



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319236-24

<b>Development</b>	Construction of 30 residential units comprising of 22 houses, 8 apartments within 2 two-storey apartment blocks and all associated works.
<b>Location</b>	Grenan, Thomastown, Co. Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	2360052
<b>Applicant(s)</b>	Creanross Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party vs. Grant
<b>Appellant(s)</b>	Claire Challoner & Ronan Walsh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> November 2024
<b>Inspector</b>	Stephen Ward

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Appendix 1 – Form 1: EIA Pre-Screening

Form 2: EIA Preliminary Examination

Appendix 2 – Appropriate Assessment Screening

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## **1.0 Site Location and Description**

- 1.1. The site is located to the southern side of Thomastown, County Kilkenny, approximately 15km south of Kilkenny City. It is situated on the eastern side of the River Nore and Regional Road R448. This is a mainly residential area, and the site adjoins the 'Mallfield' and 'Meadows' housing estates to the south. There are several commercial properties along the R448 to the northwest of the site, while the adjoining land to the northeast is undeveloped.
- 1.2. The site itself consists mainly of two undeveloped fields which are divided by a line of mature trees running north-south. There are also mature trees along the western and southern site boundaries. The site is elevated relative to surrounding land to the north and west. It is relatively level but slopes downward gradually to the northern and western boundaries. It has a stated area of 0.96 hectares.

## **2.0 Proposed Development**

- 2.1. In summary, permission is sought for the construction of 30 dwellings comprising:
  - 22 No. 2-storey semi-detached/terraced houses (20 no. 3-bed and 2 no. 4-bed)
  - 8 No. apartments within 2 No. two-storey apartment blocks, each containing 2 apartments at Ground floor level & 2 at first-floor level (all 2-bed units)
  - A new site entrance layout from the adjoining Mallfield estate
  - New boundary treatments and landscaping
  - And all associated works, including the proposed road network and necessary services to connect to existing residential development known as Mallfield.
- 2.2. Stormwater will be collected and disposed via infiltration to soil on site. Foul drainage consists of a gravity system which will connect to a re-diverted public sewer outside the northern site boundary. A new watermain is proposed to connect to the existing watermain serving the Mallfield estate.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By Order dated 12<sup>th</sup> February 2024, Kilkenny County Council (KCC) made a decision to grant permission subject to 32 no. conditions.

##### Conditions

The conditions are generally standard in nature, but the following is noted:

- No. 4 requires a range of roads-related measures, including completion of access arrangement at No 48 Mallfield prior to the main development.
- No. 10 requires the mitigation measures of NIS and CEMP.
- No. 16 outlines requirements for retaining walls and the retention of an existing rubble stone wall.
- No. 17 requires the mitigation measures of the Bat Survey.
- No. 18 outlines boundary treatments, including screening of overlooking.
- No. 30 requires that any house or apartment/duplex shall be restricted through Section 47 agreement to first occupation by individual purchasers.
- No. 31 requires a Section 47 Agreement in respect of future access and pedestrian/cycle links into adjoining LAP zoned lands, roads, etc.
- No. 32 Requires an Archaeological Impact Assessment.

#### **3.2. Further Information Request**

After the initial examination of the application, the planning authority issued a further information request. The issues raised in the request can be summarised as follows:

1. Confirm the location of construction site compound, welfare arrangements, and construction stage mitigation measures.
2. Monitor ground water levels on site and where appropriate adjust the location of proposed soak away.
3. a) Clarify that apartment blocks comply with requirements of Apartments Guidelines and Development Plan standards.

- b) Demonstrate bin storage proposals for the apartments.
  - c) Clarify management of communal areas for the apartments.
- 4. Clarify Irish Water (IW) requirements for upgrading of a section of foul main.
- 5. Submit proposals to retain stone from the existing stone wall.
- 6. a) Submit proposals for additional semi-mature landscaping to provide adequate screening to reduce the visual impact.
- b) Liaise with IW regarding distances between assets and landscaping.
- 7. a) Submit a Bat Survey.
- b) NIS to address impacts related to the upgrade of the Irish Water wastewater pipe and the adequacy of wastewater disposal.
- 8. Carry out a review of pedestrian crossing points.
- 9. Confirm that the proposed lighting Veelite Metro Streetlight 27w model is registered on the SEAI Triple E Register.
- 10. a) Submit the completed signed Roads Safety Audit Feedback Form and confirm the Auditor is satisfied with the measures proposed.
- b) The auditor shall respond to a third-party submission regarding proposed access works and visibility being obscured by existing tree planting and number of cars / parking associated with property No. 48 Mallfield.
  - c) Regarding the legal joint venture agreement for alterations / set back of boundary wall and footpath connections to facilitate proposed access, please confirm written consent from the owner of No. 48 Mallfield.
- 11. For the northern / western section of the site, submit engineering report to demonstrate that the proposed development will not undermine the structural stability / integrity of the sloped cliff face, adjoining lands and/or future planning application associated with site P21/634. This cliff face forms the backdrop for protected structures along Mill Street ACA area.

### **3.3. Planning Authority Reports**

#### **3.3.1. Planning Reports**

The assessment is outlined in two Planner's Reports, i.e., the initial report recommending a Further Information (F.I.) request and the subsequent report on the F.I. submitted. The assessment contained within the two reports can be cumulatively summarised under the following headings:

### Principle of development

- The site is zoned existing residential development; is located on an edge of town centre site in close proximity to local amenities; would be in accordance with recommendations of the Sustainable Residential Development Guidelines (2009); and would be in accordance with the key 'compact town', principle of the development plan Core Strategy and NPF. The development is therefore considered to be acceptable in principle.
- Given the strategic location of Thomastown on a rail line and within a 30-minute commuting zone for both Waterford and Kilkenny City, the proposal to provide family homes and small residential units on this infill site in walking proximity to retail services/sporting facilities and town centre is acceptable.

### Design & Layout

- The housing mix is considered acceptable, and the layout promotes Universal Design and Lifetime Housing.
- The F.I. response has satisfactorily demonstrated compliance with the Apartments Guidelines and Development Plan standards.

### Density

- The proposal (30.9 uph) is similar to existing density in the area.
- Given that the scheme generally achieves a satisfactory standard of development, the proposed density is satisfactory.

### Open Space

- Proposals comply with CCDP standards for private and public space.

### Residential Amenity

- The proposal has demonstrated that the minimum 22m 'back to back' separation distance between dwellings is achieved.

### Trees

- A detailed tree survey was submitted, and the Planner's report outlines satisfaction subject to compliance with proposed mitigation measures.

### Conservation

- The site is located just outside of the ACA and in the vicinity of a number of protected structures. Having regard to the elevated nature of the site, the F.I. Request included additional landscaping proposals for visual screening. The F.I. Response was subsequently deemed to be acceptable.

### Parking & Access

- Car and cycle parking proposals are noted, and no concerns are raised.
- The original report outlined general satisfaction with access and road-related issues, subject to addressing the issues raised in points 8 and 10 of the F.I. Request. Following the F.I. Response, it was confirmed that there were no objections subject to conditions.

### Childcare

- Taking into account existing development, the total number of houses would be 93. However, the applicant satisfactorily demonstrated in a recent application that there is adequate capacity in existing childcare services to cater for the proposed development.

### Appropriate Assessment

- The original report requested that further information be requested to include a Bat Survey and the potential impacts of the Irish Water sewer pipe.
- Following the F.I. Response, it was concluded that the proposed development will not adversely affect (either directly or indirectly) the integrity of any European site either alone or in combination with other plans or projects.

### EIA Screening

- A preliminary EIA screening concluded that EIA is not required.

### Conclusion

- The report recommends that permission be granted subject to conditions, and this forms the basis of the KCC decision.

#### 3.3.2. Other Technical Reports

Environment: The initial report requested:

- Monitoring of groundwater levels on site and where appropriate adjust the location of the proposed soak aways (including revised calculations).
- Details regarding the site compound and welfare arrangements.
- Details of the Irish Water mains sewer upgrade and any diversions.

Following the F.I. Response, it was confirmed that there were no objections subject to conditions.

Road Design: The original report raised issues as outlined in points 8 and 10 of the F.I. Request. Following the F.I. Response, it was confirmed that there were no objections subject to conditions.

Conservation Officer: The original report outlined that there were no objections subject to archaeological monitoring; retention and re-use of stone from existing stone wall on site; and increased tree cover to soften visual impact. The subsequent report outlined no objections subject to archaeological monitoring.

### 3.4. **Prescribed Bodies**

Irish Water: No objection subject to conditions.

Department of Housing, Local Government and Heritage: Recommends Archaeological Impact Assessment as a condition of any permission.

### 3.5. **Third Party Observations**

The planning authority received 5 no. submissions in the initial 5-week period and 2 no. submissions on the further information response. Many of the issues raised are generally covered in the grounds of appeal in section 7 of this report. Any other relevant issues can be summarised as follows:

- Requirements in relation to Environmental Impact Assessment, the Habitats Directive, and the Water Framework Directive.
- The site is within the zone of influence of the River Barrow and River Nore SAC; there is inadequate evidence of the adequacy of sewage disposal; and it is not possible to grant permission.
- Impacts on protected species such as the Kingfisher.



- Impacts relating to noise, air quality, waste, and fire hazard.
- Inadequate proposals for the development in respect of waste storage, cycle parking, private open space, and internal storage.
- Retention of the existing stone wall on site.
- Proposals for Electric Vehicle charging.
- Climate Change and the need to retain existing trees.
- The need to protect bats and carry out a full Environmental Impact Assessment.
- Lack of clarity in relation to Uisce Eireann connections.

