



**SIMON CLEAR & ASSOCIATES  
PLANNING AND DEVELOPMENT  
CONSULTANTS**

## **Material Contravention Statement**

### **Stage 3 Planning Application**

### **Proposed Strategic Housing Development**

**Castle Street,  
Bray, Co. Wicklow**

**Applicant: Silverbow Limited**

**April 2022**

**Simon Clear B.A. Dip. T.P. MIPI  
Darran Quaile B.A. MRUP MSc BLUP MIPI  
Paula Shannon B.A. MRUP MIPI**

**3 TERENCE ROAD WEST,  
TERENURE,  
DUBLIN 6W  
D6W YY79,  
IRELAND.**

**Phone: 00-353-1-492 5934  
Fax: 00-353-1-492 7617  
E-mail: [admin@clearconsult.ie](mailto:admin@clearconsult.ie)  
Web: [www.clearconsult.ie](http://www.clearconsult.ie)  
Vat No. 9803199H**

## 1. Statutory Context

This *Material Contravention Statement* has been prepared to accompany a planning application for a mixed-use development including 139 no. residential units submitted under the Strategic Housing Development provisions of the Planning and Development (Housing and Residential Tenancies) Act 2016.

The statement of Material Contravention has been prepared to acknowledge matters which may be considered to be a Material Contravention of the Wicklow County Development Plan 2016-2022 and the Bray Municipal District Local Area Plan 2018-2024.

This statement has been prepared in accordance with Section 8(1)(iv)(II) of the Planning and Development Housing and Residential Tenancies Act, 2016, which requires the inclusion of a statement:-

*where the proposed development materially contravenes the said plan other than in relation to the zoning of the land, indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000,*

Section 9(6) confirms that An Bord Pleanála may grant permission for a development which materially contravenes a Development Plan, other than in relation to the zoning of land as follows:-

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

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

*(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other*

*than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development.*

In this regard, the provisions of Section 37(2) (b) of the Planning and Development Act, 2000 (as amended) apply:-

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

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

## **2. Summary of Contraventions**

The table below summarises the relevant provisions of the Wicklow County Development Plan (WCDP) 2016-2022 and the Bray Municipal District Local Area Plan (BMDLAP) 2018-2024 and how the proposal may be considered to contravene these standards.

<b>Parameter</b>	<b>Policy</b>	<b>Proposal</b>
<b>Height</b>	Objective OP2 of the BMDLAP sets out criteria for development of the former Heiton Buckley site. In relation to building height, OP2 states: <i>A high density development, that makes the best use of this serviced urban land will be</i>	The proposal provides for buildings ranging from 1 to 7 storeys.

	<i>expected, in a 3-4 storey development</i>	
<b>Car Parking</b>	<p>In relation to Car Parking, Volume 3 Appendix 1 (Development and Design Standards) of the WCDP states:</p> <ul style="list-style-type: none"> <li>• <i>2 off street car parking spaces shall normally be required for all dwelling units over 2 bedrooms in size. For every 5 residential units provided with only 1 space, 1 visitor space shall be provided.</i></li> </ul> <p>This would equate to a requirement for approximately</p> <p>33 no. 1-bed x 1 space = 33  91 no. 2-bed x 1 spaces = 91  15 no. 3-bed x 2 spaces = 30  124/5 visitor spaces = 25  Total - 179</p>	<p>The Proposal provides 59 spaces at a rate of 0.42 spaces per unit.</p>
<b>Public Open Space</b>	<p>In relation to Public Open Space, Volume 3 Appendix 1 (Development and Design Standards) of the WCDP states:</p> <ul style="list-style-type: none"> <li>• <i>Public open space will normally be required at a rate of 15% of the site area – areas within the site that are not suitable for development or for recreational use must be excluded before the calculation is made;</i></li> <li>• <i>The need to provide public open space in town centre developments may be waived, particularly where public amenity space such as a town park or beach is in close proximity;</i></li> </ul>	<p>The proposal provides Communal Open Space of 1,599m<sup>2</sup>, which equates to 18.6% of the Core Site Area.</p> <p>The Communal Open Space will serve the future residents only and therefore may not be considered as ‘public’ open space.</p> <p>However, as the site is located in the town centre and in close proximity to public parks and the Bray Promenade, the Development Plan allows for the 15% public open space requirement to be waived.</p> <p>Furthermore, the scheme will greatly enhance the public realm along Castle Street and provide a community facility as a planning gain.</p>

