expressly empowers the Board to grant permission for a development that materially contravenes a development plan or local area plan, other than in relation to the zoning of the land, by reference to the criteria set out in section 37(2)(b) of the 2000 Act. As set out in the Statement of Consistency and the Opinion from Eamon Galligan SC enclosed in Appendix 3 of the Statement of Consistency, the contravention of density standards does not constitute a material contravention of the land use zoning objective, and, accordingly, the Board may grant permission for the proposed development pursuant to the provisions of Section 9(6) of the 2016 Act by reference to the criteria set out in section 37(2)(b)(i) to (iv) of the 2000 Act.

3.3 The Board may grant permission for the proposed development where it considers that one of the criteria set out paragraphs (i) to (iv) of section 37(2)(b) is fulfilled. This statement of material contravention addresses the criteria set out in section 37(2)(b)(i) to (iv). It is our considered opinion that the current proposal satisfies those criteria as follows:

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

3.4 It should be noted that the proposed development only needs to fulfil one of the criteria above i.e. it must be “*strategic*” or “*national*” importance. The proposed development falls within the definition of “*strategic housing development*” in accordance with the definition of same in section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended. Strategic housing development also comes within the definition of “*strategic infrastructure development*”. On this basis, it is submitted that the proposed development is, by definition, of strategic importance.

3.5 The full title of the Planning and Development (Housing) and Residential Tenancies Act 2016 is as follows:

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

- 3.6 The Rebuilding Ireland Action Plan, and consequently the 2016 Act, recognise the strategic importance of larger residential developments in addressing the ongoing housing and homelessness crisis. The proposal is for a strategic housing development. The delivery of housing and appropriate use of zoned land is considered to be of strategic or national importance, underpinning key Government policy such as Rebuilding Ireland as well as the National Planning Framework.

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

- 3.7 This is not relevant to the proposed statement. While the density standards indicated in the LAP conflict with National Policy, they do not conflict within the Development Plan and LAP.

(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.”

- 3.8 The following section addresses relevant national and regional planning policies and Ministerial Guidelines issued under Section 28 of the Planning and Development Act, 2000 (as amended) and provides justification for the proposed development under each document, demonstrating the scheme’s compliance with each component. The following policy and guidelines are considered relevant:

- Project Ireland 2040 – National Planning Framework;
- Rebuilding Ireland, an Action Plan for Housing and Homelessness (2016);
- Eastern and Midland Regional Economic and Spatial Strategy 2019;
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)
- Sustainable Urban Housing: Design Standards for New Apartments (2018); and
- Urban Development and Building Heights Guidelines for Planning Authorities (December 2018).

Project Ireland 2040 – National Planning Framework

- 3.9 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.
- 3.10 The National Planning Framework was published in its final form on the 16th of February 2018 following a process of consultation. The final National Planning

Framework (NPF) document incorporates significant amendments to the Draft NPF document.

3.11 The following is outlined in the Framework:

National Policy Objective 3a of the NPF states that it is a national policy objective to “deliver at least 40% of all new homes nationally within the built up envelope of existing urban settlements”.

National Policy 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’.

National Policy Objective 33 – ‘Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.’

National Policy Objective 34 – ‘Support the provision of lifetime adaptable homes that can accommodate the changing needs of a household over time.’

National Policy Objective 35 – ‘Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.’

3.12 The National Strategic Outcomes set out in the NPF are:

- Compact Growth;
- Enhanced Regional Accessibility;
- Strengthened Rural Economies and Communities;
- High-Quality International Connectivity;
- Sustainable Mobility;
- A Strong Economy, supported by Enterprise, Innovation and Skills;
- Enhanced Amenities and Heritage;
- Transition to a Low Carbon and Climate Resilient Society;
- Sustainable Management of Water, Waste and other Environmental Resources;
- Access to Quality Childcare, Education and Health Services.