## 4.0 Planning History

### Appeal Site

**P.A. Reg. Ref. 21/978:** An application for the construction of 27 No. 2 storey semi-detached and terraced housing units together with all associated site development works was REFUSED by KCC on grounds of traffic hazard and potential conflict between pedestrian and traffic movements, in particular as it relates to the interface with No. 48 Mallfield. A subsequent appeal (ABP Ref. 314751-22) was invalid.

**P.A. Reg. Ref. 04/1381 (ABP Ref. PL 10.212260):** The Board upheld the decision by KCC to grant permission to build 32 detached and semi-detached houses, with access through the adjoining housing development (Mallfield-Phase 1) and demolish the partially built semi-detached houses No. 39 and 40, with associated services.

**P.A. Reg. Ref. 02/1058:** Permission granted by KCC to erect 34 no. dwelling houses, together with associated site development works and associated services installation and with an entrance formed by an extension of Road no. 1 as permissioned through planning permission under reference no. 01/1114.

### Adjoining site to the west

**P.A. Reg. Ref. 21/634:** Permission REFUSED for construction of 5 no. apartments and associated siteworks, and for the retention and completion of a 2-bed semi-detached dwelling. The grounds for refusal related to flood risk.

## 5.0 Policy Context

### 5.1. The National and Regional Context

- 5.1.1. The National Planning Framework (NPF) is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains a number of policy objectives that articulate the delivery of compact urban growth.
- 5.1.2. The Climate Action Plan 2024 implements carbon budgets and sectoral emissions ceilings and sets a course for Ireland's targets to halve our emissions by 2030 and reach net zero no later than 2050. All new dwellings will be designed and constructed to Nearly Zero Energy Building (NZEB) standard by 2025, and Zero Emission Building standard by 2030. In relation to transport, key targets include a 20% reduction in total vehicle kilometres travelled, a 50% reduction in fossil fuel usage, a significant behavioural shift away from private car usage, and continued electrification of our vehicle fleets. The Board is required to perform its functions in a manner consistent with the Climate & Low Carbon Development Act.
- 5.1.3. The National Biodiversity Action Plan 2023-2030 includes five strategic objectives aimed at addressing existing challenges and new and emerging issues associated with biodiversity loss. Section 59B(1) of the Wildlife (Amendment) Act 2000 (as amended) requires the Board to have regard to the objectives and targets of the NBAP in the performance of its functions, to the extent that they may affect or relate to the functions of the Board. The impact of development on biodiversity, including species and habitats, can be assessed at a European, National and Local Level and is taken into account in our decision-making having regard to the Habitats and Birds Directives, EIA Directive, Water Framework Directive and Marine Strategy Framework Directive, and other relevant legislation, strategy and policy where applicable. Biodiversity impacts are considered in sections 8.8 and 9 of this report.
- 5.1.4. Having considered the nature of the proposal, the receiving environment, and the documentation on file, including the submissions received, I am of the opinion that the directly relevant section 28 Ministerial Guidelines are:

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024), Department of Housing, Local Government and Heritage (hereafter referred to as the '*Compact Settlement Guidelines*').
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, (July 2023) (the '*Apartments Guidelines*').
- Childcare Facilities – Guidelines for Planning Authorities (June 2001) and Circular PL3/2016 – Childcare facilities operating under the Early Childhood Care and Education Scheme (the '*Childcare Guidelines*').
- Architectural Heritage Protection Guidelines for Planning Authorities, 2011 (hereafter referred to as the '*Architectural Heritage Guidelines*').
- Regulation of Commercial Institutional Investment in Housing – Guidelines for Planning Authorities (July 2023).

Other relevant national Guidelines include:

- Design Manual for Urban Roads and Streets (DMURS) (2019).
- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2009).

5.1.5. The Regional Spatial & Economic Strategy (RSES) for the Southern Region is a 12-year strategic development framework which establishes a broad framework for the way in which society, environment, economy and the use of land should evolve.

## 5.2. **Kilkenny City and County Development Plan 2021-2027**

- 5.2.1. The Core Strategy builds on the NPF objectives to promote compact growth. Objective 4B includes aims to ensure that 40% of the projected growth of the County to be delivered in Kilkenny City and the towns and villages within the county, with 30% of the new housing earmarked for the City and towns to be catered for within their built-up footprint.
- 5.2.2. Thomastown is identified as one of the 'Towns > 1,500 in population' (District Towns) at Tier 3 of the Settlement Hierarchy. Table 4.5 outlines that the Core Strategy Population Allocation for Thomastown has been increased to 437 compared to 265 in the current LAP. The Council aims to ensure that the District Towns will in so far

as practical be self-sufficient incorporating employment activities, sufficient retail services and social and community facilities.

- 5.2.3. Chapter 6 'Housing and Community' aims to develop and support vibrant sustainable communities in an attractive living and working environment where people can live, work and enjoy a high quality of life, with access to a wide range of community facilities and amenities, while ensuring coordinated investment in infrastructure that will support economic competitiveness. Relevant objectives include the following:

**6G** To require a mixture of residential unit types and sizes to reasonably match the requirements of different categories of households within the city and county.

**6I** To ensure that all new housing developments and developments for renewal which includes housing, includes a mix of house types with universal design so as to provide for an aging population.

**6J** To ensure the widest possible range of housing options in each new development and to prevent the proliferation of limited option house types in any particular area.

**6K** To seek that all new private residential developments on zoned lands in excess of 20 residential units provide for a minimum of 10% units that can be converted to Universal Design standards.

- 5.2.4. Chapter 9 'Heritage, Culture and the Arts' outlines objectives to protect Natura 2000 sites and other sites of biodiversity importance. Section 9.2.5 highlights the importance of 'Woodland, Trees and Hedgerows', while section 9.2.6. outlines the need to protect 'Inland Waters'.

- 5.2.5. The site is located to the south of the River Nore which is just within the designated 'Upland' landscape as per the Landscape Character Assessment. Protected Views in the vicinity of the site include:

V7 - Views west over the Nore Valley on the R700 between Inistioge and Thomastown (at the junction with the R703), particularly those at Brownsbarn Bridge and Dangan.

V8 - View East over the Nore Valley on the Thomastown/Inistioge Grennan Road (LP4208) south of Thomastown between the junctions with road numbers LS 8236 and LP4215.

- 5.2.6. Section 9.3 'Built Heritage' outlines requirements to protect archaeological heritage and architectural heritage (including Protected Structures and Architectural Conservation Areas (ACAs)).
- 5.2.7. Chapter 10 'Infrastructure & Environment' aims include to ensure a sufficient level of water services within the county for the implementation of the core strategy, provide a framework for the protection of the environment, including water quality, and the avoidance of flood risk.
- 5.2.8. Chapter 12 'Movement and Mobility' aims to co-ordinate transport and land use planning, reducing the demand for travel and the reliance on the private car in favour of public transport, cycling and walking by providing for a greater mix of suitable uses and by promoting and facilitating the transition to electrification of transport modes moving away carbon intensive modes to new technologies such as electric vehicles.
- 5.2.9. Chapter 13 outlines 'Requirements for Developments', including:
- Urban Design – compliance with relevant guidelines and the 12 criteria outlined in the Sustainable Residential Development Guidelines.
- Density - It is not intended to prescribe maximum residential density standards. The appropriate residential density in any particular location will be determined by criteria specified in section 13.4.1.
- Separation Distance - In general, there should be adequate separation (traditionally about 22m between 2-storey dwellings) between opposing first floor windows. Relaxation of this standard will be considered subject to appropriate criteria.
- Apartments – Section 13.13 outlines standards for apartments based on national guidance on Design Standards for New Apartments.
- Open Space – Section 13.20 sets out quantitative and qualitative requirements for private and public open space.

### 5.3. Thomastown Local Area Plan 2019

- 5.3.1. The LAP was adopted at the meeting of the County Council on the 25<sup>th</sup> of March 2019. On the 19<sup>th</sup> of February 2024, in accordance with Section 19(1)(f) of the Planning and Development Act 2000 as amended, the Council resolved to extend the life of the LAP to the 25<sup>th</sup> of March 2028.

- 5.3.2. The site is zoned as 'Existing Residential', the objective for which is:
- 'To allow for new residential development and other services incidental to residential development. While housing is the primary use in this zone, childcare facilities and recreation will also be considered. (20-40 units per hectare/ 8-16 per acre).'*
- 5.3.3. Chapter 8 deals with Built & Natural Heritage and Strategic Objective SO5 is to enhance and protect, where possible, Thomastown's built and natural heritage by promoting the enhancement, management and understanding of these assets whilst encouraging sensitive and sustainable development so as to ensure its survival for future generations.
- 5.3.4. There are a number of Protected Structures on/off Mill Street to the north and west of the appeal site. Policy PS1 is to preserve and enhance the buildings identified on the Record of Protected Structures and NIAH and to carefully consider any proposals for development that would affect the special value of such structures, including their historic character.
- 5.3.5. The Mill Street area to the north and west of the site is a designated ACA. The Council considers that the collection of buildings on Mill Street and their landscape setting has special architectural and townscape qualities which derive from the traditional layout, design and unity of character of the area. Policy ACA1 is to maintain the historic character of the designated ACAs and to carefully consider any proposals for development that would affect the special character of these areas. Objective ACAO1.1 is to ensure that new development within or adjacent to the ACAs, preserve and enhance the special character and visual setting of the ACA including views and vistas, streetscapes, building lines, fenestration patterns and architectural features and to seek visual impact assessments where appropriate.
- 5.3.6. Section 8.4 acknowledges the natural heritage and biodiversity value of the River Nore (SAC, SPA), the Thomastown pNHA, and the variety of other habitats and features contribute to biodiversity, landscape value and sense of place.
- 5.3.7. Chapter 9 'Movement & Transport' aims to improve the quality of the existing transport network in the town to increase permeability and connectivity in order to provide universal access to key land uses such as the train station, community facilities including schools and sports clubs and new/existing development lands.

