
Statement of Material Contravention

Proposed Strategic Housing Development

Lands at Capdoo and Abbeylands, Clane, Co. Kildare

Westar Investments Ltd

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1.0 Introduction

Hughes Planning and Development Consultants, 70 Pearse Street, Dublin 2, have prepared this Statement of Material Contravention on behalf of our client, Westar Investments Ltd, to accompany a planning application to An Bord Pleanála for a proposed Strategic Housing Development in relation to lands at Capdoo and Abbeylands, Clane, Co. Kildare.

The proposed Strategic Housing Development comprises the construction of a residential development, comprising 333 no. dwellings (121 no. houses, 144 no. apartments, 48 no. duplex units and 20 no. maisonettes), a crèche facility, a communal/community building and a new public park on 10.36 hectares of land. The proposal also includes 3 no. vehicular/pedestrian accesses (2 no. off the Brooklands Housing Estate Road and 1 no. off Alexandra Walk), and provision of 1 no. pedestrian only access (with associated works to footpaths and verges) off the Brooklands Housing Estate Road, car parking, private open space, internal roads, footpaths, cycle tracks, public open space, landscaping, boundary treatments, street lighting, SuDS drainage, piped and other services and ancillary site development works necessary to facilitate the development.

An Bord Pleanála issued a Notice of Pre- Application Consultation Opinion on 29th October 2020 under ABP Ref. ABP 307465-20. The opinion states that An Bord Pleanála “*has considered the issues raised in the pre-application consultation process and, having regard to the consultation meeting and the submission to the Planning Authority, is of the opinion that the documents submitted with the request to enter into consultations constitute a reasonable basis for an application for strategic housing development.*”

The opinion further states that “pursuant to article 285(5)(b) of the Planning and Development (Strategic Housing Development) Regulations 2017, the prospective applicant is hereby notified that, in addition to the requirements as specified in articles 297 and 298 of the Planning and Development (Strategic Housing Development) Regulations 2017, the following specific information should be submitted with any application for permission.” Item 11 of this opinion requires:

“A material contravention statement, in respect to any and all elements of the development that may materially contravene the Development Plan objectives or policies applicable to the site, whether, core strategy, density, housing typology, car parking, open space or other.”

It is also noted that the opinion of Kildare County Council submitted to the Board at Stage 2, indicated that the Planning Authority were of the opinion that the proposed development constituted a material contravention of the development plan Settlement Strategy and Core Strategy; projected residential capacity and density outlined for KDA1 under the Clane Local Area Plan 2017-2023; the housing unit allocation for Clane as set out in Variation No. 1 of the County Development Plan, the proposed density of development and the proposed heights in the context of specific policies for the lands as set out in the Clane Local Area Plan 2017-2023.

On this basis, this Material Contravention statement provides a robust justification for the granting of permission for the proposed development which materially contravenes the Kildare County Development Plan 2017 – 2023, the Clane Local Area Plan 2017 -2023 and variation no. 1 of the Kildare County Development Plan 2017 – 2023. The Material Contravention proposed relates to settlement strategy/core strategy, density, and height of the proposed development with regards to policies contained within the Clane Local Area Plan 2017 – 2023 under KDA1 and the proposed car parking rate of 1.2 spaces per apartment in lieu of Table 17.9 of the Development Plan which requires a rate of 1.5 spaces per unit.

At this junction it is also important to note that Variation No. 1 introduces a revised Core Strategy and Settlement Strategy to bring the Kildare County Development Plan 2017 – 2023 in line with national and regional planning policy as per the National Planning Framework and the Eastern and Midlands RSES. However, **there has been stay put on Variation No. 1 and as such the revised core strategy has not yet come into force.** While we wish to note the current stay on Variation No 1 and recorded direction from the Local Authority is that while the stay is in place the variation should not be considered by An Bord Pleanála. However, It is submitted to the Board, that should the stay be lifted on the proposed variation no. 1 prior to adjudication of this application, the proposed development would

materially contravene the housing allocation for Clane as set out in the Variation which reduces the housing allocation up to 2023 to 145 units. On this basis, this material contravention statement will address the contravention of the current Kildare County Development Plan 2017 – 2023 and Clane Local Area Plan 2017 -2023 and will also address the material contravention of Variation No. 1 of the plan should this variation be adopted prior to the decision on this current application.

It is noted that the opinion request of the Board as set out above indicates that housing typology, car parking spaces and others should be included within the material justification if it materially contravenes the Development Plan or the Local Area Plan. In this instance it is submitted that there is no material contravention of open space with nearly 34% of the site provided as open space which is in excess of the 15% required under the Clane Local Area Plan and the housing typology proposed provides for a mix of house types including dwellings, apartments, duplexes and maisonettes which is in accordance with the LAP for ensuring a good mix of house types and sizes are provided and in accordance with policy MD 1 of the Development Plan. It is submitted that the proposed development accords with these specific policies and objectives of the Development Plan and Local Area Plan.

It is respectfully requested therefore that An Bord Pleanála have regard to the following justification for a potential material contravention of the Kildare County Development Plan 2017 – 2023 and the Clane Local Area Plan 2017 -2023 (as it relates to core strategy, density, building height and car parking) having regard to the fact that the proposed development is by definition ‘of strategic importance’, the pattern of development approved in the area and having regard to the compliance of the proposed development with national planning policy and section 28 Guidelines as outlined herein. These include the National Planning Framework 2040, Urban Development and Building Heights Guidelines for Planning Authorities, 2018, Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018 and the Regional Spatial and Economic Strategy for the Midlands and Eastern Region which fully support and reinforce the need for residential development at appropriate densities on sites in close proximity to public transport and within existing urban areas.

2.0 Legislative Context

Pursuant to Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (2016 Act), where a proposed development is considered to materially contravene the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), the Board can determine that permission should, nonetheless, be granted, having regard to a consideration specified in Section 37(2)(b) of the Planning and Development Act, 2000 as amended (the Act). Section 9(6)(c) of the 2016 Act stating that:

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 Act states that where a proposed development materially contravenes the development plan, the Board may grant permission 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.*

It is respectfully requested that An Bord Pleanála, should they determine the proposal materially contravenes the Kildare County Development Plan 2017 – 2023 and the Clane Local Area Plan 2017 - 2023, have regard to the justification for the proposed development provided in the subsequent

sections. It is considered that the policies and objectives stated in the Section 28 Government Guidelines, including the National Planning Framework 2040, Urban Development and Building Heights Guidelines for Planning Authorities, 2018, and Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018, provide justification for the proposed number of units, density and height. These policies, among others, are discussed in the below justification section. Further to this, the proposal can also be justified having regard to the strategic importance of Strategic Housing Developments and the permissions granted in the area since the making of the Local Area Plan.

3.0 Potential Material Contraventions

3.1 Core Strategy of Kildare County Development Plan and Clane Local Area Plan

At this junction it is important to note that Variation No. 1 introduces a revised Core Strategy and Settlement Strategy to bring the development plan in line with national and regional planning policy as per the National Planning Framework and the Eastern and Midlands RSES. However, **there has been stay put on Variation No. 1 and as such the revised core strategy has not yet come into force.** An extra from the Inspectors report on ref. 306826-20 for a proposed development in Kilcock states:

“At the time of reporting, the statutory plan and policies in place are those in the Kildare County Development Plan 2017-2023, and notwithstanding that a Variation to this Plan was adopted by the elected members in June 2020 (Variation No. 1), a Stay has been placed on this Variation. The Board received a letter from Kildare’s legal representatives advising the Board that that an immediate Stay on the operation of Variation No. 1 to the Kildare County Development Plan 2017-2023 has been put in place by the High Court and that while the Stay is in place An Bord Pleanála should avoid assessing any application by reference to Variation No. 1 of the Kildare County Development Plan 2017-2023 (attached as Appendix 1). It is further noted that Kildare County Council are seeking to have this Stay lifted and that this may occur prior to the decision date of this case currently before the board and being assessed at this time.”

On this basis, this material contravention statement will address the contravention of the current Kildare County Development Plan 2017 – 2023 and Clane Local Area Plan 2017 -2023 and will also address the material contravention of Variation No. 1 of the plan should this variation be adopted prior to the decision on this current application.

Core Strategy of Kildare County Development Plan 2017 -2023

The Kildare County Development Plan is the statutory development plan which governs the development of the application site. The plan identifies Clane as a ‘Small Town’, within its settlement hierarchy, and notes that such towns are stated to comprise populations of between 1,500 – 5,000 and are designated to develop as key local centres for services with levels of growth to cater for local need at an appropriate scale and to support local enterprise to cater for local demand. The Settlement Strategy seeks to ‘direct growth into the Large Growth Towns, followed by Moderate Sustainable Growth Towns and Small Towns, whilst also recognising the settlement requirements of rural communities’ (Policy SS2).

It is noted, as per Table 3.3 Settlement Hierarchy – Population and Housing Allocation 2016-2023’, that the Town of Clane is intended to provide 780 no. additional residential units during the period up until 2023.

Therefore, the proposed development may be more appropriately assessed with regard to current development plan and LAP policy and to the existing housing allocation for Clane under the development plan Core Strategy, i.e. 780 no. units.

The Regional Spatial and Economic Strategy for the Eastern and Midlands Region notes that Clane can be considered as a self-sustaining town which are important employment and services centres and are towns that require continued growth focusing on driving investment in services, employment growth and infrastructure whilst balancing housing delivery.

A self-sustaining town is a higher designation than small town and as such is deserving of housing allocations in terms of services and in line with population growth. Clane has established many of the necessary facilities, community services, employment base, Public transport links etc. to support continued employment and balanced population growth. The proposed development of 333 units would help strengthen the employment base and develop the town.

The RSES also notes Clane as a Level 3 Town and/or District Centre & Sub-County Town Centres (Key Service Centres). Clane is listed here alongside other towns including Celbridge and Kilcock. Please refer to Appendix 1 for further detail of permissions granted in these towns where proposals materially contravened the Kildare CDP, Variation No. 1 and LAPs with reference to density, building heights and overall unit numbers.

Core Strategy of Clane Local Area Plan 2017 -2023

The proposed residential development subject to this application is within the boundary of the Clane Local Area Plan 2017-2023.

The Core Strategy of the Kildare County Development Plan 2017-2023 allocates 2.4% of Kildare's housing growth to Clane over the period 2017-2023. The total housing allocation for Kildare over this period is 32,497 units. Table 3.3 of the County Development Plan identifies a target population of 7,668 and a housing unit target of 3,483 units for Clane to the year 2023. The LAP will need to make provision for 780 housing units over the Plan period to meet the Core Strategy requirement.