3.13 The subject development, with 165 units at the density proposed, accords with the National Planning Framework (2018) (NPF), in particular with its principles of compact growth and the reinforcement of the country’s existing urban structure at all levels. Where housing policy is concerned, the proposed development accords with the NPF’s core principles for housing delivery – in particular the location of the proposed housing is prioritised within the existing settlement of Enniskerry. The proposed increase in density aligns with national policy guidance and is considered suitable and appropriate development on the subject lands.

3.14 With regard to Objectives HD5 and HD13, the proposed development responds to the identified strategic need for a greater mix of dwellings (and inclusion of apartments) in urban areas, which is supported by SPPR4 of the Building Height Guidelines (considered below). The proposed development will include duplexes which will result in a variety of house types to accommodate a mix of household types, suitable for first time buyers, single people, families, ‘empty-nesters’ and the elderly, in order to ensure a social mix and balance is achieved.

Rebuilding Ireland – Action Plan for Housing and Homelessness

- 3.15 Rebuilding Ireland was launched in 2016 with the objective to double the annual level of residential construction to 25,000 homes and deliver 47,000 units of social housing in the period to 2021, while at the same time making the best use of the existing stock and laying the foundation for a more vibrant and responsive private rented sector.
- 3.16 Rebuilding Ireland is set around 5 no. pillars of proposed actions. *Pillar 3 seeks to – Build More Homes: Increase the output of private housing to meet demand at affordable prices.*
- 3.17 The increased density put forward in the proposal will deliver much needed housing in accordance with the aims of Rebuilding Ireland, and in particular Pillar 3, which seeks to build more homes.

Regional Economic and Spatial Strategy 2019

- 3.18 The Regional Economic and Spatial Strategy (RSES), which was adopted in June 2019, notes that the preferred spatial strategy for the East and Midlands is the consolidation of Dublin plus the Regional Growth Centres of Athlone, Dundalk and Drogheda, supported by planned focussed growth of a limited number of self-sustaining settlements. It is noted Enniskerry is located in the Bray Municipal District LAP and Bray is a key town.
- 3.19 The delivery of identified strategic development areas should be facilitated, where practicable, in a sequential manner to promote sustainable compact growth in coordination with the provision of enabling infrastructure and services.
- 3.20 The proposed scheme will deliver a high-quality residential development at an appropriate density and height, in proximity to local retail and services. The development of the lands at the proposed density is in accordance with national strategic guidance and in accordance with the proper planning and sustainable development of the area.
- 3.21 The proposed sequential development at Cookstown will consolidate the existing built up area and promote sustainable compact growth with access to the Town Centre of Enniskerry and further Bus links to Bray and Dublin City Centre.

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

- 3.22 The Action Area Plan criteria specifies a density standard of 10 no. and 20 no. units per hectare. The subject proposal is for 31.9 units per hectare gross within the area identified below (165 units / 5.19 hectares)
- 3.23 The density of 31.9 units per hectare was calculated excluding the Public Open Space as well as the CE zoned lands (based on a net area of 5.17 hectares on Cairn lands).
- 3.24 It is considered that the most appropriate categorisation of the subject lands is as ‘*small town or village*’ category. Chapter 6 of the Guidelines deals with small towns and villages and sections 6.9 to 6.12 sets out the density standards for (a) centrally located sites, (b) edge of centre sites and (c) edge of small town/village sites. The subject site is located outside the town centre of Enniskerry village and as such is not considered to be a “*centrally located site*”.

3.25 Section 6.11 of the Guidelines states:

“(b) Edge of centre sites

6.11 The emphasis will be on achieving successful transition from central areas to areas at the edge of the smaller town or village concerned. Development of such sites tend to be predominantly residential in character and given the transitional nature of such sites, densities to a range of 20-35 dwellings per hectare will be appropriate including a wide variety of housing types from detached dwellings to terraced and apartment style accommodation.”

3.26 It is considered that the subject site is “an edge of centre site” and, accordingly, a range of 20-35 dwellings per hectare applies to this site under consideration. The proposed development is at a density at the higher end of this range.