- 5.3.8. Chapter 10 'Infrastructure & Environment' aims to phase future growth in line with the capacity of supporting physical infrastructure and to ensure that it occurs in accordance with proper planning and sustainable development. It includes policies in relation to working with Irish Water and managing surface water and flood risk.
- 5.3.9. Section 11 'Urban Design' aims to ensure development proposals conform to best practice urban design principles to deliver well planned and integrated development including renewal and regeneration that will enhance the town and improve the quality of life of its residents and phase new development to ensure that it occurs in an orderly and efficient manner.

#### **5.4. Natural Heritage Designations**

The nearest Natura 2000 sites are the River Barrow and River Nore SAC, and the River Nore SPA, both located c. 30m northwest of the appeal site.

### **6.0 EIA Screening**

See Appendix 1 and completed Forms 1 & 2 attached to this report. Having regard to the nature, size and location of the proposed development, and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. Therefore, EIA is not required.

### **7.0 The Appeal**

#### **7.1. Grounds of Appeal**

The KCC decision to grant permission has been appealed by Claire Challoner and Ronan Walsh of No. 19 The Meadows. The appeal contends that the proposed development fails to comply with a wide range of policies/objectives outlined in the NPF, the Sustainable Residential Development Guidelines (2009), the CDP, and the LAP. The grounds of appeal can be summarised under the headings below.

##### Principle of development

- Concerns about the location and awkward/enclosed nature of the site, including:

- Elevated nature overlooking features of built and natural heritage
  - Concentration of surrounding properties
  - Limited access opportunities
  - On-site Uisce Eireann main sewer
  - Existing trees and vegetation
  - High vulnerability rating for ground water.
- The LAP sets out two masterplans to meet housing demand and the site falls outside the LAP Core Strategy.
  - No consideration has been given to a lack of employment infrastructure.

#### Housing Density & Mix

- The KCC Planner's report incorrectly states that Mallfield (Phases 1 & 2 (i.e. The Meadows)) consists of 66 houses, whereas it actually consists of 98 houses. The decision was made on incorrect information relating to density/overdevelopment.
- The existing Castle Avenue development consists of 52 houses and the proposed development would result in 180 houses in a compacted area with limited infrastructure/amenities.
- There are no apartment block buildings in the area and the proposed development would not be in keeping with existing character.
- The area does not lack housing units. Permission has been granted for 73 units on other sites in the town and 25 social housing units have been recently completed. This will add significant pressure on traffic, physical infrastructure, and social/community infrastructure.
- There are no family units that can be converted to universal design standards in compliance with Objective 6k. The 1<sup>st</sup> floor apartment units are limited option units with no accessible lifts.
- The cumulative total of existing, proposed, and permitted houses has not been properly considered in relation to childcare requirements, and the previous application did not adequately assess the matter.



### Design, Layout, Visual Impact

- The KCC Planner's report concludes that the design and layout is the same as that previously considered acceptable under P.A. Reg. Ref. 21/978. However, that application did not include apartment blocks.
- Concerns about the retention of trees in the middle of the site and conflict with the proposed access have not been addressed by condition no. 15.
- The development will be elevated above protected structures, Mill Street ACA, the Station Road ACA, and other sensitive areas, and condition 15(b) (landscaping) will only mitigate visual impacts during the summer months. The development will forever alter the character and amenity of the area.

### Residential Amenity

- The decision prioritises the development over the wellbeing of adjoining residents and does not align with the NPF theme of wellbeing, equality and opportunity.
- The development, particularly the apartment blocks and proposed balconies, will negatively impact on existing properties (Mallfield, The Meadows, and Mill Street, but particularly the appellants' property) by overlooking and overbearing. The tree screening shown on the drawings does not exist and/or cannot be achieved.
- Condition no. 18(c) is unrealistic and unachievable in relation to Block B (units 28 & 30). Block B should be removed in entirety.
- Condition 18(a) will not prevent overlooking from first floor level.
- The appellants will be adversely affected during the construction phase.
- Apartment Block B has overbearing and unsympathetic features for future apartment residents.
- Balconies to units 7, 9, 28, and 30 may be used for undesirable uses.
- Block B will interfere with views from the appellants' property and may devalue the property.
- There are no controls on noise/lighting nuisance associated with Units 28 & 30 and associated balconies.

- The small communal open space to the rear of Block B limits separation distance and concentrates negative impacts on the appellants' property.
- Bin storage proposals will adversely affect the appellants' property.
- The proposed location of the Construction compound will adversely affect adjoining properties (19-23 The Meadows). Mitigation measures/proposals for welfare, storage, canteen, lighting, and temporary re-location are inadequate.
- The conditions of permission (nos. 9 and 12(b)) do not adequately address construction impacts.
- The communal open space for Block B appears to be in total shadow and is not suitable for living.
- The daylight/sunlight report refers to a VSC analysis for another location and cannot be considered adequate evidence.

#### Traffic & Transport

- The addition of 30 residential units contradicts LAP objectives to address traffic congestion problems and improve connectivity and permeability.
- The R448 bridge over the River Nore is an identified 'weak structure' and its loss due to additional traffic would result in a major incident.
- The site does not facilitate improved pedestrian/cycle connectivity and permeability to other services and amenities in the town.
- Visibility will be restricted at the interface between the proposed development and No. 48 Mallfield, resulting in a traffic hazard.
- Due to limited road width, there will be difficulty for construction traffic movements through Mallfield, resulting in traffic hazard.
- The Road Safety Audit has not addressed issues outside the site boundary and has not been properly endorsed/signed.
- Concerns are raised about the suitability of construction routes to/from the wider Motorway network.

### Ecology

- There is no space for the construction compound in close proximity to the River Nore SPA and River Nore/Barrow SAC, with sections of land close to the high-vulnerability aquifer. The NIS and CEMP do not mitigate potential impacts.

### Other Issues

- The legal suitability of agreements between the applicant and the owner of No. 48 Mallfield is questioned.
- Permission for the new wastewater infrastructure on adjoining private land has not been confirmed. It would be close to Grennan House (Protected Structure); on land close to the highly vulnerable aquifer; has not been covered by the NIS and CEMP; and is subject to further design and consent.
- The applicant does not own the site.

## **7.2. Applicant Response**

The applicant's response to the grounds of appeal can be summarised under the following headings:

### Principle of development

- The site was deemed suitable for residential use in accordance with the residential zoning in the LAP. It will integrate with existing housing through existing and proposed tree planting.
- In terms of sequential development, the site is superior to other undeveloped zoned residential lands in the town.

### Housing Density & Mix

- The proposed density (31 uph) is similar to existing development and consistent with the Compact Settlement Guidelines recommendations for 20-40 uph.
- It is acknowledged that the total number of houses would be 128.
- There are adequate facilities/amenities within easy walking distance.
- The introduction of apartments will increase the range of house types.

- The CDP provides for a population increase in Thomastown of 437, which will require at least 158 houses.
- The town is served by an adequate social/community infrastructure, including health and educational services.
- The planning authority was satisfied that 4 no. ground floor apartments meet the CDP requirements for universal design / lifetime housing.
- It is unreasonable to expect the developer to cater for cumulative childcare requirements. The KCC Childcare Officer is currently undertaking a review of provision/demand, and this is expected to see a reduced demand.

#### Design, Layout, Visual Impact

- The trees in the centre of the open space are to be retained and protected, as are those on either side of the entrance.
- The Visual Impact Assessment has been considered by the KCC Conservation Officer and Case Planner. It has been concluded that the impact on the ACA would be limited subject to additional landscaping as per condition no. 15.

#### Residential Amenity

- The 1<sup>st</sup> floor balconies would be 6m from the appellants' boundary and 22.3m from their house. Overlooking balconies are comparable to 1<sup>st</sup> floor windows and can be fitted with obscured glazing and raised in height to reduce overlooking.
- The line of sight from the balconies to the appellants' rear windows is oblique and will not result in loss of privacy. It would exceed the 22m standard in the CDP and the 16m standard in the Compact Settlement Guidelines.
- There will be no unacceptable loss of privacy for properties on Mill Street due to the proposed adjoining apartment block.
- It is accepted that the plans inaccurately show existing and proposed trees at 19-23 The Meadows.
- It would be possible to move the apartment block forward to increase separation and screening to the rear of the appellants' property, as is shown on an attached possible site layout drawing.

- No evidence of property devaluation has been submitted.
- Noise and light nuisance will not apply due to the separation distance.
- Communal open space for the apartments meets CDP standards.
- The proposed bin storage is suitably located and designed.
- The approved Construction Management Plan shows the Compound in the location of houses 15-18, not to the rear of existing housing. It is not necessary for the NIS to address standard construction practice mitigation measures.
- There are times when the communal space to the rear of Block B will be completely in shadow, but the apartments are close to the public open space which can be used by occupants.

#### Traffic & Transport

- The small scale of the development is not relevant to the structural condition of the bridge.
- There are no plans to plant trees in the location where the wall will be removed at 48 Mallfield. The removal of the wall is a particular element of the application and is enforceable.
- The existing access road can accommodate construction traffic, and the developer will liaise with residents to prevent parking obstructions.
- The road layout has been designed to DMURS standards having had regard to the findings of the RSA.
- The Road Design section of KCC considered all traffic impacts and did not raise any objections.

#### Wastewater Infrastructure

- Uisce Eireann has confirmed that connection is feasible subject to upgrades.
- The application includes landowner consent for the diversion of the sewer and condition 6 addresses the matter in an enforceable manner.

