

# **MATERIAL CONTRAVENTION STATEMENT**

**FOR A**

## **STRATEGIC HOUSING DEVELOPMENT AT SION ROAD, KILKENNY**

**PREPARED BY**



**ON BEHALF OF**

**TORCA DEVELOPMENTS LTD.**

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## 1. INTRODUCTION

McGill Planning Ltd., have been instructed by the applicant Torca Developments Ltd. to prepare this Material Contravention Statement to accompany this application for planning permission in respect of a proposed Strategic Housing Development at Sion Road, Kilkenny consisting of c.120 units including houses, duplexes and apartments. The proposed SHD application will comprise the following:

- Demolition of existing buildings (total gross floor area c.3,031 sq.m.).
- Construction of a residential development of 120 no. units (36 no. 1-beds, 17 no. 2-beds and 67 no. 3+ beds) comprising 36 no. houses and 84 no. duplexes/apartments arranged within 7 no. blocks. Buildings range in height from 2 to 4 storeys.
- Provision of a community childcare facility.
- 154 no. car parking spaces and 104 no. secure bike parking spaces. Bin stores, pumping station compound and ESB kiosk.
- Landscaping proposals to include a new public park (to be taken in charge by Kilkenny CoCo) providing access to/from the River Nore Valley Walk which runs through the southern portion of the application site.
- Vehicular access from Sion Road to the north. Upgrade of footpath along Sion Road as far as the junction with the Dublin Road and provision of cycle lanes.
- All other site works, landscaping, boundary treatments and services provision to facilitate development

## 2. LEGISLATIVE CONTEXT

The Planning and Development (Housing) and Residential Tenancies Act, 2016 outlines how the Board may grant permission for a development which materially contravenes a Development Plan or Local Area Plan:

Section 9(6) of the Act states:

*“(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.”*

Section 37(2)(b) of the 2000 Act states:

*“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.”*

At the time of lodging this SHD application, Kilkenny County Council has suspended the review of the Kilkenny City & County Development Plan with effect from the 23rd of November 2018, pending the making of the Regional Spatial and Economic Strategy (RSES) for the Southern Region by the Regional Assembly.

The Members of the Regional Assembly approved the RSES to be made on 31st of January 2020. It is expected that the review process will resume shortly. The current application has referred to the existing City Development Plan 2014-20.

### **3. POTENTIAL MATERIAL CONTRAVENTION**

The current zoning for the majority of the site (where built development is proposed) is ‘Existing Low density Residential’ with the following objective:

***‘To protect, provide and improve residential amenities at low density. Low density housing is defined as not more than 10 units per ha (4 per acre) on average and must have regard to the character of the area.’***

We refer to Section 9(6)(b) of the Planning and Development (Housing) and Residential Tenancies Act 2016 as amended, which clarifies that the Board is restricted from granting permission for a development (or part of it) which materially contravenes a development plan or local area plan in relation to the zoning of land.

As noted in the Response to the Board's Opinion Report, this Stage 3 application includes a Planning Opinion prepared by Eamon Galligan Senior Counsel which concludes that the reference to the phrase "*the zoning of land*" in Section 9(6)(b) of the 2016 Act must be interpreted consistently with the same use of the phrase in Section 10(2)(a) of the Planning & Development Act, 2000 (as amended), which defines the zoning of land "*for the use solely or primarily of particular areas for particular purposes*", be it residential, commercial, industrial, etc., or for a mixture of these.

The 2000 Act makes separate provisions for regulating and controlling land (through measures such as density, heights, etc), beyond the primary zoning of the land which establishes use.

The density of the development is therefore not relevant to the question of how the lands are "zoned" for the purposes on the 2000 Act, despite the particular wording of the zoning in this instance.

**The Board, therefore, is not restricted from granting permission for the current residential proposal as the development in principle is not a material contravention of the residential zoning.**

Setting aside the matter of zoning, the Board can then assess the matter of density.

The total number of units is 120 resulting in a gross residential density of 20 units per ha, and a net density of 38 units per ha, when the existing/proposed public park /open spaces are excluded.

The proposed density is therefore higher than the 10 units per ha maximum stated in the Development Plan.

Should the Board consider that the subject development therefore represents a Material Contravention of the Development Plan (in relation to density alone) we submit that the Board can still grant permission under Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act 2016*, which states:

*"(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.”*

Section 37(2)(b) of the 2000 Act states:

*“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.”*

In this regard we submit the following under Section 5(6) of the 2016 Act:

- **Section 37(2)(b)(i) of the 2000 Act:**

The proposed development is a “Strategic Housing Development”, as defined under Section 3 of the 2016 Act.

- **Section 37(2)(b)(ii) of the 2000 Act:**

The zoning objective for the site prescribes a maximum density of 10 units per ha “*on average*”.