The Core Strategy of the LAP notes that the housing capacity of these lands is estimated to be c. 1,026 residential units (Table 4.1 refers). This capacity is adequate to deliver the Core Strategy allocation of 780 housing units over the Local Area Plan period and includes additional capacity for 246 housing units. This supports an adequate supply of housing over the Plan period and provides a level of headroom in the event that some of the identified housing lands do not come forward for development during the Plan period.

The development site forms most of Key Development Area 1 (KDA1), one of five Key Development Areas in Clane. The remainder of the lands within KDA1 are zoned SR 'strategic reserve'. LAP section 4.1 states that KDA1 has an estimated residential capacity of 161 no. units, to be developed at a density of 26 units/ ha.

Location of Development	Quantum of Land for Housing (Gross Ha)	Quantum of Land for Housing (Net Ha)*	Estimated Residential Capacity **	Estimated Density / Ha
KDA 1 Dublin Road	7.7	6.2	161	26
KDA 2 Capdoo	10.9	8.7	227	26
KDA 3 Kilcock Road	9.6	7.7	201	26
KDA 4 Nancy's Lane	11.2	9.0	233	26
KDA 5 Millicent	6.6	5.3	158	30
Other Sites	3.1	3.1	46	16
TOTAL	49.1	40	1026	

Table 4.1: Estimated Residential Capacity* The net developable area in Key Development Areas is estimated to be 80% of the total area to take account of strategic infrastructure requirements.

Figure 1.0 Residential Capacity for KDA1

Table 4.1 also notes that the figures stated represent an estimate only. The density of development and number of units permissible will be determined at detailed design stage based on a full assessment of site characteristics and local sensitivities.

Variation No. 1 of Kildare County Development Plan 2017-2023

Variation No. 1 amends the core strategy of the county development plan and in Table 2.2, identifies Clane as a 'Small Town' within its settlement hierarchy and describes such settlements as '*local service and employment functions in close proximity to higher order urban areas*' and containing 'local service and employment functions such as convenience retail and are proximate to larger urban centres.'

Variation No. 1 of the Kildare County Development Plan was prepared to align the core strategy of the Development Plan with the guidance of the Regional Spatial and Economic Strategy. In this regard, we note that the RSES designate Clane as a self-sustaining town as outlined above; a designation higher within the Kildare County Settlement Hierarchy than that afforded by the Variation No. 1. Accordingly, we respectfully suggest that the RSES grants a higher ranking to the Town of Clane than provided for in Variation No. 1, and that the RSES directs that a greater level of support be provided to the Town of Clane to aid continued growth focusing on driving investment in services, employment growth and infrastructure whilst balancing housing delivery.

It is also important to note that no specific objectives or population targets are provided within the RSES or the National Planning Framework which Variation No. 1 is required to meet at a micro level relating to the Town of Clane. Nor are there any prescriptive objectives or specific unit numbers outlined for Clane in either document.

Chapter 3 of the proposed Variation to the development plan sets out the allocation of housing in more detail. Section 3.5, Table 3.3 sets out growth targets for towns, villages, rural settlements, rural nodes and the open countryside during the Plan period, based on a requirement for 6,023 no. housing units. The following settlement strategy policies are relevant for consideration in the context of the subject proposal:

- CS 1** *Provide new housing in accordance with the County Settlement Hierarchy.*
- CS 3** *Support rural communities through the identification of lower order centres including towns, villages and settlements to provide more sustainable development centres in the rural areas.*
- CS 4** *Deliver sustainable compact urban areas through the regeneration of towns and villages through a plan-led approach which requires delivery of a least 30% of all new homes that are targeted in these settlements to be within their existing built up footprint.*
- CS 11** *Seek the delivery of physical and community infrastructure including strategic open space and recreational areas in conjunction with high quality residential developments to create quality living environments.*
- SS 1** *Manage the county's settlement pattern in accordance with the population and housing unit allocations set out in the RSES, the Settlement Strategy and hierarchy of settlements set out in Table 3.1.*

Section 3 of the proposed Variation to the development plan includes a settlement hierarchy which (if the Variation No. 1 is adopted) would underpin decisions regarding the location and scale of new developments such as housing, employment creation and social and physical infrastructure provision. As discussed previously, Clane is identified as a 'Town' in the proposed Variation to the settlement hierarchy. Table 3.3 lists the percentage allocation of growth in the various towns, villages and settlements in Kildare, with Clane's allocation outlined below:

Settlement Type	Towns / Villages	2016 Census Pop	2016 Dwellings	Allocated Growth (%) 2020-2023	NPF 2026 Pop Growth in persons	NPF 2026 Pop Growth in housing units	Population Growth 2020 to 2023 (annualised from 2026 NPF Figures) ⁵	Dwellings Target 2020 to 2023
Town	Sallins	5,849	2,071	1.9%	748	267	321	114
	Kilcullen	3,710	1,401	2.5%	984	352	422	151
	Kill	3,348	1,227	1.3%	512	183	219	78
	Clane	7,280	2,741	2.4%	945	337	405	145
	Prosperous	2,333	813	1.0%	394	141	169	60
	Rathangan	2,611	1,009	0.9%	354	127	152	54
	Athgarvan	1,176	373	0.7%	276	98	118	42
	Castledermot	1,475	622	0.5%	197	70	84	30
	Derrinturn	1,602	558	0.6%	214	76	92	33

Figure 2.0 Excerpt from population and housing unit allocation 2020-2023 outlined in Table 3.3 of the Kildare County Development Plan 2017-2023

Section 3.4.2 of the development plan encourages a sequential approach to development of settlements where *'all towns, villages, settlements, rural nodes (as appropriate) should be developed in a sequential manner, with suitable undeveloped lands closest to the core and public transport routes being given preference for development in the first instance'*.

We would contend that the subject proposal is consistent with the sequential approach sought by the proposed Variation to the Kildare County Development Plan 2017-2023 as the proposed development is within 800 metres of the Clane Town centre and is in close proximity to existing transport services, physical and social infrastructure and amenities. However, while it aids in achieving the 337 no. new homes sought by 2026, the subject proposal contravenes the Development Plan by exceeding the growth allocation of 145 no. new homes set in relation to the 2020 to 2023 period. We contend this exceedance can be justified.

We again wish to note the current stay on Variation No 1 and recorded direction from the Local Authority is that while the stay is in place the variation should not be considered by An Bord Pleanála. However, It is submitted to the Board, that should the stay be lifted on the proposed variation no. 1 prior to adjudication of this application, we recognise that the subject proposal contravenes the Development Plan by exceeding the growth allocation of 145 no. new homes set in relation to the 2020 to 2023 period. However, as the sections below will outline, we contend this exceedance can be justified. The subject proposal is consistent with the sequential approach sought by the proposed Variation to the Kildare County Development Plan 2017-2023, being within 800 metres of the Clane Town centre and is in close proximity to existing transport services, physical and social infrastructure and amenities. Furthermore, the proposal would assist in achieving the targeted delivery of new homes sought by 2026.

3.2 Density and Height as set out in Clane Local Area Plan 2017 – 2023

The Clane Local Area Plan sets out a design brief for the subject lands under Key Development Area 1. Figure 3 below sets out the key design criteria for the lands as set out in the LAP.

<p>Vision: The extension of the urban area of Clane through new residential development and open space and amenity, with a high quality permeable urban form, which protects natural heritage and delivers important connectivity to the River Liffey and to the future town park.</p>
<p>Connectivity/Movement Achieve vehicular, pedestrian and cyclist permeability throughout the development area, with access from existing residential developments to the south, and providing for future access in conjunction with future development of Strategic Reserve lands. Provide strong pedestrian and cycle links at desire lines to the future town park and River Liffey, extending existing riverside routes and considering pedestrian river crossings. Design all roads and streets in accordance with the Design Manual for Urban Roads and Streets.</p>
<p>Built Form Provide passive surveillance of roads, cycleways, footpaths and open spaces. Address existing unsupervised edges, predominantly through the use of the perimeter block in built form. Create legible development with sense of place. Have regard to residential amenity of existing dwellings at the southern edge. Buildings 2 – 3 storey height with transition in scale from existing residential development. This KDA is likely to accommodate lower to medium density residential development in the order of 25-30 units per hectare.</p>
<p>Landscape and Spaces Provide min. 15% of New Residential lands as public open space. Retain natural heritage and Green Infrastructure features, including area of woodland, through incorporation into areas of open space. Incorporate natural heritage and Green Infrastructure features in addressing flood risk and preparation of SuDs strategy.</p>

Figure 3.0 Excerpt from Clane LAP illustrating key policies for KDA 1

In this regard the proposed development materially contravenes the objectives for building to be 2- 3 storey in height with the proposed development height exceeding this by one storey with four storey's proposed. The proposed development also materially contravenes the density of 25-30 units per hectare with a proposed residential density of 41 units per hectare based on the residential zoned lands. However, given national, regional and local planning policies to increase residential density and height at appropriate locations, a strong justification for the granting of permission for the proposed density and height is set out below.

4.0 Justification for Potential Material Contraventions pursuant to Section 37(2)(b) of the 2000 Act.

A justification for the potential material contraventions of the Kildare County Development Plan 2017 - 2023 and the Clane Local Area Plan 2017 – 2023 is set out below, under the relevant parts of Section 37(2)(b) of the 2000 Act.

4.1 Part (i) - Proposed Development is of Strategic or National Importance

The proposed development comprises of inter alia the provision of 333 houses, apartments, duplexes and maisonettes on a site of c. 10.36 hectares. 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, of strategic importance with respect to the timely delivery of urban housing and implementation of the current Government's Action Plan for Housing and Homelessness – Rebuilding Ireland.

National guidance, such as the National Planning Framework, Urban Development and Building Height Guidelines, Sustainable Urban Housing Design Standards for New Apartments and the Regional Spatial and Economic Strategy for the Eastern and Midlands Region seek to create compact sustainable residential to be located in appropriate urban locations, close to existing/proposed infrastructure and services. The development is located on residentially zoned land in an existing urban settlement and is adjacent to existing infrastructure and services. The development provides linkages to the existing residential development located to the south and west at Brooklands Estate and Alexandra Walk along with connections to lands to the north in the future. In addition to providing

residential development in accordance with national, regional and local policy, the proposed development also provides a 1.8 hectare neighbourhood park along the River Liffey with play pieces, benches and trails for the benefit of the wider town of Clane. It is therefore submitted that the proposed development can be considered to be of strategic importance.