### **7.3. Planning Authority Response**

The response considers the grounds of the appeal and the applicant's response. It confirms that the matters were considered during the assessment of the application. The main points can be summarised as follows:

- It agrees with the applicant's response and considers that the development is in accordance with proper planning and sustainable development.
- KCC Road Design section is satisfied that relevant issues have been addressed.
- Impacts on No. 19 The Meadows have been addressed by condition regarding the balconies serving Apartment Blocks E and 1<sup>st</sup> floor gable windows.
- The suggested revised layout would afford greater separation distance and privacy. The relaxation of car parking to 1 space per apartment can be considered given the site's location. KCC would have no objection to the revised layout, which will not undermine other development standards, i.e. public open space, traffic safety, etc.
- The proposed development will contribute to meeting Core Strategy targets and complies with the CDP, the LAP, and the Compact Settlement Guidelines.
- It would provide much-needed housing at a sustainable density in close proximity to an existing town centre and would not seriously injure amenities or be unacceptable in relation to traffic.

### **7.4. Observations**

None.

### **7.5. Further Responses**

The appellants have commented on the applicant's appeal response. They reiterate previously raised concerns and generally reject the applicant's response. Any relevant additional issues raised can be summarised as follows:

- On the 8<sup>th</sup> of April 2024, following heavy rainfall, a significant number of large rocks broke away from the Mill Street/Mallfield housing development cliff face.

The application findings did not determine the rockfall and the proposed development could destabilise the cliff face further.

- Walking distance to the site does not consider older and younger age groups.
- KCC now proposes to construct an additional 42 no. units at Newtown (Sheephouse Lane masterplan area), which would result in a total of 170 no. units to exceed the CDP Core Strategy.
- The applicant has not established adequate capacity in relation to childcare and educational services.
- It is acknowledged that development has been limited since 2019 but there has been a significant number of permitted housing developments and the applicant's contention regarding sequential superiority is questioned.
- Overlooking impacts from the balcony cannot be compared to windows.
- The revised layout is a material change which has not been shared with the Environment or Road Design sections of KCC. The proposed additional screening would need to be in excess of 4 metres and would result in overshadowing of the adjoining communal space and the appellants' garden, as well as ending a long-established rural vista. Their concerns would not be mitigated by the suggested amendments, including those to the balconies.
- The appellants have had their property valued but a written value could not be provided for a hypothetical situation. They were verbally advised that there would be significant devaluation.
- The outdoor swimming pools referenced are seasonal only.
- The response does not address concerns about the bin store location/design.
- The applicant does not present any evidence that the construction compound will be in the position of houses 15-18. The location would be restricted and awkward and in close proximity to Natura 2000 sites and highly vulnerable groundwater.
- Tree nos. T055 and T056 will have to be removed to achieve the 4m extension at no. 48 Mallfield.
- The applicant's F.I. response did not include any evidence that they had liaised with Uisce Eireann regarding the foul sewer diversion. Failure to secure

permission in this regard would have serious implications for residential amenity, public health, environmental protection, and the Natura 2000 network.

- KCC did not review the wider traffic impacts of the development.
- The appellants have not inferred that there is no demand for new housing in Thomastown and they have not objected to other developments in the town.

## **8.0 Assessment**

### **8.1. Introduction**

8.1.1. I have examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority and prescribed bodies, and I have inspected the site and had regard to the relevant local/regional/national policies and guidance.

8.1.2. The issue of Appropriate Assessment will be addressed separately in section 9 of this report. Otherwise, I consider that the substantive issues to be considered in this appeal are as follows:

- Principle of Development
- Impacts on Existing Properties
- Proposed Residential Standards
- Traffic and Transport
- Water Services
- Density, design, and visual amenity
- Other Issues.

### **8.2. Principle of Development**

8.2.1. Concerns have been raised about a range of physical and environmental constraints that apply to the site, and these will be considered in detail throughout this assessment. The main concerns about the principle of the development revolve around a perceived awkward/enclosed nature of the site; the cumulative number of other permitted/planned developments in the area; and the lack of supporting infrastructure in the form of employment, transport, and social/community facilities.



## Zoning

- 8.2.2. At the outset, I would highlight that the principle of development on the site is supported by the LAP. The site largely forms the northern end of a larger area zoned as 'Existing Residential'. The zoning objective for 'existing residential' is the same as that for 'new residential', that is:

*'To allow for new residential development and other services incidental to residential development. While housing is the primary use in this zone, childcare facilities and recreation will also be considered. (20-40 units per hectare/ 8-16 per acre).'*

- 8.2.3. The objective also outlines that 'permissible uses' include 'Residential (Apartments)' and 'Residential (Houses)'. Appendix A outlines that 'Permissible Uses' means uses which are generally acceptable in principle in the relevant zone, subject to further consideration in the normal planning process. I further note that the LAP has been subject to Strategic Environmental Assessment Screening; Appropriate Assessment Screening; Strategic Flood Risk Assessment and Infrastructural Assessments; all of which have informed the decision to zone the subject site for residential use.

- 8.2.4. Consistent with the LAP approach, I am satisfied that residential development on the site is acceptable in principle in accordance with the zoning objective. I acknowledge that further consideration is required in relation to the nature and scale of the proposed development and its impact on surrounding infrastructure and amenities, and this will be considered throughout this assessment.

## Cumulative Housing

- 8.2.5. The appeal has outlined that the extent of existing housing at this location has not been properly considered, and points to a total of 150 existing houses in the adjoining Mallfield/Meadows/Caste Avenue estates. It also contends that there are 140 dwellings that have been recently completed / permitted / planned.
- 8.2.6. I note that the LAP Core Strategy outlined a housing requirement of c. 100 units<sup>1</sup> to accommodate an additional 265 persons over the Plan period. However, I do not consider that this should be applied as a limiting factor to the proposed development for the following reasons:

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<sup>1</sup> Not including an estimated 62 units for Social Housing

- The Plan period (2019-2025) has subsequently been extended a further three years to 2028, thereby resulting in additional requirements.
- Section 4.3.1. and Policy RD1 of the LAP outline requirements to ensure that sufficient land is zoned for residential use. Accordingly, it outlines minimum rather than maximum housing requirements.
- The housing requirements are based on the capacity of 'new residential' and 'low density residential' zonings. Section 4.3.2 of the LAP outlines that there will also be *'opportunities to provide infill developments comprising small residential or mixed use schemes on existing residentially or mixed use zoned lands across the LAP area'*. Accordingly, development proposed on 'existing residential' lands is intended to supplement the projected housing requirements.
- I acknowledge that the LAP outlines two masterplan areas (1 'new residential' and 1 'low density residential'. However, consistent with the above, and contrary to the appellants' contentions, the LAP clearly does not preclude additional residential development outside the masterplan areas.

8.2.7. Notwithstanding the above, the CDP Core Strategy takes precedence over the LAP provisions. Section 4.4 of the CDP outlines that the population allocation for the District Towns has been revised upwards in the context of the overall county allocation, the particular function of the town in the County context, aligning all population projections to a common date, planning decisions since the adoption of the LAPs, the availability of engineering services infrastructure (water and wastewater), social services such as primary and secondary schools, and the ratio of resident workers and total jobs in the towns. The assessment concluded that some 150 additional people could be allocated over the plan period to the towns of Callan and Thomastown over and above that allocated in their respective Local Area Plans. Accordingly, the CDP allocates an increased population of 437 to Thomastown.

8.2.8. Based on the household sizes applied in the LAP (i.e. c. 100 units to accommodate 265 persons), the revised CDP population allocation of 437 would equate to c. 165 units. This exceeds the total of 140 dwellings recently completed / planned / permitted, as stated by the appellants. However, I would highlight that 67 of the 140 units are social/affordable units and the LAP outlines that such units are not included in the population allocations. The relevant number of recently completed / planned /

permitted units would therefore be 73. And while this would leave ample opportunity to accommodate the proposed 30 units within the CDP allocation of 437 persons, I have previously outlined that development on 'existing residential' land is supplementary to the population allocations in any case.

- 8.2.9. Accordingly, having considered the extent of existing, permitted, and planned residential development in Thomastown, I am satisfied that the proposed development can be accommodated in accordance with the Core Strategies as outlined in the LAP and CDP.

#### Infrastructural Capacity

- 8.2.10. Section 4.3.3 of the LAP confirms that an Infrastructure Assessment has been completed in accordance with the requirements of the National Planning Framework (NPF). The assessment is based on the potential for delivery of the required services and/or capacity to support new development and is also aligned with the approved infrastructural investment programme of the relevant delivery agency(ies) or based on a written commitment by the relevant agency(ies) to provide the required infrastructure within a specified timescale.
- 8.2.11. Section 5 of the LAP outlines a profile of economic development and employment. It acknowledges that the ratio of jobs to workers is somewhat below the average for the region, and outlines proposals to support local employment and improve access to/from neighbouring employment centres. Section 6 also considers community facilities and acknowledges that the integration of social infrastructure with the development of the town is fundamental to long-term resilience and sustainability.
- 8.2.12. Accordingly, I am satisfied that the LAP has appropriately considered the capacity of physical, employment, social, and community infrastructure. Furthermore, in upwardly revising the LAP population allocation the CDP has considered the availability of engineering services infrastructure (water and wastewater), social services such as primary and secondary schools, and the ratio of resident workers and total jobs in Thomastown.
- 8.2.13. Ultimately, I consider that this is a small development with an estimated population of c. 80 persons, which would result in only a c. 3.5% increase on the recorded 2022 census population for Thomastown (2,305). I am satisfied that the CDP and LAP have appropriately considered infrastructural capacity to cater for population growth,

and in principle, I do not consider that the proposed development would result in unacceptable pressure on infrastructural services. More detailed assessment will be outlined throughout this report where necessary.

### Conclusion

- 8.2.14. Having regard to the foregoing, I am satisfied that the site is zoned for residential use, would not result in excessive residential development in Thomastown, and would not place excessive pressure on infrastructural services. Therefore, the principle of the development would be consistent with the proper planning and sustainable development of the area.