However, Section 11.4.1 states that it is not the intention of the Development Plan to prescribe maximum residential density standards:

*“The emphasis will be on providing quality-housing environments based on innovation and a design led approach. A high standard of architectural design and layout will be required. The Planning Authority will seek to ensure that new developments have individuality and a sense of place, which is generated by the interaction between the physical characteristics and features of the site and its surroundings and the layout, landscaping and design of the new housing.”*

In accordance with Section 11.4.1 the proposed layout, quantum and mix, and resulting density of the proposal presented to the Board has been arrived at through a “design-led approach” in order to create a bespoke development that reflects its unique setting, establishes an individual sense of place and that reflects and exploits the physical characteristics of the site and its surroundings and with regard to the following:

<b>Section 11.4.1 of Kilkenny City Development Plan</b>	<b>EVALUATION OF CONSISTENCY</b>
<i>i) The extent to which the design and layout follows a coherent design brief resulting in a high quality residential environment;</i>	The design brief in this instance is to: (1) provide a unique residential development with a broad range of unit types in that will provide for a sustainable mixed community close to services and amenities, (2) protect and enhance the key natural attributes of the site that will create a unique residential environment but that is also open to the wider community to experience.
<i>ii) Compliance with qualitative and quantitative criteria set out (including the 12 design criteria);</i>	This is addressed in detail in the Architectural Design Statement prepared by Brian Dunlop Architects.
<i>ii) Proximity to points of access to the public transport network;</i>	The recently commenced KK2 bus service (Purcellsinch to St. Lukes Hospital via Kilkenny City Centre) now operates along the Dublin Road with a stop c.250m north of the application site. This service runs every half hour and is one of only 2 bus services serving Kilkenny.  Such close proximity to public transport suggests a greater density and mix of residential development is justified at this site than was previously considered in the drafting of the 2014 Development Plan.

*iv) The extent to which the site may, due to its size, scale and location, propose its own density and character, having regard to the need to protect the established character and amenities of existing adjoining residential areas;*

*v) Existing topographical, landscape or other features on the site, and;*

The site is unique in the area having been in ecclesiastical/institutional use previously compared to low density residential and agricultural use on other properties.

Significant natural heritage features reflecting the historic landscape setting remain on the site, and in the southern portion have been utilised to provide part of the River Nore Valley Walk.

It is proposed to create a new public park within the western section of the site utilising the significant bands of mature trees to create a link from Sion Road to the Nore Valley Walkway that will be taken in charge and fully open to the public.

The residential component is proposed on the existing built area of the site and adjoining open area free of significant trees.

This area extends to 3.15ha and will interface with the public park area with a well-defined urban edge of 3-4 storey apartment blocks along the single access road into the site providing surveillance over the public areas.

These units are located in the heart of the site where this scale and density of development can be accommodated without any impact on the character and setting of adjoining lands or on the wider views (are shown in the photomontages submitted).

Along the northern and eastern boundaries of the site, detached, semi-detached and terraced housing is proposed which at 2 storeys will integrate with the residential character along Sion Road.

The retention of the trees and open space along the western side of the site will ensure



	no impact on the amenities of properties to the west.
vi) <i>The capacity of the infrastructure, including social and community facilities, to absorb the demands created by the development.</i>	<p>The proposed development is located within the environs of Kilkenny city and is within short walking distance of a range of retail services (convenience retail, pharmacy leisure) and employment opportunities located along the Dublin Road to the north.</p> <p>The proposed development includes for childcare on site to serve future residents.</p> <p>The development will benefit from significant recreational amenities with the Nore Valley Walk located to the immediate south, and notwithstanding the additional public open space proposed as part of this development.</p>

In summary it is considered that the development proposed is justified in terms of design and density. The development strikes an appropriate balance between the local Development Plan objectives which on the one hand promote lower density but which are equally amenable to higher density developments that are justifiable in terms of quality of layout and design, proximity to public transport and services, and which utilise the unique characteristics of the site to promote sustainable residential community, significant planning gain to the area (new park) and which does not impact on the amenities of adjoining properties.

- **Section 37(2)(b)(iii) of the 2000 Act:**

The proposed development now before the Board strikes, what we believe is, an appropriate balance between Sections 3.3.1 and 11.4.1 of the Development Plan, but also with regard to national planning policy as now guided under the National Planning Framework, and which is very clear in promoting greater densification of residential development on zoned and serviced land close to services and amenities in large towns such as Kilkenny.

In relation to specific national policy we note the following:

- Section 5.11 of the ***Sustainable Residential Development in Urban Areas Guidelines, 2009*** states that “Outer Suburban/Greenfield” sites at the edge of large towns should achieve net residential densities in of 35-50 units per ha.
- Noting the former ecclesiastical/institutional use of this site, Section 5.10 of the 2009 Guidelines states that former institutional lands should also be developed at net densities of 35-50 units per ha. Section 5.10 also notes that developments on such

lands should seek to retain the open character of the lands and can offer recreational or amenity open space opportunities to the wider community. In this instance we note the new public park and connection to the existing Nore Valley Walk proposed as part of this development.

- The ***Design Standards for New Apartments Guidelines, 2018*** state that mixed residential developments at “Less Accessible Urban Locations” can achieve net densities up to 45 units per ha with optimal density to be assessed on a case by case basis with regard to location and context.

The proposed development comprises a very broad mix of housing types, that includes 8 large detached houses on large plots and 18 semi-detached houses. This part of the proposed development addresses the need for such housing types in this part of Kilkenny as identified in Section 3.3.1.

The remainder of the scheme comprises a mix of terraced housing, duplexes and small apartment blocks. The total number of units is 120 resulting in a gross residential density of 20 units per ha, and a net density of 38 units per ha, when the existing/proposed public park /open spaces are excluded.

This is considered a suitable quantum, mix, layout and density of residential development given the particular context of the site and national planning policy.

#### **4. CONCLUSION**

Given the above it is contended that the proposed SHD scheme at Sion Road, Kilkenny complies with national policy and indeed the Kilkenny City Development Plan (Section 11.4.1), and therefore the Board may grant permission under Section 9(6) of the 2016 Act.