### 3. National and Regional Planning Framework

Since the adoption of the Wicklow County Development Plan 2016-2022 the national and regional planning framework has changed considerably, with the publication of *Project Ireland 2040 National Planning Framework*, *EMRA Regional Spatial and Economic Strategy* and Section 28 Guidelines, notably the *Urban Development and Building Heights Guidelines 2018*.

### **3.1 National Planning Framework**

The National Planning Framework (NPF) signals a shift in Government policy towards securing more compact and sustainable urban development, to enable people to live nearer to where jobs and services are located. There will be a major new policy emphasis on renewing and developing existing built-up areas rather than continual expansion and sprawl of cities and towns out into the countryside, with a target of 50% of future population growth focused in the five Cities and their suburbs.

#### **National Policy Objective 2a**

- A target of half (50%) of future population and employment growth will be focused in the existing five Cities and their suburbs<sup>15</sup>.

The National Planning Framework requires that planning and related standards, including car parking, be based on performance criteria.

### **3.2 Eastern Midland Regional Assembly Regional Spatial and Economic Strategy**

The *Eastern Midland Regional Assembly Regional Spatial and Economic Strategy* (EMRA RSES), published in November 2018 supports the implementation of National Policy Objectives and targets contained in *Project Ireland 2040 - National Planning Framework* (NPF) and alignment with the investment priorities of the *National Development Plan 2018-27* (NDP).

Bray is identified in the EMRA RSES as a *Key Town: Large economically active service and/or county towns that provide employment for their surrounding areas and with high-quality transport links and the capacity to act as growth drivers to complement the Regional Growth Centres.*

It is acknowledged in the EMRA RSES that the development potential in Bray is restricted due to the the coast to the east, Bray Head/Sugarloaf mountains to the south and the N/M11 to the west. Therefore it is policy to support the consolidation and re-intensification of infill, brownfield and underutilised lands within the urban area.

## **4 Relevant Section 28 Guidelines**

### **4.1 Urban Development and Building Heights Guidelines**

The *Urban Development and Building Heights Guidelines 2018* were published in December 2018. The Guidelines recognise that *“increasing prevailing building heights therefore has a critical role to play in addressing the delivery of more compact growth in our urban areas, particularly our cities and large towns through enhancing both the scale and density of development and our planning process must actively address how this objective will be secured”*.

The Guidelines take precedence over blanket height limitations in Development Plans. The guidelines recognise that *“it is Government policy that building heights must be generally increased in appropriate urban locations.”*

Town centres and high capacity public transport corridors are recognised as locations suitable for increased building height:-

*In general terms therefore, maximum building heights in city and town centre areas have tended towards the range of six to eight storeys, which have been exceeded in only a limited number of locations. These locations have generally been identified in strategic planning policy terms as being suitable for buildings that are significantly taller than the prevailing and/or traditional building heights as in the case of strategic development zones and high capacity public transport nodes (Para. 1.8).*

#### 4.1.1 Public Transport

The Guidelines note that substantial investment in public transport infrastructure is a key tenet of Project Ireland 2040, particularly in cities and towns through investment in a range of modal solutions, including rail, Metrolink, LUAS, Bus Connects and walking and cycling 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 developing sustainable mobility corridors and networks (Para. 2.4).

#### 4.2.2 Placemaking

The Guidelines also note that taller buildings can also assist in reinforcing and contributing to a sense of place, such as indicating the main centres of activity, important street junctions, public spaces and transport interchanges. In this manner, increased building height is a key factor in assisting modern placemaking and improving the overall quality of our urban environments (Para. 2.5).

#### 4.2.3 Development Management

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* (Para. 3.1).

### **4.2 Sustainable Urban Housing: Design Standards for New Apartments**

The site meets the criteria for a Central and Accessible Urban Location, being located within walking distance of DART. The Guidelines require that car parking in large-scale apartment developments be minimised, substantially reduced or wholly eliminated.