### **8.3. Impacts on Existing Properties**

- 8.3.1. Significant concerns have been raised in this case about impacts on the amenities of surrounding properties, particularly the appellants' property at No. 19 The Meadows. The relevant issues raised are considered in the following paragraphs.

#### Overlooking / Overbearing Impacts

- 8.3.2. Overlooking and overbearing impacts are largely dependent upon the height, scale, and design of the proposed development and its separation distance from existing properties. In this regard, I note that the proposed development consists of 2-storey residential properties which are generally consistent with the height and scale of existing development. I note that the proposed properties are significantly elevated relative to the Mill Street properties. However, impacts are mitigated by significant separation distances and vegetative screening, and the rear outlook from the Mill Street properties is already largely dominated by steeply rising topography. Accordingly, I do not consider that significant adverse impacts should occur subject to suitable design and separation distances.
- 8.3.3. Section 13.9 of the CDP outlines that, in general, there should be adequate separation (traditionally about 22 m between 2-storey dwellings) between opposing first floor windows. However, relaxation of this standard will be considered where the careful positioning of opposing windows can prevent overlooking even with shorter back-to-back distances. Windows serving halls and landings do not require the same degree of privacy as, say, balconies and living rooms.

- 8.3.4. I have considered the separation distances for any opposing first-floor windows relating to House Types A, B, C, and D. In all cases, the distance would exceed 22 metres in compliance with CDP standards.
- 8.3.5. For the apartment blocks, I note that there are no opposing windows within 22 metres to the north or west of the proposed northern block (Units 6-9). There is a west-facing first-floor kitchen window (unit 7) in close proximity to the western site boundary, but frosted glazing will be used. The rear first-floor windows in the other apartment block (units 27-30) would also be more than 22 metres from the rear windows of No. 19 The Meadows.
- 8.3.6. In addition to the windows, the appeal has raised serious concerns about the first floor balconies serving units 28 & 30. In relation to No. 19, the permitted balconies would be c. 6m from the shared boundary and c. 20.3m from the nearest point of the existing house. The rear windows in No. 19 are setback further and angled to avoid direct opposition. I note that the 22-metre standard referenced in the CDP refers to opposing windows, and that there is no specified standard for window – balcony separation. The standard is also stated to be ‘in general’ and refers to ‘about’ 22 metres, which allows for discretion. However, using the 22-metre standard as a guide, I consider that the balconies would not result in any unacceptable overlooking of windows given the separation distance and angled interface.
- 8.3.7. In addition to overlooking of windows, the appeal raises concerns about the privacy of the rear garden of No. 19. I note that the elevated balconies would be within c. 6.6m of the shared boundary and I consider that this has the potential for adverse overlooking impacts. However, the applicant’s response to the appeal suggests that the block could be moved c. 3 metres further north, providing a distance of c. 9m and additional screen planting between the balcony and the shared boundary. I consider that this would provide adequate separation and screening to prevent any unacceptable overlooking impacts.
- 8.3.8. I note that the appellants are not satisfied with the suggested amendments and contend that it would be a material change that requires further consideration by KCC. However, I consider that the applicant’s submission constitutes a suggested condition of any permission, rather than any material change to the current application/appeal proposal. The planning authority have had the opportunity to

comment on this and have confirmed that it would have no objection and that the amendment would not undermine any other development plan standards.

Accordingly, I consider that the suggested amendment can be considered by the Board and that a condition to this effect should apply to any grant of permission.

- 8.3.9. Notwithstanding the aforementioned CDP standards on separation distances, SPPR 1 of the Compact Settlement Guidelines also outlines that a distance of at least 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained. Separation distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity spaces. These standards are clearly less onerous than the CDP 22-metre standard and I am satisfied that the proposed development would comfortably exceed the 16-metre standard.

#### Daylight & Sunlight Impacts

- 8.3.10. Apart from references to the provisions of the Building Height Guidelines in proposals for 'increased height', which does not apply to this 2-storey proposal, the Development Plan does not set out requirements for daylight/sunlight assessment. This approach is supported by the Compact Settlement Guidelines (s.5.3.7) which outlines that a detailed technical assessment is not necessary in all cases. It states that it should be clear from the assessment of architectural drawings (including sections) in the case of low-rise housing with good separation from existing and proposed buildings that undue impact would not arise, and planning authorities may apply a level of discretion in this regard.
- 8.3.11. Notwithstanding this, the applicant's FI response included a Daylight Analysis and Overshadowing Report. I note that one line of the report refers to 'Waterloo Rd and Waterloo Lane' but it is clear that this is a typographical error and that the report assesses the correct development. The report is based on relevant standards as outlined in BS EN 17037:2018 and the BRE guide 'Site Layout Planning for Daylight and Sunlight: A guide to Good Practice' (2022). Consistent with the applicant's report, I acknowledge that the BRE advice is not mandatory and is intended to be interpreted flexibly.

8.3.12. The report considered overshadowing of neighbouring amenity area based on BRE recommendations that at least 50% of the space should receive 2 hours of sunlight on the 21<sup>st</sup> of March, or that the area which receives 2 hours of sunlight would not be reduced to less than 0.8 times the existing level. It demonstrates that all areas would exceed the 50% requirement and would not be reduced to less than 0.8 times existing levels as a result of the development. And while the appellants have raised concerns about additional overshadowing as a result of the suggested additional screen planting on the northern side of the shared boundary, I do not consider that this will have an impact given the direction of sun movement from east to south to west. Similarly, given the orientation and separation of existing houses, I do not consider that there would be significant impacts on sunlight levels to the internal rooms of existing houses.

8.3.13. In relation to daylight, the report carried out a Vertical Sky Component (VSC) analysis. VSC is the ratio of the part of illuminance at a point on a given vertical plane which is received directly from the sky, to illuminance on a horizontal plane due to an unobstructed hemisphere of this sky. The BRE guide outlines that a VSC of >27% is acceptable. The applicant's assessment indicates that the VSC for all relevant sample windows would comfortably exceed the 27% standard, which I consider to be acceptable in accordance with the BRE Guide.

8.3.14. Having regard to the foregoing, I do not consider that there would be any unacceptable daylight or sunlight impacts for the existing properties in the area.

#### Construction Impacts

8.3.15. I note that the 'Proposed Site Compound Layout' drawing submitted on the 12<sup>th</sup> December 2023 indicates its location to the north of 19-23 The Meadows, while the Construction Environmental Management Plan (CEMP) submitted the same day indicates that it would be at the northern end of the site in the vicinity of proposed houses 15-18. The applicant's response to the appeal confirms that it would be in accordance with the CEMP, and this could be conditioned in accordance with condition no. 9 of the KCC decision. I consider that this peripheral location would significantly mitigate any associated impacts on existing properties, particular nos. 19-23 as referenced in the appeal. And in relation to the eventual construction of houses 15-18, I note that the indicated compound area extends beyond the footprint

of these houses and would not preclude their construction. The indicated area is a reasonable approximation and detailed proposals to facilitate the construction of houses 15-18 could be agreed as a condition of any permission.

8.3.16. The CEMP outlines a range of measures to control and manage the effects of the construction stage. This includes proposals for the management of waste; staff welfare; environmental measures in relation to noise, dust/air, surface water and groundwater, and ecological receptors; traffic management; and clarification of roles, responsibilities and procedures. I am satisfied that the proposed measures are comprehensive and appropriate, and that any temporary construction impacts associated with the development would be typical of urban development and would not significantly detract from the amenities of existing properties. I would accept that the final details of construction would be confirmed after the appointment of a contractor, and that the final CEMP can be agreed as a condition of any permission in accordance with standard practice.

8.3.17. The CEMP states that the proposed site working hours are subject to planning permission and conditions, subject to occasionally agreed exceptions. However, it is stated that deliveries will generally be between 07:00 – 18:00 Mon-Fri and 08:00 to 14:00 on Saturdays, and that in order to minimise noise disruption, no activity that would reasonably be expected to cause annoyance to residents shall take place before 08:00 or after 16:00 on those days. I consider that the proposed hours are generally typical of such development and consistent with approvals by the Board, and that a suitable condition should apply to any grant of permission.

#### Other Issues

8.3.18. The appeal raises concerns about the operational impacts of the development, particularly the first-floor apartments and associated balconies. The concerns relate to light and noise, as well as potential undesirable uses. However, I consider that the proposed development would be consistent with the established residential nature of the area and that it would not be reasonable to conclude that any associated noise, light, or uses would result in significant effects on residential amenity.

8.3.19. I note concerns that the small communal open space associated with units 27-30 would concentrate negative impacts on the appellants' property. However, I do not consider that negative impacts can be attributed to the communal open space, and I



would highlight that the size of this space would be further increased through the relocation of the block to north as previously discussed.

- 8.3.20. Regarding concerns about bin storage, I note that enclosed storage areas are proposed to the western side of units 27-30, at a distance of at least 15 metres from the appellants' property. This is a typical arrangement for a development of this nature, and I do not consider that it would significantly detract from the residential amenities of the area.
- 8.3.21. While concerns have been raised that the development would detract from views/vistas enjoyed by existing properties, I would highlight that residents are not entitled to the protection of any such views. I have considered the scale and distances between existing and proposed development, and I do not consider that there would be any overbearing impacts on the outlook from existing properties.
- 8.3.22. Related to the various concerns outlined in this section of my report, it has been contended that the proposed development would adversely impact on the value of property. However, no explicit evidence has been submitted to support this contention. And having regard to the foregoing assessment, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

### Conclusion

- 8.3.23. Having regard to the foregoing, I am satisfied that, subject to appropriate conditions of any permission, the proposed development would not result in any unacceptable impacts for existing properties in the area.