3.27 Section 6.12 of the Guidelines states:

“(c) Edge of small town / village

6.12 In order to offer an effective alternative to the provision of single houses in surrounding unserviced rural areas, it is appropriate in controlled circumstances to consider proposals for developments with densities of less than 15 - 20 dwellings per hectare along or inside the edge of smaller towns and villages, as long as such lower density development does not represent more than about 20% of the total new planned housing stock of the small town or village in question. This is to ensure that planned new development in small towns and villages offer a range of housing types, avoiding the trend towards predominantly low density commuter-driven developments around many small towns and villages within the commuter belts of the principal cities and other Gateway locations. Such lower density development also needs to ensure the definition of a strong urban edge that defines a clear distinction between urban and the open countryside.”

3.28 The proposed development would provide 165 of the 472 unit growth target for Enniskerry, at 34.9% of the total housing needed for Enniskerry in the next 5 years. As the proposal comprises in excess of 20% of the total new planned housing stock, section 6.12 does not apply and a density of 15-20 dwellings per hectare would not be compliant with the Section 28 Guidelines.

3.29 It is noted that the subject site is not located within the Dublin Metropolitan Area Spatial Plan (MASP; EMRA RSES).

3.30 The Action Area density standard of 10 no. and 20 no. units per hectare is relatively low having regard to the 20-35 guideline range in the Guidelines of national policy. The location of the subject site is in a transitional location between the built up area of Enniskerry village and the eastern edge of the village. The proposal constitutes in excess of 20% of the total new planned housing stock set out in the core strategy allocation for Enniskerry and therefore does not fall under the criteria to be considered under Section 6.12 above. The subject proposal falls to be considered under Section 6.11 of the Guidelines which provides for densities of 20-35 units per hectare and a wide variety of housing types including apartments. The optimal design solution to meet Section 28 Guidelines densities in the 2009 SRD is to include apartments/duplex apartments.

3.31 The density proposed provides a balance between the ecological and visual considerations and objective of the National Planning Framework for compact growth of existing settlements. The proposed density and inclusion of apartments in the

proposed development is justified by reference to the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009), in particular Section 6.11 thereof, whilst also providing for a layout which is appropriate for the subject site and its context.

Urban Development and Building Heights Guidelines (December 2018)

- 3.32 The Government published the Urban Development and Height Guidelines on December 7th 2018 (the Height Guidelines). The Height Guidelines are intended to set out national planning policy guidelines on building heights in urban areas, in response to specific policy objectives set out in the NPF.
- 3.33 The Height Guidelines contain SPPR 4 which requires:
- “It is a specific planning policy requirement that in planning the future development of greenfield or edge of city/town locations for housing purposes, planning authorities must secure:*
- 1. the minimum densities for such locations set out in the Guidelines issued by the Minister under Section 28 of the Planning and Development Act 2000 (as amended), titled “Sustainable Residential Development in Urban Areas (2009)” or any amending or replacement Guidelines;*
 - 2. a greater mix of building heights and typologies in planning for the future development of suburban locations; and*
 - 3. avoid mono-type building typologies (e.g. two storey or own-door houses only), particularly, but not exclusively so in any one development of 100 units or more.”* (emphasis added).
- 3.34 The proposed development provides an appropriate density in compliance with the Sustainable Residential Development in Urban Areas (2009) of c. 31.9 units per hectare (net).
- 3.35 With regard to point 1, as outlined in the previous section, the proposed development complies with the 2009 Guidelines.
- 3.36 With reference to Objective HD13, points 2 and 3 of SPPR4 require a greater mix of building heights and typologies in the future development of suburban locations and to avoid mono-type building typologies (2 storey or own-door houses only), particularly in developments of 100 units or more. The apartments/ duplex apartments have been specifically included in the proposed development to address the requirements of SPPR4 to provide a mix of building heights and typologies and to ensure appropriate density is achieved.
- 3.37 Section 9(3)(b) of the 2016 Act provides that to the extent that they differ from the provisions of the Development Plan or Local Area Plans, the provisions of SPPRs must be applied instead.
- 3.38 The proposed development comprises a total of 165 no. units in total, including 105 no. houses and 56 no. apartments /duplex apartments and 4 no. Maisonette dwellings. The duplex units are provided across 6 no. 3 storey buildings.
- 3.39 The proposed development avoids mono-type development of 2 storey own door houses, through the incorporation of 56 no. apartments/ duplex apartments in 3 storey buildings, (33.9% of the total).
- 3.40 The proposed scheme and density as well as the inclusion of apartments, put forward is considered entirely appropriate, given the location of the site and the surrounding

urban context. Accordingly, the density and inclusion of apartments in the proposed development is also justified by reference to the Urban Development and Building Heights Guidelines (December 2018).