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

As discussed in Section 3.2 of this report, KDA 1 of the Local Area Plan establishes a quantitative density of 26 units per hectare and a building height of 1- 3 storey. The LAP also states under objective HCO 1:

“HCO1.1 To require new residential developments to meet the standards and guidance as set out in:

- *The Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, DEHLG (2009) and the accompanying Urban Design Manual Best Practice Guide, DEHLG (2009).*
- *The Design Manual for Urban Roads and Streets, DTTS and DECLG (2013).*
- *The policies, objectives and development management standards contained in this Local Area Plan and in the Kildare County Development Plan.*
- *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, DEHLG (2015).”*

As detailed further in Section 4.3.2 below, the Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities require a minimum density of 35 units per hectare for the subject lands. Therefore, there are conflicting objectives within the LAP with regards to density and heights.

The Kildare County Development Plan 2017-2023 provides for a density range of 35-50 units per hectare on ‘Outer Suburban / Greenfield’ sites in large towns. A large town is defined as a town with a population of over 5,000. The population of Clane at the 2016 Census was 8,142 persons in 2016. The estimated residential capacity specified for Key Development Area 1 in the Clane Local Area Plan 2017-2023 is 26 units per hectare. Therefore, there are conflicting statements in the local area plan, and the appropriate density (as provided for in the Kildare County Development Plan 2017-2023) should be between 35-50 units per hectare.

There are also conflicting objectives in the Development Plan and regional planning policy with the RSES designating Clane as a self-sustaining town whilst Variation No. 1 designates Clane as a small town.

Furthermore, the overall policies and objectives of the Kildare County Development Plan 2017 -2023 seeks to:

- support sustainable development in established urban areas,
- deliver compact and sustainable development
- create sustainable and integrated communities
- ensure an appropriate mix of housing types and sizes
- encourage appropriate densities for new developments.

The proposed development complies with the policies and objectives of the Development Plan with the exception of the settlement strategy and density with the proposal marginally contravening the height within the LAP.

The Settlement Strategy of the Development Plan applies to the period 2017 – 2023 and there has not been any significant grant of planning permissions granted since Ref. ABP Ref. ABP-304632-19 at Capdoo, Clane was permitted. Thus it would appear that a total of 456 no. residential units have been permitted in Clane since the adoption of the LAP, leaving a remaining total of 324 no. units within the allocation of 780 no. units for the plan period. This proposed development provides for 333 no. residential dwellings which is only marginally above that set out within the plan (9 no. units) and is consistent with the additional capacity of 246 units (i.e. 25%) headroom capacity. The marginal

exceedance of the Settlement Strategy is warranted by the increase residential density supported and required by recent national and regional planning guidance. The proposed development exceeding the settlement strategy is based on an assumption that all commenced and permitted developments will be constructed and completed by 2023.

It is therefore submitted that despite the restrictive settlement strategy and density parameters of the Kildare County Development Plan, the subject development achieves the objectives of the KCDP.

4.3 Part (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

The following section shall demonstrate how the proposed development in terms of unit numbers, density and height are justified in the context of recent National Planning Policy and Section 28 Government Guidelines. Please also refer to the Statement of Consistency and Planning Report for further details on the proposed developments compliance with national and regional guidelines.

4.3.1 Project Ireland: National Planning Framework 2040

The National Planning Framework 2040 (NPF) seeks to increase densities and building heights in appropriate urban locations to consolidate urban sprawl, increase the sustainability of public transport networks and meet the housing needs of our growing population. The NPF seeks to influence the location of new housing development and future population growth and targets the location of 40% of new housing development within and close to the existing 'footprint' of built up areas over the lifetime of the framework.

The following objectives and guidance regarding brownfield development in the NPF are of particular relevance:

- National Policy Obj. 3a** *Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.*
- National Policy Obj. 3b** *Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.*
- National Policy Obj. 4** *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 Obj. 13** *In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.*
- National Policy Obj. 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 Obj. 35** *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.*

To enable brownfield development, planning policies and standards need to be flexible, focusing on design led and performance-based outcomes, rather than specifying absolute requirements in all cases. Although sometimes necessary to safeguard against poor quality design, planning standards should be flexibly applied in response to well-designed development proposals that can achieve urban infill and brownfield development objectives in settlements of all sizes. This is in recognition of the fact that many current urban planning standards were devised for application to greenfield development sites and cannot account for the evolved layers of complexity in existing built-up areas.

The proposed residential development is consistent with the Objectives of the NPF. The proposed development will take place in a sustainable manner, on lands that are within the established urban settlement of Clane, zoned for residential development and can be considered contiguous to existing residential developments. This will take place through appropriate design standards and achieving the correct density for the subject site. The development will not give rise to any negative effects on the environment and will support the economic growth and development of Clane.

It is evident that there is a strong emphasis placed on increased building heights and densities in appropriate zoned lands and locations within existing urban settlements. As such it is respectfully submitted that the proposed building height ranging from two storeys to four storeys is in line with Government guidance and evolving trends for sustainable residential developments in urban areas.

The National Planning Framework states the following in relation to changing family size:

Currently, 7 out of 10 households in the State consist of three people or less, with an average household size of 2.75 people. This is expected to decline to around 2.5 people per household by 2040. Household sizes in urban areas tend to be smaller than in the suburbs or rural parts of the country. In Dublin city, one, two and three person households comprise 80 percent of all households. Yet, the stock of housing in Ireland is largely comprised of detached and semi-detached houses with three to four bedrooms.

Having regard to the above, the proposed unit mix responds to the identified strategic need for smaller units in the housing stock in urban areas. The proposed development will include one-bedroom and two-bedroom apartments which will improve the variety of house types in the area consistent with national policy guidance.

4.3.2 Sustainable Residential Development in Urban Areas & Design Manual

The role of the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' is to ensure the sustainable delivery of new development in urban areas throughout the country. The Guidelines provide clear guidance on the core principles of design when creating places of high quality and distinct identity. The Guidelines recommend that planning authorities should promote high quality development in policy documents and through the development management process. The Guidelines should be read in tandem with the Design Manual which demonstrates good design principles and their application in designing new residential developments.

The Guidelines recognise that a key design aim in delivering sustainable communities is to reduce, as far as possible, the need to travel, particularly by private car, by facilitating mixed-use development and by promoting the efficient use of land and of investment in public transport. Such policies will help to sustain viable local services and employment.

Section 2.1 of the Guidelines state 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."*

The sequential approach to land development is also recognised by the Guidelines within Section 2. which notes that *"the Department's 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 and that areas to be zoned shall be contiguous to existing zoned development lands..”

In this case, the subject site is zoned for residential development under the current Kildare County Development Plan 2017-2023 and Clane Local Area Plan. The site is located on appropriately zoned lands to the north east of Clane town centre and will be contiguous to existing residential developments at Brooklands and Alexandra Walk. Limiting height and density will prevent sustainable, compact development within appropriately zoned lands located within an existing settlement boundary and will lead to ‘leapfrogging’ of developments and urban/suburban sprawl, particularly into greenfield and high amenity lands. Thus, the LAP objectives restricting height at the application site conflict with National Planning Policy issued under Section 28 Guidelines.

The Guidelines also recognise the need to plan for sustainable neighbourhoods. In this regard, the proposed strategic housing development provides for a range of community facilities for residents in the form of a childcare facility and high-quality amenity spaces for the enjoyment of the local community including play equipment as well as public access and connectivity to the open space areas. The proposed land uses are in accordance with the zoning objective designation on the site. It is important to note that the wider area of Clane provides a wealth of services and amenities for the use and enjoyment of the community including local shops, supermarkets, schools, healthcare facilities, churches, community centres, , etc.

In terms of density, Section 5.11 of the Guidelines support increased residential densities particularly for sites located in ‘Outer Suburban / Greenfield’ sites, particularly for such sites on the periphery of cities or larger towns, as it states:

‘The greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally.’

In addition to the above, the guidelines go on to further state the following in terms of residential development in ‘Outer Suburban/Greenfield’ sites;

‘Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares.’

The application site will achieve an overall net density of c.41 dwellings per hectare. It is considered that the site is classified as an outer suburban / greenfield site noting its location on appropriately zoned lands in a highly accessible location within the development boundary of Clane. Therefore it is submitted that the proposed development provides for an appropriate density of development.

4.3.3 Urban Development and Building Heights Guidelines for Planning Authorities, 2018

The Urban Development and Building Height Guidelines, 2018, are intended to set out national planning policy guidelines on building heights and development intensity in urban areas in response to specific policy objectives set out in the National Planning Framework and Project Ireland 2040. Under Section 28(1C) of the Planning and Development Act 2000 (as amended), Planning Authorities and An Bord Pleanála will be required to have regard to the guidelines and apply any specific planning policy requirements (SPPR’s) of the guidelines in carrying out their function.

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

The Height Guidelines state that *'the preparation of development plans, local areas plans, and Strategic Development Zone Planning Schemes and their implementation in the city, metropolitan and wider urban areas must therefore become more proactive and more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights'*.

The site benefits from an excellent public transport network. The site is located a 4-minute walk (approximately) from the R403/Maxol bus stop which serves Go Ahead bus route no. 120. This service operates 7 no. days a week from 5:53am to 00:14 am, running, on average, 1 no. bus per half hour. A second bus stop is located 11 minutes (approximately) from the site which serves Transport for Ireland route 139. This is a daily service, which runs one bus an hour between 7:20am to 23:30pm. An additional bus stop located at Cloisters nearby, serves route 846 which is provided by JJ Kavanagh & Sons. The bus services provide regular access to Connolly and Heuston Stations, University College Dublin, Dublin City Centre, Liffey Valley, Naas, Celbridge and more. The 139 bus route will provide direct access to the upcoming Maynooth DART line which will run 9 daily return trips . The proposed development therefore represents an opportunity to provide for increased densities in accordance with national planning policy.

4.3.4 Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018

The 'Sustainable Urban Housing: Design Standards for New Apartments' build on the content of the 2015 apartment guidance. The Guidelines state that "in the longer term to 2040, the Housing Agency has identified a need for at least 45,000 new homes in Ireland's five cities (Dublin, Cork, Limerick, Galway and Waterford), more than 30,000 of which are required in Dublin City and suburbs, which does not include additional pent-up demand arising from under-supply of new housing in recent years."