## **8.4. Proposed Residential Standards**

- 8.4.1. Some issues have been raised in relation to the standard of supporting facilities for the proposed apartments. In this regard, I would state as follows:
- Adequate proposals have been provided for enclosed and easily accessible waste storage facilities.
  - Covered bicycle parking facilities have also been provided (10 spaces for each block) in accordance with the Apartments Guidelines standards.

- The application outlines that private amenity spaces (13.5m<sup>2</sup>) are provided for each apartment. While I acknowledge that these are provided for the first-floor units in the form of balconies, it is not clear from the floor plans that patio/terrace areas would be provided for the ground floor units. However, I am satisfied that this can be accommodated subject to agreement as a condition of permission.
- Internal storage of at least 6m<sup>2</sup> is proposed for each unit in accordance with the requirements of the Apartments Guidelines. I note that this includes dedicated storage/utility space but is also partly provided in bedrooms. However, the bedroom storage is appropriately provided in addition to minimum aggregate floor areas in accordance with s. 3.31 of the Apartments Guidelines.

8.4.2. Otherwise, I have considered the 'Statement of Consistency' with the Apartments Guidelines and CDP standards as included in the FI response. Consistent with the planning authority's approach, I am satisfied that the proposed apartments satisfactorily address these requirements.

8.4.3. I note that concerns have been raised that the communal open space for the apartments would be in shadow and would not be suitable for purpose. I have considered the applicant's Daylight Analysis and Overshadowing Report, and I note that there will be times when these spaces will be in shadow, particularly in later hours of the day and in wintertime. However, as previously outlined, the BRE Guide advises that at least 50% of such spaces should receive 2 hours of sunlight on the 21<sup>st</sup> of March. The applicant's report demonstrates that this would be comfortably exceeded for the northern apartment block (i.e. 88.94%). And while the results for the southern block are not quantified in the report, I consider that the shadow diagrams included in section 7 of the report clearly demonstrate that the majority of the space would not experience overshadowing between the hours 10:00 to 14:00, which would be acceptable. I also consider that these results would be further improved through the relocation of the block further north as previously discussed.

8.4.4. The appellant has raised the issue about further overshadowing of this space as a result of additional screen planting along the shared boundary. However, section 3.3.9 of the BRE Guide outlines that trees normally need not be included in sunlight assessments, particularly in the case of deciduous trees. It would be my recommendation that deciduous trees should be planted along the shared boundary

and, accordingly, I do not consider that this would significantly impact on sunlight levels to the proposed open space.

- 8.4.5. Concerns have also been raised with regard to universal design standards within the development. In this regard, I note that CDP Objective 6I aims to achieve a mix of house types with universal design so as to provide for an aging population, while Objective 6K aims for at least 10% of units in developments such as this to be capable of conversion to Universal Design standards. Consistent with the planning authority approach, I am satisfied that there is a suitable mix of housing and that the 4 ground floor apartments (13.3% of the units) would satisfy requirements for universal design and lifetime housing.
- 8.4.6. In relation to childcare requirements, the appellants contend that the cumulative total of existing, proposed, and permitted houses has not been properly considered. The CDP outlines that KCC will implement the Childcare Facilities Guidelines for Planning Authorities. Where a large housing development is proposed, i.e. seventy-five houses or more, the planning authority will require the provision of a purpose-built unit for childcare on the site which shall have regard to the existing level of childcare provision in the area. It is stated that the Council will operate this requirement in a flexible manner.
- 8.4.7. It is clear that the current application for 30 units falls well short of the 75-unit threshold to require childcare facilities. I acknowledge that the cumulative total with existing development at this location (i.e. Mallfield / The Meadows / Castle Avenue) would exceed 75 units. However, it should be noted that the existing houses have been developed over recent decades. These estates have gradually matured and, therefore, I do not consider that their childcare requirements should be cumulatively considered with the proposed development. In my opinion, the proposed development would constitute a small extension to a long-established residential area, which would not warrant a requirement for a childcare facility.
- 8.4.8. In relation to car-parking, I note that the proposals were considered acceptable by the planning authority. The suggested relocation of the southern apartment block would result in a reduction to 4 spaces to serve the 4 proposed apartments. However, I am satisfied that a standard of 1 space per apartment would be acceptable given the size of the units (2-beds); the availability of 4 other 'shared'

spaces; and the discretion available to apply parking standards as per section 12.12 of the CDP. In the event that the Board considers that there would be a material contravention in this regard, I am satisfied that it could be granted (under s. 37(2)(a) of the Act) having regard to the Compact Settlement Guidelines which outline that car parking ratios should be reduced at all urban locations and that maximum (rather than minimum) parking standards shall apply under SPPR 3.

- 8.4.9. Consistent with condition no. 28(c) of the KCC decision, I consider that any grant or permission should require the provision of EV charging facilities to satisfy the requirements of s. 12.14 of the CDP.

#### Conclusion

- 8.4.10. Having regard to the foregoing, I am satisfied that the proposed dwellings would be of an appropriate standard and that they would be provided with an appropriate level of supporting facilities and services.

### **8.5. Traffic & Transport**

#### Proposed access

- 8.5.1. It is proposed to access the site via an existing residential access road serving the Mallfield estate. The existing road is of typical residential specification, consisting of a carriageway width of c. 6m flanked by 2m footpaths and public lighting. The road currently terminates at No. 48 Mallfield, where a plastered block wall and existing trees form the boundary with the appeal site.
- 8.5.2. It is proposed to remove the existing block wall to facilitate the extension of the existing road and footpaths to serve the proposed development. As part of these works, the side garden to No. 48 would also be widened by 4 metres. A new boundary wall would be provided to the side of No. 48, consisting of a 2-metre-high block wall reducing to a 900mm hooped metal railing for a distance of 3.5m immediately adjoining the proposed new footpath. The owners of No. 48 have submitted written consent for the proposed works, and I am satisfied that this is sufficient for the purposes of the appeal case.
- 8.5.3. Having reviewed the proposed access arrangements, I consider that the proposed development would simply extend the existing road and associated infrastructure in a similar manner. The interface with No. 48 has been appropriately designed,

including a low-level boundary, and will ensure that adequate sightlines will be available to avoid traffic hazard. This is demonstrated in the applicant's FI response (report by Roadplan Consulting) which responds to the Road Safety Audit and shows that adequate sightlines of 23m will be achieved; that there will be adequate visibility for pedestrians; and that footpath connectivity and crossing facilities will be provided.

#### Traffic generation and wider impacts

- 8.5.4. I would highlight that this is a small scheme which will not generate significant traffic volumes when considered in the context of the local residential area or the wider town and surrounding road network. The development would suitably tie into the existing road network and its comparatively minor scale would not result in any significant impacts for the capacity or safety of the existing road network, including the River Nore bridge. Having inspected the site and connecting road network, I consider that, consistent with the KCC approach, the capacity and safety of the road network and associated junctions is adequate to accommodate the development.
- 8.5.5. I note that the Road Safety Audit (RSA) has addressed the scheme itself and its connection to the existing road network. I consider that this is sufficient given the limited scale of the development and that a wider assessment of the surrounding network is not required. I am satisfied that the issues identified in the RSA have been appropriately endorsed and accepted by the design team and that appropriate solutions have been incorporated into the application.

#### Construction traffic

- 8.5.6. I note that concerns have been raised about traffic hazard due to inadequate road widths within the Mallfield estate. Concerns have also been raised about the suitability of construction routes to and from the wider Motorway network.
- 8.5.7. Section 6 of the CEMP includes an Outline Traffic Management Plan (TMP). It confirms that access to and from the site will be via the Mallfield estate and that a range of measures will apply, including banksmen, access/exit control and signage. I note that the alignment of the route through Mallfield is largely straight to facilitate good visibility. It is of an adequate width of 6m and includes footpaths for its full length. On-site car-parking is provided, as well as a range of shared spaces which offer a suitable alternative to haphazard on-street parking.

- 8.5.8. The wider construction route is proposed to link to the M9 Motorway via the regional road network over a distance of c. 10km. Again, I consider that this network is adequate to cater for the expected construction traffic.
- 8.5.9. Other measures proposed within the TMP include:
- Speed limits of 50km/hr in local communities and 30km/hr in sensitive areas.
  - Road cleaning condition maintenance.
  - Emergency and communications procedures.
- 8.5.10. Having regard to the above, I consider that construction traffic impacts will be typical of any such urban development, that the existing road network is adequate to accommodate the additional traffic, and that an appropriate Traffic Management Plan would be put in place.

#### Pedestrian connectivity and permeability

- 8.5.11. The appellants have raised concerns that the proposed development does not promote pedestrian connectivity and improved permeability, particularly for older and younger age groups. I note that the pedestrian route to the town centre is quite circuitous relative to the route 'as the crow flies'. However, there are footpath and lighting facilities for the entire length of the route of c. 850 metres to Market Street.
- 8.5.12. In discussing 'compact growth', the Compact Settlement Guidelines (s.1.3.2) outlines that planning authorities should plan for an integrated network of well-designed neighbourhoods that can meet day-to-day needs within a short 10 to 15 minute (approx.) walk of all homes. The Apartments Guidelines also discusses walking distances, albeit mainly in the context of distances to public transport, but nonetheless describes 800-1000 metres as being a 'reasonable walking distance'.
- 8.5.13. Having regard to the above, I consider that the site would be within a reasonable and acceptable walking distance of the town centre and that it would benefit from appropriate pedestrian infrastructure to facilitate improved connectivity and permeability. The KCC decision has also included a condition requiring a section 47 agreement to facilitate future cycle/pedestrian linkages.

#### Conclusion

- 8.5.14. Having regard to the foregoing, I would have no objection to the traffic and transport related impacts of the development, either at construction or operational stages.

## 8.6. Water Services

### Water Supply

- 8.6.1. It is proposed to connect to the existing watermain in the Mallfield estate and the Uisce Eireann (UE) submission has confirmed that this is feasible without infrastructure upgrade, subject to standard conditions.