#### **1) Central and/or Accessible Urban Locations**

In larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.

These locations are most likely to be in cities, especially in or adjacent to (i.e. within 15 minutes walking distance of) city centres or centrally located employment locations. This includes 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services.

## **5. Material Contravention Considerations**

The following section has regard to the criteria available to ABP in accordance with Section 37(2)(b) of the Planning and Development Act, as amended.

Having regard to the national and regional policy context outlined above, it is submitted that the proposed height, car parking and open space provision is in accordance with proper planning and sustainable development and permission may be granted in contravention of the Development Plan / Local Area Plan.

### ***5.1 Strategic or National Importance - 37(2)(b)(i)***

The proposal is lodged under the strategic housing legislation which aims to fast-track larger housing developments on appropriately zoned sites so as to assist in realising Government's objectives of increasing the national housing stock and promoting appropriate compact urban development at suitable locations. These objectives are provided for within the *National Planning Framework*. It is therefore of strategic national importance having regard to the provisions of *Rebuilding Ireland – The Government's Action Plan on Housing and Homelessness* and the *National Planning Framework 2040*, in particular national planning objective 3a and 3b.

### ***5.2 Section 28 Guidelines – 37(2)(b)(iii)***

#### ***5.2.1 Height***

The *Urban Development and Building Heights Guidelines 2018* call for more compact urban development, particularly in close proximity to public transport.

Applying these planning principles to the subject site, it is submitted that the proposed height in excess of the 3-4 storeys indicated in the BMDLAP is appropriate given the physical constraints on development capacity in Bray identified in the RSES.

In terms of public transport, the site is located on a bus corridor and within 1km of DART. Such locations are rare and such sites are finite in the Dublin Metropolitan Area. National guidance is clear that increased density and height at such locations is required to optimise the effectiveness of the investment in infrastructure.



The *Urban Development and Building Heights Guidelines 2018* also recognise the role of taller buildings in terms of placemaking and improving the overall quality of our urban environments. A critical element of this is to achieve adequate and meaningful height on a site which defines a northern gateway to the town centre.

The subject site benefits from high quality public transport and is a location that lends itself very well to a building of scale, with the taller elements interfacing with the reservation for the future Southern Access Road.

Compliance with SPPR 3 of the Guidelines is demonstrated in the enclosed *Planning Context Report & Statement of Consistency*.

It is submitted that the proposed development is appropriate and in accordance with proper planning and sustainable development.

#### 5.2.2 Car Parking

It is clear from the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities* that in urban locations served by public transport or close to town centres or employment areas and particularly for housing schemes with more than 45 dwellings per hectare net (18 per acre), planning authorities must consider a reduced overall car parking standard and apply an appropriate maximum car parking standard.

The area is well served by public transport and by pedestrian and cyclist linkages. The site is therefore ideally placed to take advantage of non-car sustainable modes of travel.

The enclosed *Transportation Assessment Report* includes an assessment of public transport capacity, which concludes that additional demand for Bus and DART services as a result of the proposed development can be accommodated on the existing services.

### 5.2.3 Public Open Space

The proposal is principally a residential apartment development, which is designed in compliance with the standards contained in *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities*.

The Guidelines focus on the provision of good quality communal amenity spaces, with minimum standards indicated. The proposal exceeds these standards. The Guidelines do not require ‘public’ open space in addition to communal amenity space. Such a requirement would conflict with national policy objectives requiring the efficient use of serviced urban land.

As noted in Section 2 above, the Development Plan states clearly that public open space requirements can be waived in town centres where public amenity space such as a town park or beach is in close proximity. Notwithstanding this, the scheme will greatly enhance the public realm along Castle Street and provide a community facility as a planning gain.

## **6. Conclusion**

Having regard to the strategic nature of the development, the proposed development will help to deliver national strategic policy objectives on housing for an increased and urbanised national population in compact urban settlements of scale and sustainable form, as further detailed in the EMRA RSES and in the WCDP and complies with the NPF and Section 28 Guidelines. It is submitted that An Bord Pleanála can grant permission for the proposed development.

Darran Quaile

April 2022