The Guidelines also state that *"apartments are most appropriately located within urban areas. As with housing generally, the scale and extent of apartment development should increase in relation to proximity to core urban centres and other relevant factors. Existing public transport nodes or locations where high frequency public transport can be provided, that are close to locations of employment and a range of urban amenities including parks/waterfronts, shopping and other services, are also particularly suited to apartments."*

In light of this, the Guidelines note that *"City and County Development Plans must appropriately reflect this, in the context of the need to both sustainably increase housing supply and to ensure that a greater proportion of housing development takes place within the existing built-up areas of Ireland's cities and towns. This means making provision for more residential development to take place on infill and brownfield sites and as refurbishment of existing buildings, to increase urban residential densities."*

Section 2.23 of the Guidelines also recognises that the National Planning Framework *"signals a move away from rigidly applied, blanket planning standards in relation to building design, in favour of performance-based standards to ensure well-designed high-quality outcomes. In particular, general blanket restrictions on building height or building separation distance that may be specified in development plans, should be replaced by performance criteria, appropriate to location."*

The objectives within the Kildare County Development Plan 2017-2023 and Clane Local Area Plan 2017 – 2023 materially conflict with this National Policy.

Section 4.22 in the Guidelines note that:

"As a benchmark guideline for apartments in relatively peripheral or less accessible urban locations, one car parking space per unit, together with an element of visitor parking, such as one space for every 3-4 apartments, should generally be required. "

Section 2.4 of the Guidelines also promotes higher density development in accessible, suburban locations within easy walking distance to/from high frequency urban bus services. The subject site meets this criterion as it is within a 4-minute walk (approximately) from the R403/Maxol bus stop which serves Go Ahead bus route no. 120. This service operates 7 no. days a week from 5:53am to 00:14

am, running, on average, 1 no. bus per half hour. A second bus stop is located 11 minutes (approximately) from the site which serves Transport for Ireland route 139. This is a daily service, which runs one bus an hour between 7:20am to 23:30pm. An additional bus stop located at Cloisters nearby, serves route 846 which is provided by JJ Kavanagh & Sons. The bus services provide regular access to Connolly and Heuston Stations, University College Dublin, Dublin City Centre, Liffey Valley, Naas, Celbridge and more. The 139 bus route will provide direct access to the upcoming Maynooth DART line which currently runs up to 9 trips daily and will significantly increase services in line with increased Dart Services.

4.3.5 Rebuilding Ireland – Action Plan for Housing and Homelessness

Rebuilding Ireland was launched in 2016 with the objective to double the annual level of residential construction to 25,000 no. homes and deliver 47,000 no. 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.

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 and Pillar 4, ‘Improving the Rental Sector’, includes build-to-rent and encourages “build-to-rent” as a key action.

The increased density and height and indeed the number of units put forward in the proposal will deliver much needed housing within the Area in accordance with the aims of Rebuilding Ireland, and in particular Pillars 3 and 4.

4.3.6 Regional Spatial and Economic Strategy for the Eastern and Midland’s Region

The Regional and Spatial Economic Strategy for the Eastern and Midland’s Region (RSES) was published on 28th June 2019. It is a strategic plan and investment framework to shape future development and to better manage regional planning and economic development throughout the Region to 2031 and beyond. It identifies regional assets, opportunities and pressures and provides appropriate policy responses in the form of Regional Policy Objectives. The RSES builds on the foundations of Government policy in Project Ireland 2040 and replaces the current Regional Planning Guidelines (RPGs). The following commentary from section 4.7 ‘Self-Sustaining Growth Towns and Self-Sustaining Towns’ of the RSES is noted with regards to Clane Town:

*‘Towns recording the highest growth rates in the country over the last ten years (>32%), and which have lower levels of employment provision include; Ashbourne, Balbriggan, Blessington, **Clane**, Kinsealy-Drinan, Lusk, Laytown-Bettystown, Ratoath, and Sallins. Nevertheless, it should also be noted that such towns are important employment and service centres. In addition some of these settlements, such as Ashbourne and Ratoath have the potential to strengthen their employment base and develop as important centres of employment due to their strategic location, connectivity with surrounding settlements, and the availability of a skilled workforce.’*

The above commentary regarding Clane is provided under the subsection entitled Self-Sustaining Towns, with the RSES providing the following definition for these urban areas:

‘Self-Sustaining Towns are towns that require contained growth, focusing on driving investment in services, employment growth and infrastructure whilst balancing housing delivery.’

The proposed development is consistent with the above as it will provide housing within appropriately zoned lands to accommodate the growing residential population of Clane. It is noted, as per the Land Use Zoning Objectives Map contained within the Clane Local Area Plan, that the Planning Authority retains significant banks of land for the provision of employment based uses within Clane Town and, as such, it is considered that the timing of the proposed development is appropriate in the context of the development of this urban centre.

4.4 Part (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

We would contend that permission for the proposed development should be granted having regard to the pattern of development approved in the immediately surrounding area. Precedent exists for approval of developments which exceed the density and dwelling nos. specified for the Key Development Areas (KDA). More specifically, we refer to ABP Ref. ABP-304632-19 which involved a Strategic Housing Development, involving the construction of 366 no. new residential units and a childcare facility, on a site (identified as KDA2) at Capdoo, Clane, Co. Kildare. This application was approved by An Bord Pleanála on 26th September 2019, with the Inspectors Report including the following commentary regarding deviation from the recommendations outlined for KDAs in the Clane Local Area Plan 2017-2023:

12.2.7 - It is considered that the proposed net / gross residential density is in accordance with the 30 plus dwellings per hectare recommended for land efficiency by the Guidelines. Furthermore, the proposed density has regard to its immediate context, new link road, proximity to town centre, the nature and character of the settlement and its role function in the settlement hierarchy. In this regard, the proposed density is well within the density range of 30-40+ dwellings per hectare advocated for small towns while also consistent with the 35-50 units per hectare for greenfield sites in cities and larger towns. Accordingly, I am of the opinion that the proposed density is appropriate to the application site and is fully consistent with the requirements of the Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, DEHLG (2009). National guidance documents clearly emphasise the need for urban consolidation, intensification and densification of both brownfield and greenfield development land and ensuring the delivery of a wider mix and form of housing typologies.

12.2.10 - The Clane LAP 2017 – 2023 estimates the capacity of the KDA 2 subject lands based on a residential density of 26 units per hectare. Table 4.1: of the LAP 'Estimated Residential Capacity,' specifically, sets out a number of 227 units for KDA 2 Capdoo. I note that this is a net calculation of the lands, based on a gross density of less than 20 units / ha and that a gross estimation (based on 26 units / ha) would be in the region of 300 units. There is no explanation or justification for a density of less than 20 units per hectare on such a site having regard to Sustainable Residential Development Guidelines (2009).

12.2.1 - It is firmly considered that an increase in the density proposed is not material. While the LAP proposes 26 units per hectare with a number of 227 units specifically denoted, it is highlighted that taking the gross density (of 26 units per ha, as opposed to 20 units / ha) a 300 residential unit development could be accommodated. What is proposed is a residential development of 366 units with a gross density of 32 units per hectare, i.e. a 15 % increase in the density as set out in the LAP. This is not considered a significant or material increase in density, specific regard being had to Objective HCO1.1 of the LAP which provides that residential development should accord with the standards provided in The Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, DEHLG (2009). To this end the proposal satisfies Objective HCO1.1.

12.2.13 - Clearly National Guidelines emphasise the need for urban consolidation, intensification and densification of both brownfield and greenfield development land and ensuring the delivery of a wider mix and form of housing typologies. The proposed development which provides for a gross residential density of 32 units per hectare / net residential density of 37.8 units per hectare is considered in accordance with national guidelines, in the interests of the efficient use of land, and appropriate on this site.

In light of the above, it is submitted that should An Bord Pleanála consider the proposed development a material contravention of the Kildare County Development Plan 2013-2019 and/or the Clane Local Area Plan 2017-2023 there is ample justification for An Bord Pleanála to permit a material contravention of the Development Plan in terms of allowable density and dwelling nos. having regard to Section 37(2)(b)(ii) and Section 37(2)(b)(iii) of the Planning and Development Act, 2000 (as amended).

In addition, there are precedents within Kildare County Council where planning permission was granted by the Board for material contravention of the settlement strategy of Kildare County Council. These permissions include

- Ref. 306504-20 - permission was granted by the Board for 372 no. units at Celbridge, Co. Kildare;
- Reg. Ref. 307013-20 - permission was granted by the Board for 167 units at Kill, Co. Kildare;
- Reg. Ref. 307258-20 - permission was granted by the Board for 152 units at Devoy Quarter, Naas, Co. Kildare; and,
- Reg. Ref. 306826-20 - permission was granted by the Board for 152 units at Boycetown and Kilcock, Co. Kildare for 345 units.

Of note is the Board's assessment in relation to 307013-20 at Kill Co. Kildare in relation to the core strategy which states:

The Board, have reviewed and considered the National Planning Framework, Regional Spatial and Economic Strategy, and Variation No.1, as it relates to Kill and are satisfied, that notwithstanding the overarching principles and high level population targets in the National Planning Framework and Regional Spatial and Economic Strategy, there are no specific objectives or population targets that the Variation is required to meet at a micro level relating to Kill and the National Planning Framework does not state or provide a specific unit number for the town of Kill, and that this reference to a 'stated National Planning Framework 2026 dwelling target of 183 units to 2026' is inaccurate and not accepted. The Board is satisfied that a reason for refusal which specifically references to the National Planning Framework and Regional and Spatial Economic Strategy are not applicable, and that the development is in accordance with the broad principles and objectives of the national and regional planning framework documents.

Please refer to appendix 1 of this report which sets out the precedent cases in full.

In this regard, the proposed residential development at Capdoo & Abbeylands accords with the Settlement strategy for Clane as set out in the Kildare County Development Plan 2017 – 2023. Should variation no. 1 be implemented, it is submitted to the Board that there are precedents within which planning permission can be granted for the material contravention of the core strategy noting that the National Planning Framework and Regional Spatial and Economic Strategy does not state a specific unit number for the town of Clane and that the proposed development is in accordance with the broad principles and objectives of the national and regional planning framework documents.

Noting the proposed development is of strategic importance during an acute housing crisis, that there are conflicting objectives within the Development Plan and Local Area Plan, that the proposed development complies with relevant planning policy at national level, and that there are precedent cases in the adjoining area and within Kildare for material contravention of density, height, parking and core strategy, it is submitted to the Board that there is a justification in this instance for the granting of the proposed development

5.0 Further Justification

5.1 Core Strategy

Current Kildare County Development Plan 2017 - 2023 and Clane Local Area Plan 2017 -2023

It is submitted to the Board, that under the current core strategy as set out in the Kildare County Development Plan 2017 – 2023, that a material contravention is not proposed in light of the housing units allocated for Clane and as justified below.