### Wastewater

- 8.6.2. It is proposed to connect to the existing UE foul network which currently runs along the northern periphery of the site, and UE originally outlined that this would be feasible subject to upgrade to a 300mm diameter public sewer. However, the applicant's FI response highlights that the two existing gravity sewers are 225mm dia. & 300mm dia., not the 150mm dia. indicated on UE GIS records. Accordingly, the applicant contends that an upgrade to 300mm is not required but proposes to divert part of the sewer to the north of the proposed development. The FI response includes correspondence from UE which acknowledges the applicant's findings and confirms that the diversion proposal is reasonable subject to design and agreement.
- 8.6.3. Sections of the existing foul sewers would be made redundant and new sewers would be installed outside the northern site boundary. The application includes written agreement from the landowner to the north for the proposed diversion; maintenance/upgrade access for UE and KCC; and that no further development shall occur in this area in accordance with UE requirements.
- 8.6.4. Having regard to the above, I am satisfied that the proposed wastewater connection can be accommodated without the need for upgrades and that the foul sewer diversion is reasonable, as has been confirmed by UE. Such diversion is a common feature of urban development, and I consider it reasonable that the specific design details would be agreed in consultation with UE and in accordance with best practice (as per the CEMP) to prevent any significant environmental effects.

### Surface water and groundwater

- 8.6.5. It is proposed to include a SuDs based storm water management system in accordance with KCC requirements and CIRA C753. Surface water from the access road and footpath will discharge under gravity flow to ground via onsite stormwater soakaways (Ref E). Stormwater falling within most individual sites will be collected

and discharged to ground via a soakaway in the rear garden of each site. Following site investigation findings of shallow bedrock, the applicant's FI response removed the individual soakaways from sites 21-26, which will now be redirected to soakaway Ref E. No direct discharge to the River Nore is proposed.

- 8.6.6. The soakaways have been designed in accordance with the BRE 365 Digest: Soakaway Design to cater for all surface water run-off from roofs, paved entrance parking areas, footpaths and the proposed access road. The soil infiltration characteristics were established by onsite testing and the results confirm that soakaways can be sized to cater for all surface water run-off. All soakaways have been designed for a 1:10 storm event and a 10% increase in intensity for climate change was added in accordance with current best practice guidelines.
- 8.6.7. The site investigations also outline that groundwater was not encountered until a depth of c. 2.1m and that the scheme has been designed to ensure an adequate depth of subsoil between the groundwater level and the soakaways.
- 8.6.8. In addition to the above operational measures, the CEMP confirms that construction stage surface water and groundwater protection measures will be implemented. The main pollutants with the potential to impact water receptors are identified as silt, fuel/oil, concrete and chemicals. Proposals are outlined to eliminate potential contamination with reference to the Eastern Regional Fisheries Board recommendations for protection of adjacent water courses during the construction phase. In summary, these include:
- Storage of harmful materials in bunded compounds away from drains / gullies.
  - Refuelling of machinery to be carried out using drip trays
  - Runoff from machine service and concrete mixing areas must not enter storm water drains and gullies.
  - Stockpiling of sands and gravel to be minimised and kept well away from storm water drains and gullies.
  - Open excavations to be backfilled immediately following installation of services/foundations etc.
- 8.6.9. In relation to flood risk, I acknowledge that the site is significantly higher than the level of the River Nore. The applicant's Site Services Report addresses the need for



flood risk assessment. It considers the CFRAMS Kilkenny Nore Fluvial Flood Map and the worst case or 'low probability' flood extent. Consistent with these findings, I am satisfied that the site is not located within a flood zone and potential flooding is not a concern as the proposed ground floor levels are substantially higher than the estimated extent of low probability flood event. I am also satisfied that surface water from the proposed development will be suitably infiltrated to ground and will not increase run-off levels or flood risk to surrounding lands.

- 8.6.10. In conclusion, I acknowledge the surface water and groundwater sensitivities of the site given its proximity to the River Nore and the high risk to vulnerable groundwater receptors. However, having regard to the site investigations carried out and the proposed measures to protect surface water and groundwater at construction and operational stages, I am satisfied that the proposal would be in accordance with best practice and would not pose any unacceptable risks.

## 8.7. Density, design, and visual amenity

- 8.7.1. It is proposed to construct 30 dwellings within a site area of 0.96 hectares, resulting in a density of c. 31 units per hectare. Despite outlining indicative densities for the purposes of zoning requirements, section 12.1.1 of the LAP confirms that the acceptable density on any site shall be determined by a design led approach that takes cognisance of the receiving environment and the established character of the area. I also note that the zoning objective for 'Existing / New Residential' (as per Appendix A) indicates a density of 20-40 units per hectare, with which the proposed development would comply.
- 8.7.2. The CDP (s. 13.4.1) confirms that it is not intended to prescribe maximum residential density standards and that appropriate residential density in any particular location will be determined by the consideration of a range of criteria. These are summarised and considered in the following table.

**Table 1 – Assessment of density criteria as per s. 13.4.1 of the KCC Development Plan**

Criteria	Assessment
i. Design & Layout	The design brief effectively centres on the extension and 'rounding off' of this residential area. It has been informed by visual impact assessment and consideration of the topography and vegetation

	<p>within and surrounding the site. A coherent brief has been followed that will result in a high-quality residential environment.</p>
<p>ii. Qualitative &amp; quantitative criteria (including Urban Design manual)</p>	<p>As outlined throughout this report, I am satisfied that the proposed development complies with quantitative and qualitative criteria outlined in the LAP and CDP.</p> <p>The Urban Design Manual (2009) has been replaced by the Compact Settlement Guidelines (2024), but an updated Design Manual has not yet been published. In the absence of an updated manual, I consider it appropriate to consider the 12 criteria outlined in the 2009 Design Manual in accordance with the CDP as follows:</p> <p><u>Context</u> – The proposal mainly consists of 2-storey housing which is generally consistent with existing development. Although concerns have been raised about the inclusion of apartments, I consider that the blocks are of an appropriate scale and design to integrate with existing development.</p> <p><u>Connections</u> – As per section 8.5, I am satisfied that there will be appropriate connections to the existing residential area and the wider town centre and hinterland.</p> <p><u>Inclusivity</u> – Following from section 8.4, I am satisfied that the proposed units and associated facilities will be suitably accessible.</p> <p><u>Variety</u> – Residential as the sole use is acceptable given the limited size of the development. The proposed mix of houses would increase variety in the area and the units would be supported by appropriate open space and other facilities.</p> <p><u>Efficiency</u> – The development would make a more efficient use of this serviced and zoned site, which is currently underutilised.</p> <p><u>Distinctiveness</u> – The proposal would retain important features on site such as trees and the stone wall and would introduce its own character which is distinct from existing development. This would create an appropriate sense of place.</p> <p><u>Layout</u> – The layout connects with routes in the existing residential area and the routes through the site are appropriately overlooked by active frontage. The streets are designed to prioritise pedestrian/cycle movement, and the layout contains a variety of appropriate open spaces.</p>

	<p><u>Public Realm</u> – The public spaces are appropriately designed to be enjoyed by residents and are overlooked to ensure safety/security.</p> <p><u>Adaptability</u> – The majority of the development consists of houses which can be easily adapted and/or extended. The apartments are not as adaptable, but I consider that they already offer a greater variety of house types to meet changing needs.</p> <p><u>Privacy &amp; Amenity</u> – As per sections 8.3 and 8.4, the development will ensure an appropriate level of privacy and amenity for existing and future residents.</p> <p><u>Parking</u> – It is proposed to provide a mixture of private and shared parking which will be suitably secure and accessible.</p> <p><u>Detailed design</u> – The proposed layout and landscape design appropriately integrates with site features and the wider landscape/townscape, and the detailed design of buildings creates an attractive development with its own identity.</p> <p>Having regard to the above, I am satisfied that the proposal successfully responds to the Urban Design Manual criteria. Furthermore, I am satisfied that these criteria adequately cover the 'Key Indicators of Quality Design and Placemaking' outlined in the Compact Settlement Guidelines.</p>
iii. Proximity to Public Transport	The site is within reasonable walking distance (800-1000m) of the town centre where local and inter-city bus services are available. It is also within c. 2km of the rail station where Dublin-Waterford services are available via Kilkenny. This is acceptable given the small scale of the development and the nature of this location.
iv. Adherence to Masterplan / LAP	The development of the site would be in accordance with the LAP. There is no masterplan for the site.
v. Existing character and density	While there is existing development to the south and west, lands to the north and east are largely undeveloped and provides greater flexibility to define a new density and character on the site. The proposed development strikes an appropriate balance between the protection of existing character and creation of its own identity.
vi. Site Features	The site is elevated, particularly in relation to the ACA to the west, and contains notable site features in the form of trees, stone walls, and the existing wastewater assets.

	<p>The application is accompanied by a Tree Survey Report which outlines an Arboricultural Impact Assessment and Arboricultural Method Statement for protecting trees to be retained. It assesses 46 trees and 2 hedgerows. 14 trees are to be removed due to direct conflict with the development and 9 will be removed based on physiological &amp; structural condition. No Category A (high quality) trees will be removed, while only 6 Category B (moderate quality) will be removed. The vast majority are considered low quality (C) or unsuitable for retention (U). I note that groups will be removed to facilitate access and housing at the northern end of the site. Otherwise, a minority of trees within existing clusters in the centre and southwest corner of the site will be removed.</p> <p>Having reviewed the applicant's assessment and inspected the site, I would concur with the classifications set out. I would accept that tree removal is necessary to facilitate the appropriate redevelopment of the site, and I am satisfied that adequate tree cover will be retained and protected. I note that there is a lack of clarity regarding tree nos. 55 and 56 because of the relocated boundary associated with No. 48 Mallfield. I consider that these trees should be retained, and this can be achieved through realignment and/or alternative materials (e.g. use of fencing) for this boundary.</p> <p>It is proposed to retain a significant section of the existing stone wall, but it is highlighted that its rubble nature may pose safety concerns. I consider that this can be appropriately addressed through repairs where necessary as a condition.</p> <p>As previously outlined, the wastewater assets will be acceptably diverted and protected.</p>
vii. Infrastructure	<p>As per sections 8.2, 8.5, and 8.6 of this report, I am satisfied that the proposed development would be adequately serviced by the capacity of existing infrastructure.</p>

8.7.3. Having regard to the above table, I am satisfied that the proposed development satisfactorily addresses the CDP criteria to support the proposed density.