- 3.41 In light of the foregoing, it is respectfully suggested that permission for the proposed development should be granted having regard to the above policies and guidelines.

(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*

- 3.42 This is not relevant to the subject proposal.

4.0 MATERIAL CONTRAVENTION JUSTIFICATION IN RELATION TO VOLUNTARY/SHELTERED HOUSING

- 4.1 The Board may consider that the proposed development materially contravenes the Action Area Plan and Bray Municipal District LAP, which provides that 0.4 hectares of the AA3 lands are to be used for voluntary/sheltered housing, as part of the overall Part V provision.

- 4.2 The BMD LAP states:

“A minimum area of 0.4ha shall be provided for voluntary / sheltered housing, of a type to be agreed with the Local Authority, as part of any Part V obligations under the Wicklow Housing Strategy. Permission will not be considered for private housing until sufficient progress has been made on this element.”

- 4.3 A draft Action Area Plan (AAP) for the AA3 lands was submitted to Wicklow County Council during pre-application consultation and was approved by Wicklow County Council by letter dated 30 June 2020. The letter dated 30 June 2020 stated that *“planning applications may be submitted in relation to this area”*.

- 4.4 The AAP approved on 30 June 2020 stated as follows:

“With reference to the sheltered housing, 0.4ha of land or alternative Part V provision, subject to agreement with Wicklow County Council, shall be included as part of a planning application on Cairn Homes lands. Scalaheen Ltd shall agree Part V requirements on their lands with Wicklow County Council.”

- 4.5 The letter from Wicklow County Council 30th June 2020 approving the Action Area Plan for the lands stated:

“The development of the residential lands within Action Area 3 shall be linked to the provision of both physical infrastructure (including water services and any road improvement works) and social infrastructure (including the delivery of the public park and the provision of childcare facilities) deemed necessary to serve this development, and the delivery of the 0.4 hectares minimum area of voluntary/sheltered housing.”

“A minimum area of 0.4 hectares shall be provided for voluntary/sheltered housing of a type to be agreed with the Local Authority, as part of any Part V obligations under the Wicklow housing Strategy.”

- 4.6 The minimum area of 0.4ha in Action Area Plan 3 relates to the entirety of the AA3 lands of 9.4 residential zoned land. The subject site includes c. 64.7% of the AA3 lands. Accordingly, this requirement equates to an area of c. 0.25ha on the subject site for voluntary/sheltered housing.

- 4.7 With reference to the Wicklow Housing Strategy, there is no guidance or definition of voluntary/sheltered housing. Similarly, voluntary/sheltered housing is not defined in the BMD LAP. The LAP simply states that the voluntary/sheltered housing is of a type to be agreed with the Local Authority as part of any Part V obligations.
- 4.8 The applicant is proposing 16 no. Part V units as part of the proposed development, comprising duplex apartments and maisonette dwellings. The footprint of the area assigned to the Part V allocation is below the 0.4 hectares (at c. 0.2 hectares).
- 4.9 The applicant has entered into initial discussions with the Housing Department of Wicklow County Council in respect of Part V. The applicant agrees to accept a condition on a grant of planning permission, if the Board is minded to approve the proposed development, which requires the applicant to enter into a Part V agreement with Wicklow County Council as per their requirements prior to the commencement of development. The Part V detail is provided in Appendix 4 to the Statement of Consistency.
- 4.10 In this regard, the Maisonette dwellings could be managed by an Approved Housing Body (AHB), subject to agreement with the Housing Department of Wicklow County Council. We note a letter of support from Tuath Housing Association enclosed with the SHD application, in respect of Part V. It is further noted that 8 no. of the Part V units proposed are ground floor units which may be suited for sheltered housing if Wicklow County Council feel there remains a requirement for such types of dwellings in Enniskerry.
- 4.11 Accordingly, the Board may consider that the proposed development contravenes materially the BMD LAP in respect of voluntary/sheltered housing, as it relates to the area provided (0.2 hectares) being below the 0.4 hectares. It is respectfully suggested that permission should nevertheless be granted by reference to the criteria set out in Section 37(2)(b) of the Act. This statement of material contravention addresses each of the items and it is our considered opinion that the current proposal satisfies the criteria as follows:

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

- 4.12 The proposed development falls within the definition of a Strategic Housing Development in accordance with the definition of same provided under section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended. On this basis it is submitted that the proposed development is, by definition, strategic in nature and of strategic importance.

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

- 4.13 It is considered that the 0.4 hectares of land to be allocated to sheltered or voluntary housing does not reflect the Wicklow County Council Housing Strategy 2016-2022 which does not mention sheltered or voluntary housing. It is further noted that Chapter 4 of the County Development Plan does not reference or define what sheltered or voluntary housing relates to.

(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

- 4.14 It is considered that the provision of sheltered/voluntary housing at a rate of 11.2 units per hectare (based on the maximum 105 units indicated in the LAP for 9.4ha of residential land) is contrary to the National Planning Framework (2018) (NPF), in particular with its principles of compact growth and the reinforcement of the country's existing urban structure at all levels.
- 4.15 Rebuilding Ireland is set around 5 no. pillars of proposed actions. Pillar 2 seeks to accelerate Social Housing *"to significantly increase the level and scale of supports available to those whose circumstances mean they need State help in meeting their housing needs."* The proposed development which provides 16 no. Part V units is in keeping with key Government policy of increasing and accelerating social housing delivery of c. 10,000 units on an annual basis between 2016 and 2021 (page 44 of Rebuilding Ireland).
- 4.16 The proposed scheme will deliver a high-quality residential development at an appropriate density and height, in proximity to local retail and services. A 0.4 hectare provision of sheltered housing (equating to a density of c. 11 units per hectare) would be below density standards in strategic government guidance in the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) and the Urban Development and Building Height Guidelines (2018) as set out in detail in section 3 above.
- (iv) *permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan'***
- 4.17 This is not relevant to the proposed development.

5.0 SUMMARY AND CONCLUSIONS

- 5.1 In accordance with the provisions of section 9(6) of the 2016 Act An Bord Pleanála may grant permission for a strategic housing development which materially contravenes a Development Plan or Local Area Plan, other than in relation to the zoning of land where by reference to the criteria set out in section 37(2)(b)..
- 5.2 Further, 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 or Local Area Plans, the provisions of SPPRs must be applied instead.
- 5.3 An appropriate justification is set out within this statement which justifies granting permission for the proposed development in contravention of the Bray Municipal District Local Area Plan 2018 and/or the Wicklow County Development Plan 2016-2022, which contravention does not relate to the zoning of land. The statement demonstrates that the proposed increased density and inclusion of apartments is appropriate on the subject lands in line with, amongst other things, relevant Section 28 Guidelines and the National Planning Framework 2040.
- 5.4 Further, in the event that the Board considers that the proposed development materially contravenes LAP in terms of the requirement that 0.4 hectares of the AA3 lands are to be used for voluntary/sheltered housing, as part of the overall Part V provision, appropriate justification is set out within this statement.
- 5.5 It is respectfully requested that An Bord Pleanála have regard to the justification set out within this statement which demonstrates that the increased density, the apartments and the Part V housing proposed is entirely appropriate in this instance, noting the national importance of delivering housing given the current housing crisis.
- 5.6 Having regard to the justification set out within this statement by reference to the criteria in section 37(2)(b), it is respectfully submitted that this is an appropriate case for the Board to grant permission for the proposed development in accordance with the section 9(6) of the 2016 Act.