The Board Inspector under Ref. ABP-304632-19 (dated 10th September 2019), noted that

“within Clane there are 5 number KDAs with a projected estimated residential capacity of 1026. To date, only, part of KDA4 is currently under development and has permission for 90 residential units. Therefore, a grant of permission for an additional 366 units, as

proposed in the subject application, would give rise to permission being granted, to date, or since the adoption of the LAP to 456. We are now almost halfway into the timeframe of the LAP, it being Q4 of 2019. This figure is nowhere near the target projected for housing units, set out in the Kildare County Development Plan and the LAP of 780 units for the town up to 2023. Clearly the number of units proposed in the subject application does not breach the overall target number set out in the core strategy for the town of Clane ...”

Since the granting of permission for the aforementioned development, there has not been any significant grant of planning permissions and thus it would appear that a total of 456 no. residential units have been permitted in Clane since the adoption of the LAP, leaving a remaining total of 324 no. units within the allocation of 780 no. units for the plan period. This proposed development provides for 333 no. residential dwellings which is only marginally above that set out within the plan (9 no. units) and is consistent with the additional capacity of 246 units (i.e. 25%) headroom capacity.

It is noted that the proposed development if granted, would be decided upon in the first quarter of 2021. Thereafter, construction work would at the earliest date commence in Q3 2021. The development, if granted planning permission, would be phased over a period of 4/5 years after commencement. Therefore, construction of this proposed development would assist in meeting the completion and delivery of the 780 units as sought by the Clane LAP, for the plan period 2017-2023. It is respectfully suggested that delivery of these additional housing units would be welcome and in line with national requirements during an acute housing crisis.

The Clane LAP section 4.1 states that KDA1 has an estimated residential capacity of 161 no. units, to be developed at a density of 26 units/ ha. This gives rise to a total of 161 units only on the subject lands. It is also noted that the net area for development is 6.2 hectares. The subject lands has a net area of 8 hectares and as such this would give rise to a development of 209 residential units based on a density of 26 units per hectares. The proposed development provides for a net density of 41 units per hectare or a gross density of 32 hectares per unit which is a 15% increase in density as set out in the LAP. It is also important to note that Table 4.1 notes that the figures stated represent an estimate only. The density of development and number of units permissible will be determined at detailed design stage based on a full assessment of site characteristics and local sensitivities.

Variation No. 1 of Kildare County Development Plan 2017-2023

While we wish to note the current stay on Variation No 1 and recorded direction from the LA that while the stay is in place the variation should not be referenced by ABP, It is submitted to the Board, that should the stay be lifted on the proposed variation no. 1 prior to adjudication of this application, the proposed development would materially contravene the housing allocation for Clane as set out in the Variation which reduces the housing allocation up to 2023 to 145 units.

However, the proposed development of 333 no. residential units can be justified in the context of national and regional planning policy and indeed noting that the proposed development will provide essential housing during an acute housing crisis.

There is a clear and urgent need for housing at a national level within Ireland, which is particularly prevalent within towns, including Clane. This is acknowledged by the Government as well as planning authorities and other such bodies. The result of this crisis has been a significant change in planning policy and guidance, which seeks to increase the output of housing with a focus being on increased densities within appropriate urban locations and zoned and serviceable sites. Key policy changes include:

- Rebuilding Ireland, an Action Plan for Housing and Homelessness (2016);
- Project Ireland 2040 – National Planning Framework;
- Sustainable Urban Housing: Design Standards for New Apartments (2018); and
- Urban Development and Building Heights Guidelines for Planning Authorities (December 2018).

All of these documents acknowledge the current need and demand for additional housing and seek to bring forward the delivery of housing units. Locally, the lands are zoned for residential development and

Clane can be considered as a self-sustaining growth town noting its significant population and designation by the RSES (albeit variation no.1 identifies same as a small town). The key tenet of the overall Settlement Strategy is the continued promotion of sustainable development through positively encouraging consolidation and densification of the existing urban built form – and thereby maximising efficiencies from already established physical and social infrastructure. It is submitted that the proposed development of 333 units complies with the objectives to promote sustainable development through densification of the existing urban form and the provision of residential dwellings where there is a great demand for housing.

It is also important to note that planning permission has been granted for a similar development to that proposed at Kill Hill and Earl's Court, Kill, Co. Kildare which is also designated as a small town in Variation No. 1 to the Kildare County Development Plan 2017 -2023. Despite the proposed development exceeding the housing unit allocation as set out in the core strategy for the Variation, the Board approved the proposed development noting that the material contravention would be justified for the following reasons:

"In relation to section 37(2)(b)(i) of the Planning and Development Act 2000 (as amended):

The proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended); to its support for the National Policy Objectives in the National Planning Framework, in particular Objective 11, its location within the development boundary of Kill which is identified as Small Town in the Kildare County Development Plan 2017-2023, on zoned and serviced lands, and its potential to contribute both to the achievement of the Government's policy to increase delivery of housing from its current under-supply as set out in Rebuilding Ireland Action Plan for Housing and Homelessness issued in July 2016.

In relation to section 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended):

The objectives of the development plan are not clearly stated with regard to the two-core strategy housing unit target figures for Kill (table 3.3 of Volume 1 and table 1.2 of Volume 2 of the Kildare County Development Plan 2017-2023) and applicable density figure for the site at this location in Kill, having regard to table 4.2 of the Kildare County Development Plan 2017-2020. Further having regard to Variation No.1, which amends the core strategy figures to such an extent that fails to have regard to the level of extant permissions in Kill, and fails to co-ordinate zoning and core strategy figures, the plan is considered inconsistent in terms of its policy, population targets and zonings.

In relation to section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended):

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework, specifically National Policy Objective 27 and 33; the provisions as set out in the 'Urban Development and Building Height Guidelines, Guidelines for Planning Authorities December 2018' (in particular Specific Planning Policy Requirement 3 and Specific Planning Policy Requirement 4); and the 'Guidelines for Planning Authorities on Sustainable Residential Developments in Urban Areas May 2009' (in particular Chapter 6).

It is submitted to the Board, that the aforementioned reasons for granting the justification of material contravention for Kill are also applicable to the proposed development noting the proposed development is located within the development boundary of Clane, are zoned residential lands with access to existing infrastructure, are located in proximity to existing public transport and links to planned increased public transport capacity including the electrification of the train line to DART services, its proximity to the range of services and facilities within Clane and the provision of a high quality 1.8 ha neighbourhood which will benefit the wider residents of the town.

5.2 Density and Height

It is submitted to the Board that the proposed development which proposes an increase in density in line with national standards and an increase in height by 1 no. storey compared to that set out within the LAP is justified (i.e. 4 storey versus 3 storey).

Firstly, with regards to density, the proposed density of development is 41 units per hectare or 32 units per hectare based on the gross site area (i.e including the river liffey park). The prescribed density of development for KDA 1 as set out in the LAP is 26 units per hectare. We would suggest that this density prescribed in the LAP is contrary to national policy as set out in the guidelines for sustainable residential development in Urban Areas. Section 5.11 Outer Suburban / 'Greenfield site' of these guidelines provides guidance for lands on the periphery of cities or larger towns. The subject site is located on the periphery of Clane, a self sustaining town as illustrated by the census data discussed above and as designated in the RSES, and therefore, in a location where densities could be expected to fall within the range of 35-50 dwellings per hectare range, as per national best practice guidance. The guidance states the following in this regard:

'the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally. Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares'.

The adoption of the recommended density of 26 dwellings per hectare, recommended by the Clane Local Area Plan 2017-2023 would be contrary to national planning policy. It would also be contrary to Objective HC01.1 of the LAP which provides that residential development should accord with the standards provided in The Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, DEHLG (2009). In this regard, it is respectfully noted that the proposed development with a density of 41 units per hectare accords with national guidelines.

Secondly, with regards to building height, the Clane Local Area Plan sets a height requirement of 2 -3 storey for residential development within KDA1. The proposed development provides for building heights ranging from 2 to 4 storeys. It is submitted to the Board that the proposed maximum four storey height would be compatible with the surrounding environment, with the four storey units carefully sited to ensure an appropriate increase in height across the subject lands and addressing the make -up of existing residential areas adjacent.

It is noted that the Inspector on the previous application Ref. ABP-305905-19 considered that the four storey height is acceptable in principle at this location. The additional height is justified in the context of the Urban Development and Building Height Guidelines 2018 which 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 National Planning Framework and Project Ireland 2040.

Under Section 28 (1C) of the Planning and Development Act 2000 (as amended), Planning Authorities and An Bord Pleanála will be required to have regard to the guidelines and apply any specific planning policy requirements (SPPR's) of the guidelines in carrying out their function. The Guidelines emphasise the policies of the NPF to greatly increase levels of residential development in urban centres and to increase building heights and overall density, and to ensure that the transition towards increased heights and densities are not only facilitated but actively sought out and brought forward by the planning process and particularly at Local Authority level and An Bord Pleanála level. SPPR1 reads as follows:

'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'.

In the context of the policies and objectives of the Clane Local Area Plan 2017-2023, regarding density and dwelling numbers, these Guidelines were adopted in December 2018 and post date the adoption of the Clane Local Area Plan 2017-2023. The Guidelines require that Development Plans and Local Area Plans avoid prescription around building height and development intensity. This recognises that ambitious targets in the NPF encouraging more sustainable patterns of development to prevent urban sprawl can only be achieved if development is maximised on suitable sites in urban areas. The subject proposal is consistent with the Urban Development and Building Height Guidelines 2018.

In addition, The Project Ireland: National Planning Framework 2040 seeks to increase densities and building heights in appropriate urban locations to consolidate urban sprawl, increase the sustainability of public transport networks and meet the housing needs of our growing population. In relation to residential development the plan states:

'A major new policy emphasis on renewing and developing existing settlements will be required, rather than continual expansion and sprawl of cities and towns out into the countryside, at the expense of town centres and smaller villages. The target is for at least 40% of all new housing to be delivered within the existing built up areas of cities, towns and villages on infill and/or brownfield sites'.

The proposed residential density stands at 41 dwellings per hectare (providing 333 no. dwellings on the subject site), on lands zoned for residential development, in compliance with the National Planning Framework 2040 guidance outlined above as well as objectives 33 and 35 contained therein, which seek to:

"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 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'."

With regards to building heights, the Urban Development and Building Height Guidelines 2018 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 National Planning Framework and Project Ireland 2040. Under Section 28 (1C) of the Planning and Development Act 2000 (as amended), Planning Authorities and An Bord Pleanála will be required to have regard to the guidelines and apply any specific planning policy requirements (SPPR's) of the guidelines in carrying out their function. The Guidelines emphasise the policies of the NPF to greatly increase levels of residential development in urban centres and to increase building heights and overall density, and to ensure that the transition towards increased heights and densities are not only facilitated but actively sought out and brought forward by the planning process and particularly at Local Authority level and An Bord Pleanála level. SPPR1 reads as follows:

'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'.

Furthermore, SPPR 4 of the national guidelines states the following:

"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 (2007)” 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.”*

In this regard the proposed development meets the minimum densities of 35 units per hectare, provides for a mix of heights and typologies with 1, 2, 3, and 4 bed dwellings, apartments, duplexes and maisonettes proposed ranging in height from two to four storey in accordance with item 3 of SPPR 4.

The increase in density of development and associated increase in housing numbers of the Clane Local Area Plan has been established by the granting of permission by An Board Pleanála ABP-304632-19 where permission was granted for 366 units in lieu of the stated LAP figure of 227 units for KDA 2. Therefore, it is submitted that the proposed development of 333 residential units is an appropriate quantum of development in line with the core strategy of the Kildare Development Plan 2017 – 2023 and the Clane Local Area Plan 2017 – 2023.

5.3 Car Parking

The proposed development includes a total of 575 no. car parking spaces, inclusive of 256 no. spaces to serve the proposed apartments/duplex units, 242 no. spaces to serve the houses and 59 no. visitor parking spaces. The development also provides 18 no. parking spaces to serve the crèche facility. Further to vehicular parking, the development provides a total of 311 no. bicycle parking spaces provided throughout the development.

Under the Kildare County Development Plan Table 17.9 ‘Car Parking Standards’ of the Development Plan provides the following minimum standards in respect of car parking provision for residential units:

- *2 spaces per house*
- *1.5 spaces per apartment unit*
- *1 visitor space per 4 apartments*
- *0.5 per staff member plus 1 per 4 children for Crèche facilities*

Further to the above the guidance emphasises that the design quality of the street is paramount and that new residential development should not be dominated by car parking along access streets, yet, provided within the curtilage or residential units or within close proximity to apartment buildings. Notwithstanding the provision of car parking spaces for residential apartments, which has been guided by the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2018), the development ensures that all dwelling houses provide for 2 no. parking spaces within the curtilage of the individual unit. The subject proposal includes a total of 575 no. car parking spaces are proposed. Of these, 242 no. spaces serve the proposed dwellings which is consistent with the above requirements. 256 no. spaces serve the residents of the proposed apartments/maisonette units/duplex units which equates to a rate of 1.2 per apartment unit, and 59 no. spaces serve visitors to the development. 18 no. spaces serve the proposed childcare facility.

The proposed car parking allocation complies with the above minimum requirements, save for in relation to the apartment allocation which requires a variation to the above. This slight variation is considered appropriate having regard to national planning policy which encourages a reduction in car parking provision and an increased uptake in green transport modes (such as walking and cycling). In particular, the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities – 2018, encourages reduced car parking provision to serve apartments where the site is well serviced by public transport and is accessible to services and amenities. Section 4.22 in the Guidelines note that:

“As a benchmark guideline for apartments in relatively peripheral or less accessible urban locations, one car parking space per unit, together with an element of visitor parking, such as one space for every 3-4 apartments, should generally be required.”

In this instance, the proposed development complies with national standards for the lands noting the subject site is proximate to a number of bus and cycle routes and is within walking distance of the Clane Town Centre and that the proposed parking provides for 1.2 spaces per apartment unit plus 59 no. visitor spaces.

The site benefits from an excellent public transport network. The site is located a 4-minute walk (approximately) from the R403/Maxol bus stop which serves Go Ahead bus route no. 120. This service operates 7 no. days a week from 5:53am to 00:14 am, running, on average, 1 no. bus per half hour. A second bus stop is located 11 minutes (approximately) from the site which serves Transport for Ireland route 139. This is a daily service, which runs one bus an hour between 7:20am to 23:30pm. An additional bus stop located at Cloisters nearby, serves route 846 which is provided by JJ Kavanagh & Sons. The bus services provide regular access to Connolly and Heuston Stations, University College Dublin, Dublin City Centre, Liffey Valley, Naas, Celbridge and more. The 139 bus route will provide direct access to the upcoming Maynooth DART line. The proposed development therefore represents an opportunity to provide for increased densities in accordance with national planning policy.

Therefore, the proposed car parking is in accordance with National Guidelines and only marginally contravenes the objectives for car parking in the Development Plan which pre-dates national guidelines. On this basis it is submitted that the proposed development is aligned with national and regional planning policy with regards to car parking and is in accordance with the proper planning and sustainable development of the area.

6.0 Conclusion

Having regard to the foregoing, including the SHD precedent development referenced above, it is considered that the proposed development numbers, density and height is justified in this instance. It is submitted that the proposed development is consistent with the proper planning and sustainable development of the area, and is consistent with all relevant national and regional planning policies and guidelines. On this basis, the proposed material contravention of the Development Plan and Local Area Plan can be justified as follows:

"In relation to section 37(2)(b)(i) of the Planning and Development Act 2000 (as amended):

The proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended); to its support for the National Policy Objectives in the National Planning Framework, in particular Objective 11, its location within the development boundary of Clane which is identified as Small Town in the Kildare County Development Plan 2017-2023, on zoned and serviced lands, and its potential to contribute both to the achievement of the Government's policy to increase delivery of housing from its current under-supply as set out in Rebuilding Ireland Action Plan for Housing and Homelessness issued in July 2016.

In relation to section 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended):

The objectives of the development plan are not clearly stated with regard to the two-core strategy housing unit target figures for Clane and applicable density figure for the site at this location. Further having regard to Variation No.1, which amends the core strategy figures to such an extent that fails to have regard to the level of extant permissions in Clane, and fails to co-ordinate zoning and core strategy figures, the plan is considered inconsistent in terms of its policy, population targets and zonings.

In relation to section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended):

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework, specifically National Policy Objective 27 and 33; the provisions as set out in the 'Urban Development and Building Height Guidelines, Guidelines for Planning Authorities December 2018' (in particular Specific Planning Policy Requirement 3 and Specific Planning Policy

Requirement 4); and the 'Guidelines for Planning Authorities on Sustainable Residential Developments in Urban Areas May 2009' (in particular Chapter 6)."

It is respectfully submitted that should An Bord Pleanála consider the proposed development a material contravention of the Kildare County Development Plan 2017 – 2023 and Clane Local Area Plan 2017 - 2023 that an appropriate justification is set out within this statement demonstrating that the proposed development is appropriate having regard to the contents of the Development Plan and Local Area Plan, the policies and objectives set out within the Section 28 Guidelines, as well as the strategic nature of the development and the pattern of development approved in the surrounding area.



Anne McElligott MIPI
Associate Director
for HPDC.

Appendix 1 – Precedent Cases

ABP Ref.	Site Address	Proposed Development (summary)	Site Context	Decision and Inspectors Report/Board Commentary regarding Core Strategy/Unit Allocations
306504-20	Townland of Crodaun, Celbridge, Co. Kildare.	Demolition of existing structure, construction of 372 no. residential units (218 no. houses, 154 no. apartments), childcare facility and associated site works.	<ul style="list-style-type: none"> c.9.55 hectares of residentially zoned land located, approx. 1.5km to the north of Celbridge town centre / Main Street to the south east of the junction of the R449 with the Maynooth road (R405), to the south of the M4 motorway; 	<ul style="list-style-type: none"> Board approved the scheme on 3rd Sept 2020. The Inspectors Report (dated 22nd April '20) included the following commentary of note: <p><i>12.1.11 I note that Variation No. 1 of the KCDP 2017 – 2023 has no legal status until such a time as it is adopted. The proposed development will contribute to achieving the core strategy housing allocation of 3,250 dwellings for Celbridge, as identified in Table 3.3 of the KCDP. I note the material contravention issue with respect to density proposed not according with the maximum density indicated within the Celbridge LAP 2017. However, a Material Contravention Statement accompanies the subject application. In this regard, it is submitted that the County Development Plan provides for a density range of 35-50 u/ha on 'Outer Suburban / Greenfield' sites in Large Towns. A large town is defined as a town with a population of over 5,000. The population of Celbridge at the 2016 Census was 20,288 persons. As such, it is contended that there are conflicting statements in the LAP and the appropriate density as provided for in the KCDP should be 35-50 u/ha. I tend to agree that the proposed development may be considered of strategic importance, that there are conflicting objectives relating to density in the LAP, that the proposed development is fully aligned with national and regional policy, and therefore satisfies the requirements of section 37(2)(b) of the Act.</i></p> <p><i>13.1 I consider the principle of residential development to be acceptable on this site. The site is a zoned and serviced site within the development boundary of the town, albeit, an outer suburban / greenfield site on the periphery of Celbridge. The site is not proximate to high capacity bus or rail services. A high quality residential development on this site has the potential to contribute to the provision of housing in the area.</i></p> The Board's order approving the development, included the following commentary of note: <p><i>The Board considered that, while a grant of permission for the proposed strategic housing development would not materially contravene a zoning objective of the statutory plans for the area, a grant of permission could materially contravene the provisions at section 12.2.4 of the Local Area Plan for Celbridge 2017-2023 restricting the density of residential development in the Crodaun Key Development Area in relation to density.</i></p> <p><i>The Board considers that, having regard to the provisions of section 37(2) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the Local Area Plan would be justified for the following reasons and consideration.</i></p> <p><i>In relation to section 37(2)(b) (i) of the Planning and Development Act 2000 (as amended):</i></p> <p><i>The proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) and its potential to contribute to the achievement of the Government's policy to increase delivery of housing from its current under supply set out in Rebuilding Ireland – Action Plan for Housing an Homelessness issued in July 2016. The proposed development is of strategic importance to the development of Celbridge in line with national policies to provide for compact growth within the Dublin Metropolitan Area Strategic Plan, and in proximity to public transport.</i></p> <p><i>In relation to section 37(2)(b) (ii) of the Planning and Development Act 2000 (as amended):</i></p> <p><i>The Kildare County Development Plan 2017-2023 provides for a density range of 35-50 units per hectare on 'Outer Suburban / Greenfield' sites in large towns. A large town is defined as a town with a population of over 5,000. The population of Celbridge at the 2016 Census was 20,288 persons. The estimated residential capacity specified for Key Development Area 4 in Table 4.1 of the Celbridge Local Area Plan 2017-2023 is 25-30 units per hectare. Therefore, there are conflicting statements in the local area plan, and the appropriate density (as provided for in the Kildare County Development Plan 2017-2023) should be between 35-50 units per hectare.</i></p> <p><i>In relation to section 37(2)(b) (iii) of the Planning and Development Act 2000 (as amended):</i></p> <p><i>Permission for the development should be granted having regard to guidelines under section 28 of the Act, having particular regard to the advice contained at ABP-306504-20 Board Order Page 11 of 21 section 5.11 of the guidelines issued by the Minister in 2009 on Sustainable Residential Development in Urban Areas that residential development on outer suburban greenfield sites should be at densities between 35 and 50 dwellings per hectare, with which the proposed development would comply.</i></p>
307013-20	Kill Hill and Earl's Court, Kill, Co. Kildare.	167 no. residential units (107 no. houses, 60 no. apartments) and associated site works.	<ul style="list-style-type: none"> 6.3 ha of residentially zoned land located on the eastern side of Kill Village in County Kildare, which is just south of the N7 dual carriageway; and 	<ul style="list-style-type: none"> Board approved the scheme (ignoring the recommendation of the Inspector to Refuse) – 14th Sept 2020. The Inspectors Report (dated 26th August 2020) provided an assessment of the proposed development in the context of Variation No. 1 which has now been put on hold. The Inspector recommended refusal on the basis that the proposed 167 dwellings would not comply with the core strategy and settlement hierarchy of the Kildare County Development Plan (KCDP) 2017-2023, as amended by Variation No. 1, as the development would significantly exceed the housing unit allocation of 78 units for Kill. However the Board granted permission approving the development.

- The Board's order approving the development, included the following commentary of note (**Note:** The Board referred to Variation 1 to the Kildare County Development Plan 2017–2023 in their Order and Direction):

The Board considered that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the statutory plan for the area, a grant of permission could materially contravene provisions of the core strategy and density objectives. The Board considers that, having regard to the provisions of section 37(2)(b)(i)(ii) and (iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the Kildare County Development Plan 2017-2023 would be justified for the following reasons and considerations:

In relation to section 37(2)(b)(i) of the Planning and Development Act 2000 (as amended):

The proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended); to its support for the National Policy Objectives in the National Planning Framework, in particular Objective 11, its location within the development boundary of Kill which is identified as Small Town in the Kildare County Development Plan 2017-2023, on zoned and serviced lands, and its potential to contribute both to the achievement of the Government's policy to increase delivery of housing from its current under-supply as set out in Rebuilding Ireland Action Plan for Housing and Homelessness issued in July 2016.

In relation to section 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended):

The objectives of the development plan are not clearly stated with regard to the two-core strategy housing unit target figures for Kill (table 3.3 of Volume 1 and table 1.2 of Volume 2 of the Kildare County Development Plan 2017-2023) and applicable density figure for the site at this location in Kill, having regard to table 4.2 of the Kildare County Development Plan 2017-2020. Further having regard to Variation No.1, which amends the core strategy figures to such an extent that fails to have regard to the level of extant permissions in Kill, and fails to co-ordinate zoning and core strategy figures, the plan is considered inconsistent in terms of its policy, population targets and zonings.

In relation to section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended):

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework, specifically National Policy Objective 27 and 33; the provisions as set out in the 'Urban Development and Building Height Guidelines, Guidelines for Planning Authorities December 2018' (in particular Specific Planning Policy Requirement 3 and Specific Planning Policy Requirement 4); and the 'Guidelines for Planning Authorities on Sustainable Residential Developments in Urban Areas May 2009' (in particular Chapter 6).

In deciding not to accept the Inspector's recommendation to refuse permission, the Board notes the Inspector's summary of the rationale for the Variation No.1 of the Kildare Development Plan, and for the revisions to the core strategy in Table 3.3, which are, inter alia, as outlined in para 11.4.6, 'As noted previously, the figures in table 3.3 are allocated on the basis of an assessment of the overarching figure for the county established by the National Planning Framework and supported by the Regional Spatial and Economic Strategy, with the translation of this assigned figure from national and regional level down to county level, divided spatially across the various settlements, on the basis of an evidence based quantitative strategy.'

The Inspector further states that 'Under table 3.3, a dwelling target of 78 units is assigned to the 'Town' Kill for 2020-2023, modified from the stated National Planning Framework 2026 dwelling target of 183 units to 2026 (National Planning Framework figure being assigned by County with hierarchy distributing that allocation), with the figure of 78 units allocated to coincide with the life of the development plan.'

The Board, have reviewed and considered the National Planning Framework, Regional Spatial and Economic Strategy, and Variation No.1, as it relates to Kill and are satisfied, that notwithstanding the overarching principles and high level population targets in the National Planning Framework and Regional Spatial and Economic Strategy, there are no specific objectives or population targets that the Variation is required to meet at a micro level relating to Kill and the National Planning Framework does not state or provide a specific unit number for the town of Kill, and that this reference to a 'stated National Planning Framework 2026 dwelling target of 183 units to 2026' is inaccurate and not accepted. *The Board is satisfied that a reason for refusal which specifically references to the National Planning Framework and Regional and Spatial Economic Strategy are not applicable, and that the development is in accordance with the broad principles and objectives of the national and regional planning framework documents.*

The Board accepts and acknowledges the overarching objectives of the National Planning Framework and Eastern and Midland Regional Assembly Regional and Spatial Economic Strategy which seek to concentrate development in to compact and sustainable urban settlements, with a clear hierarchy of villages, small towns, and larger towns within the various counties. This is considered an appropriate and reasonable objective and to be in accordance with proper planning and sustainable development. The Board notes the National Planning Framework stated Kildare population target as 249,000-254,000 persons in 2026, and that no further breakdown is provided. The Board also notes that the National Planning Framework sets out a tiered approach to zoning lands – based on whether the lands or serviced or serviceable. In this regard the Board also notes that in respect of the subject site, the lands are

				<p>serviced, and are within the footprint or spatially sequential to the identified settlement. Having regard to the provisions and population targets stated in the Variation No.1 of the Kildare Development Plan, the Board accepts and concurs with the Inspector's analysis and conclusion that subsequent to the lodgement of the application and pursuant to the provisions of Variation No.1, the proposed development now materially contravenes the County Development Plan, as it relates to the core strategy figures.</p> <p>.....To this end, in so far as the Board is addressing the issue of the Material Contravention of the Core Strategy and Settlement Hierarchy, the Board, having considered the submissions received including those of the planning authority (executive and elected members), third parties and developer, and are of the opinion, that while the proposed development materially contravenes the Core Strategy as set out in Variation No.1, that the development in all other regards accords with the principles of proper planning and sustainable development, and is of a scale and nature, that in the opinion of the Board, <u>does not significantly undermine the county's settlement hierarchy or proposed pattern of growth. The scale of development proposed, in conjunction with the permitted development is such as to allow the town of Kill remain within the population figures of a small town and does not adversely prejudice the realisation of the objectives of the National Planning Framework or Regional Spatial and Economic Strategy.</u></p> <p>The National Planning Framework sets out a tiered approach to zoning lands – based on whether the lands are serviced or serviceable. In respect of the subject site, the lands are serviced, and are within the footprint or spatially sequential to the identified settlement.</p> <p>The Board also noted Table 2.4 of the Variation, which states that Kildare's growth is estimated at approx.6000 units for 2020-2023, although noted as circa 14,000 units up to 2026. The proposed development of 167 units equates to approximately 1% of the target growth of units for the period up to 2026.</p> <p>The town of Kill currently has a population of approx.3,500 persons. With an additional circa 315 housing units proposed (including the current development of 167 units), the town remains below 5,000 persons (as a household size of 2.4 persons per household is applied).</p> <p>If the proposed development were permitted it could not be commenced until late Quarterly 4 2020 although more likely early Quarterly 1 2021. Therefore, the proposed development could and would reasonably be phased over the five-year period 2021 to 2026, and as such would equate to 167 units of the total 14,000 units identified as the target, i.e. approx. 1% of the growth. Based on the broad principles and targets outlined in the National Planning Framework and Regional Spatial and Economic Strategy and as per the overall dwelling/unit targets for Kildare (as outlined in the Variation No.1), the Board is satisfied that the proposed development does not undermine the principles of compact growth and sustainable development for the county or town, and does not undermine the settlement strategy for the county, notwithstanding the breach of the household target for Kill which relates to the period Quarterly 1 2023.</p> <p>Having regard to the provisions of section 37(2)(b),(i) and contrary to the Inspector's argument that the development could not be considered strategic by reason of its breach of the core strategy and Variation, the Board is satisfied that the development is of strategic and national importance, in that it is providing much need housing in line with the Rebuilding Ireland Housing Action Plan for Housing ABP-307013-20 Board Order Page 10 of 26 and Homelessness 2016, and that it is doing so in a way that accords with national policies in respect of compact growth, recommended/required densities as per section 28 Guidelines and on lands that are zoned and serviced and the development of which will enhance and improve connectivity within Kill and provide and open up amenity lands.</p>
307258-20	Devoy Quarter, Naas West, Naas, Co. Kildare.	152 no. apartments, childcare facility and associated site works.	<ul style="list-style-type: none"> • 2.127ha, residentially zoned, a greenfield site, is located to south west of Naas Town Centre, Co. Kildare; • The Kildare County Development Plan 2017 – 2023, inclusive of Variation No. 1, identified Naas as a Key Town (Tier 1 of the settlement strategy) with high quality transport links and the capacity to act as regional drivers to complement the Regional Growth Centres; and Table 3.3 (Population and Housing Unit Allocation 2020-2023) outlines a population growth target of 2,514 persons and a dwelling target of 898. 	<ul style="list-style-type: none"> • Board approved the scheme (upholding the recommendation of the Inspector to Approve) – 17th Sept 2020. • The Inspectors Report (dated 3rd September 2020) included the following commentary of note: <ul style="list-style-type: none"> 10.3 In terms of the expansion of Naas as a town, Naas is identified as a Key Town in the EMRA-RSES and the Kildare County Development Plan 2017-2023 (KCDP). Key towns are important in the regional context as it has been determined that they have capacity and future growth potential to accommodate above average growth potential coupled with the requisite for investment in other sectors, including services, amenities etc. The development of identified key towns aids the achievement of national objectives in the National Planning Framework (NPF) such as NPO 1b supporting the growth of the eastern and midland region. Appropriate development on serviced sites can ensure compact urban growth. • The Board's order approving the development, included the following commentary of note (Note: The Board referred to Variation 1 to the Kildare County Development Plan 2017–2023 in their Order and Direction): <ul style="list-style-type: none"> The Board noted the submission from the Chief Executive of Kildare County Council, considering the density proposed as inappropriate having regard to the absence of any high-quality public transport to the site. The Board considered that the location of the site four kilometres from the Naas and Sallins railway station, within walking distance of a bus stop, which has a high frequency service, and the pedestrian and cycle connectivity to the town centre provided suitable access to the site by sustainable transportation. In this regard, it is considered that the proposed density of 72 units per hectare would support a compact urban form by locating higher density development adjacent to the town core of Naas and would contribute ABP-307258-20 Board Order Page 7 of 18 to the consolidation of a Key Town is in accordance with the National Planning Framework, Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019-2031, the Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual, A Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009, and Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in March 2018.

306826-20	Townlands of Commons West, Boycetown and Kilcock (adjacent to the existing Brayton Park estate), Kilcock, Co. Kildare	345 no. residential units (69 no. duplex units, 182 no. houses and 94 no. apartments), crèche and associated site works	<ul style="list-style-type: none"> 11.5ha residentially zoned greenfield site, partially in use for agriculture, and is located to the west of Kilcock, a small growth town in County Kildare; and 	<ul style="list-style-type: none"> Board approved the scheme – 19th August 2020. The Inspectors Report (dated 11th August 2020) included the following commentary of note: <p><i>12.1 At the time of reporting, the statutory plan and policies in place are those in the Kildare County Development Plan 2017-2023, and notwithstanding that a Variation to this Plan was adopted by the elected members in June 2020 (Variation No.1), a Stay has been placed on this Variation. The Board received a letter from Kildare’s legal representatives advising the Board that that an immediate Stay on the operation of Variation No. 1 to the Kildare County Development Plan 2017-2023 has been put in place by the High Court and that while the Stay is in place An Bord Pleanála should avoid assessing any application by reference to Variation No. 1 of the Kildare County Development Plan 2017-2023 (attached as Appendix 1). It is further noted that Kildare County Council are seeking to have this Stay lifted and that this may occur prior to the decision date of this case currently before the board and being assessed at this time.</i></p> <p><i>Therefore, in the interest of comprehensiveness and to ensure the Board have all the necessary information before them at the time of making their decision, I am assessing and making my recommendation in respect of this case on the basis of:</i></p> <p><i>(i) The Kildare County Development Plan 2017-2023, excluding the Variation, as this is the statutory plan at the time of writing this report. The CE’s report received on 26th of June 2020, was written at a time when the Variation was in place and no stay existed, and again this will be dealt with through the report, having regard to the now statutory position, and</i></p> <p><i>(ii) The potential statutory position at the time of making the decision by the Board, if the council were to be successful in lifting the stay and the Variation was in place. I will consider the implications of this for assessment and consideration of the development. Therefore, I will assess the development against the provisions of the Variation, and make a recommendation in respect of the development where the Variation to be in place, and will further respond to the CE’s report and recommendations which were informed by the Variation.</i></p> <p><i>However, as noted above, the final recommendation and applicable recommendation at the time of discharging the report to the Board will be based on the Development Plan without the Variation. This is in line with the advice of the Council’s solicitors, and therefore must be assumed to supersede the CE’s report (dated 26th of June 2020), in respect of its reference to the Variation.</i></p> The Inspector went on to recommend approval in the absence of the Variation and refusal if the Variation was in play at the time a decision came to be made. The following commentary was provided in justifying a refusal in such an instance: <p><i>12.25 I consider the housing allocation for Kilcock, and other settlements in Kildare, up until 2023 as adopted in Variation No 1 of the development plan, is necessary to provide an evidence based quantitative strategy for the spatial development of the area. I note Kilcock is defined as a Self-Sustaining Town of variation No 1 which is a 3rd tier development in the County Settlement Strategy as set out in the Kildare County Development Plan 2017-2023 and Table 3.3 provides a housing allocation for the town of 241 units from 2020-2023, the lifespan of the existing development plan. I consider the proposed development of 345 no. dwellings, 100 units above the allocation in Variation No.1, significantly exceeds the current dwelling allocation for the town. In this instance I consider the proposed development a material contravention of Variation No.1 of the CDP.</i></p> <p><i>12.26 I note the settlement hierarchy and housing allocation as stated in variation no. 1 are in keeping with the policies and objectives of the National Planning Framework (NPF), in particular National Policy Objective 71 and the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA), in particular Regional Policy Objective 4.1, which require growth and investment to be planned in accordance with a hierarchy of settlements. I consider that by permitting development in excess of that housing allocation in the Core Strategy would militate against the implementation of the objectives of the NPF and the RSES for the EMRA and would, therefore, be contrary to the proper planning and sustainable development of the area.</i></p> <p><i>12.27 This aside, should the Board disagree with my conclusion and consider a grant of permission is warranted under Section 37 (2) (b) of the planning act, they will note the location of the site contiguous to the existing settlement, listed as site ref No 1 for a neighbourhood expansion area in the LAP and the absence of any order of priority in the LAP. In this instance the conflict between policies requiring sustainable growth in the CDP and the absence of any order of priority for residential development in the LAP are highlighted and the development would be justified under Section 37 (2) (ii) in this instance.</i></p> The Board’s order approving the development, included the following commentary of note: <p><i>The Board considered that, a grant of permission for the proposed Strategic Housing Development would materially contravene the Kildare Development Plan 2017-2023, as amended by Variation No.1 (June 2020) and the Kilcock Local Area Plan 2015-2021, in respect of density and core strategy. The Board considers that, having regard to the provisions of section 37(2)(b)(i) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of Kildare County Development Plan 2017-2023, as amended by Variation No.1, in particular Table 2.2, relating to revised core strategy figures for the town of Kilcock, would be justified for the following reasons and considerations:-</i></p> <p><i>In relation to Section 37(2)(b)(i) of the Planning and Development Act 2000 (as amended):</i></p>
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				<p><i>The proposed development is considered as a Strategic Housing Development under the Planning and Development (Housing) and Residential Tenancies Act 2016 as it is located on zoned residential land and exceeds 100 number units. The Board's opinion confirmed the proposed development is strategic in nature under the provisions of this Act, and is of strategic importance in respect of the development of Kilcock in line with national policies to provide for compact growth within the Dublin MASP, and in proximity to public transport.</i></p> <p><i>The Board considers the proposal is in accordance with national guidance, such as the National Planning Framework and the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy, Urban Development and Building Height Guidelines, and Sustainable Urban Housing: Design Standards for New Apartments Guidelines, which seek the creation of compact, sustainable residential developments to be located in appropriate urban location, close to existing/proposed infrastructure and services. While Variation No. 1 reflects certain objectives of the Regional Spatial and Economic Strategy, Variation No.1 has been adopted without any associated rezoning, and in the opinion of the Board, without due regard to density or efficient land-use implications, and as such has not demonstrated itself to be wholly consistent with Sustainable Urban Development Guidelines, Residential Density Guidelines, National Planning Framework compact growth objectives, etc. The development is located on residentially zoned land in an existing urban settlement, within the Dublin MASP and is adjacent to existing infrastructure and services. The development provides linkages to a proposed school site, is well served and accessible to public transport (via the Sligo-Dublin rail line), and as such is suitable for development and of a strategic and beneficial nature to the town of Kilcock.</i></p> <p><i>The Board considers that, having regard to the provisions of section 37(2)(b)(ii) and (iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of Table 10 of the Kilcock Local Area Plan 2015-2021, which relate to a density restriction on the site would be justified for the following reasons and considerations: -</i></p> <p><i>In relation to section 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended):</i></p> <p><i>It is considered that, in relation to the density requirements for the site there are conflicting objectives in the Kildare County Development Plan 2017-2023 and the Kilcock Local Area Plan 2015-2021. The proposed density of 44 units per hectare complies with the range 35-50 specified in Table 4.2 of the Kildare County Development Plan 2017-2023 although contravenes the restriction of 30 units per hectare in Table 10 of the Kilcock Local Area Plan 2015-2021. The Board considers the density requirements of the Kildare County Development Plan 2017-2023 comply with Section 5.11 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and a density of 44 units per hectare on the site is justified.</i></p> <p><i>In relation to Section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended):</i></p> <p><i>It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the 'Guidelines for Sustainable Residential Developments in Urban Areas' issued 2009 (in particular section 5.11 and the accompanying Urban Design Manual) relating to the appropriate densities on sites on the periphery of large towns and the use of a range of building heights for good urban design and place making for new neighbourhoods.</i></p> <p><i>The Board noted the inspector's opinion that the proposed development was in material contravention of Section 17.2.1 of the Development Plan however considered that, in relation to the building heights proposed for the site, the objectives in Section 17.2.1 of the Development Plan are satisfied in that the predominant height is consistent with the prevailing height of the surrounding area (53% of the proposed development are two-storey dwellings), none of the taller elements are in the proximity of existing housing, there are no protected structures, Architectural Conservation Areas or any other sensitive site in the vicinity, the location of the three and five storey elements contribute to the formation of a cohesive streetscape pattern, supported by a strong urban design rationale, and none of the buildings exceed five storeys and/or 15 metres. Furthermore, the Board considered that the proposed height of five storey feature elements for the apartment blocks provide a variety of building heights informing the neighbourhood design and creating a sense of space as required in the national Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) 2009 and the accompanying Urban Design Manual, and Section 13.4.1 of the local area plan. Any contravention relating to 17.2 is not material in nature having regard to the above.</i></p> <p><i>In not accepting the Inspector's recommendation in respect of material contravention on Variation No.1, the Board considered the development to be of strategic importance and consistent with national guidance on compact growth, density and efficient land-use and optimisation of existing and proposed public transport services and infrastructure in the area, and as such consider that a grant of permission having regard to the provisions of section 37(2)(b)(i) to be appropriate and warranted. The Board considered the submissions received, and in particular noted the Chief Executive's report and recommendation which recommended a refusal for, inter alia, reasons relating to Material Contravention of Variation No.1.</i></p>
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