8.7.4. In addition to the aforementioned local policies, the Compact Settlement Guidelines provides further clarity on appropriate density standards. In accordance with Table

3.6 of the Guidelines, I consider that the site falls within the ‘small / medium town edge’ category. It is a policy and objective of the Guidelines that residential densities in the range 25 dph to 40 dph (net) shall generally be applied at such locations.

- 8.7.5. Section 3.4 of the Guidelines deals with ‘Refining Density’. Step 1 of this process is the consideration of proximity and accessibility to services and public transport. While densities within the ranges set out (i.e. 25-40 dph) will be acceptable, planning authorities should encourage densities at or above the mid-density range at the most central and accessible locations in each area, densities closer to the mid-range at intermediate locations and densities below the mid-density range at peripheral locations. Having considered the accessibility criteria outlined in Table 3.8 of the Guidelines, I consider that the site should be classified as ‘peripheral’, where densities below the mid-density range should be encouraged. I consider that the proposed density (31 dph) would be consistent with this guidance.
- 8.7.6. Step 2 of the process involves considerations of character, amenity and the natural environment. The specified criteria are outlined and considered in the following table.

**Table 2 - Consideration of criteria outlined in Step 2 of ‘Refining Density’**

Criteria	Assessment
(a) Local Character	As previously outlined, I am satisfied that the proposed development will appropriately integrate with local character.
(b) Historic Environments (built and landscape heritage)	I acknowledge that the site is within the upland landscape which adjoins the River Nore, Mill Street Architectural Conservation Area, and several protected structures both within the ACA and in the immediate surrounding area. I also note that the CDP identifies protected views in the vicinity of the site (V7 and V8). The application was accompanied by Visual Impact Assessment (VIA) which compared existing and proposed views from The Quay (northeast), Thomastown Bridge (northwest), and Station Road (West). In order to mitigate visual impacts, additional landscaping proposals were submitted as part of the further information response. Having reviewed the VIA and inspected the site, I am satisfied that the proposed development will satisfactorily integrate with existing development and existing/proposed vegetation, and that it would not significantly

	detract from the landscape or built heritage value of the area. I would accept that View no. 1 in the VIA appears to be based on summer foliage, although the other views appear to be based on autumn/winter cover. My site inspection was carried out in November 2024, and I am satisfied that any impacts will be acceptable throughout the year.
(c) Environment, Habitats and Species	<p>As per section 6 and Appendix 1 of this report, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development and that EIA is not required.</p> <p>The potential for impact on protected habitats and species is considered in sections 8.8 and 9 of this report. I consider that there would be no significant adverse impacts on protected habitats or species.</p> <p>Accordingly, I do not consider that density should be constrained on grounds of the environment or protected habitats/species.</p>
(d) Residential Amenity	As per section 8.3 of this report, I do not consider that there would be any unacceptable impacts on residential amenity.
(e) Water services	As per section 8.6 of this report, I consider that there will be adequate water supply and wastewater networks.

8.7.7. In conclusion, I consider that the proposed density (31 dph) is consistent with the quantitative recommendations of the LAP (20-40 dph) and the Compact Settlement Guidelines (25-40 dph). Furthermore, having considered the other criteria outlined in the Development Plan and the Compact Settlement Guidelines throughout this report, I consider that the proposed design and layout is appropriate for the subject site and will not significantly detract from the heritage or visual amenity of the area.

## 8.8. Other Issues

### Bats

8.8.1. The applicant's FI Response included a Bat Survey Report. The report details that the bat suitability of habitat in the study area was obtained using the National Biodiversity Data Centre (NBDC) database. The site was visited for a daytime inspection on the 6<sup>th</sup> of July 2023. Emergence and activity surveys were undertaken on the 6<sup>th</sup> to 7<sup>th</sup> of June 2023 and 7<sup>th</sup> to 8<sup>th</sup> of June 2023, and two Anabat Express

detectors were also operational on the site from the 6<sup>th</sup> to the 8<sup>th</sup> of June 2023. I am satisfied that the surveys completed were appropriate for the site.

- 8.8.2. No evidence of bat roosts was found on site and bat activity during the emergence and activity surveys was considered to be low. Soprano Pipistrelle, Common Pipistrelle, Leisler's Bat, and Myotis spp. bats were recorded but in low numbers. Leisler's bats were recorded flying high over the site and do not depend on the site. Soprano pipistrelle bats were recorded and low numbers forage opportunistically on the site and surrounding areas. Only three passes of Myotis spp. bats were recorded. The surveys concluded that the site is of low importance to bats and no bat species depends on the site.
- 8.8.3. The report outlines that there will be no loss of bat roosts. In terms of foraging/commuting habitat loss, it outlines that the site is already fragmented within the urban area; that existing trees will be retained (as detailed in section 8.7 above); and that there is much more suitable habitat in open areas and treelines surrounding the site. It concludes that impacts in this regard will be insignificant.
- 8.8.4. The report also acknowledges other potential impacts in relation to disturbance such as lighting, noise, and human activity, although these impacts are not considered likely to be significant.
- 8.8.5. Although the site is deemed to be of low importance to bats, some precautionary recommendations are included in the report, as follows:
- If bats are found to be present at any time during tree felling, work will stop immediately, and an ecologist will be consulted.
  - Site clearance works will be undertaken outside the active bat season (late spring to end of September) and the bird nesting season (31st March to 31st August).
  - All efforts should be made to minimise light spill in accordance with Bat Conservation Ireland's Bats & Lighting: Guidance Notes for Planners, Engineers, Architects and Developers (2010).
  - Any additional planting or landscaping should use native species.
  - Four bat boxes will be installed on trees within the retained treeline.

- 8.8.6. Based on the foregoing, the report concludes that the proposed development will not have a significant impact on bats. I am satisfied that the surveys and the report has been carried out appropriately and I would concur with the findings of same.

#### Structural Impacts

- 8.8.7. In response to concerns about structural impacts, particularly the surrounding sloped cliff face, the applicant's FI response (Civil and Structural Engineers report) outlines the findings and recommendations on potential risk.
- 8.8.8. A Geological Desk Study found that geology in the area is underlain by a Sandstone bedrock and soil is generally classified as a Glaciofluvial Sand and Gravel Till. Site Specific Investigations were also carried out, including a trial hole close to the northern boundary of the site. It found topsoil to a depth of 0.3m overlying firm Glaciofluvial Sand and Gravel Till to the bedrock depth of 2.205m, and an indication of groundwater at a depth of 2.15m.
- 8.8.9. It is proposed that house foundations will be excavated in an open cut with safe slope angles at the sides of trenches. The report notes that ground levels to the northern / western sides fall at a relatively steep gradient of approximately 1 in 4 from the development boundary but refers to site sections along the northern site boundary which confirm that the neighbouring land falls outside of the zone of influence of the proposed development. I note that there are no site section drawings for the western site boundary. However, as evidenced by the site contour survey drawing on file and by my inspection of the site and adjoining lands, I note that the level differences on immediately adjoining land to the west of the site are not as pronounced as those to the north. I note the cliff face to the west of the site referred to by the appellants (i.e. at the Mill Street car park). However, the nearest of the proposed dwellings would be c. 25 metres from the cliff face and I do not consider that there would be any structural impacts.
- 8.8.10. The applicant's report outlines that the mechanism for subsidence related to groundwater drawdown, leading to effective stress increase which consolidates the affected material, is not plausible in Sandstone bedrock due to the very high strength of bedrock. And in relation to 'Cut Slope Stability', it states that trial hole investigation has shown the Glaciofluvial Sand and Gravel Till to be classified as Compact to



Dense, which is stable when cut. Therefore, it concludes that there is negligible risk of a catastrophic movement of subsoil occurring.

- 8.8.11. Having regard to the applicant's report and drawings, and having inspected and site and surrounding topography, I consider that the development does not involve significant excavation or other exceptional siteworks, and I do not consider that there is any unacceptable risk of structural impacts.

#### Ownership

- 8.8.12. The application acknowledges that the applicant is not the legal owner of the site. However, written consent for the making of the application has been submitted from the legal representatives of the owners. Similarly written consent has been submitted for any associated site works bounding or adjoining the application site.
- 8.8.13. Accordingly, I am satisfied that the applicant has provided sufficient evidence of legal interest for the purposes of the planning application and decision. Any further consents that may have to be obtained (e.g. Uisce Eireann applications) are essentially a subsequent matter and are outside the scope of the planning appeal.

#### Planning Authority Conditions

- 8.8.14. The conditions of the KCC decision are generally standard in nature and should be incorporated into any permission, unless as otherwise addressed in this report.
- 8.8.15. Condition no. 30 requires that any house or apartment/duplex shall be restricted through a Section 47 agreement to first occupation by individual purchasers. Consistent with the Guidelines on Regulation of Commercial Institutional Investment in Housing (2023), I consider tht this should apply to houses and duplex units, not to apartments. There is no LAP/CDP policy provision to support the application of such restrictions to apartments.

## **9.0 Appropriate Assessment**

### **9.1. Introduction**

The requirements of Article 6(3) of the Habitats Directive, as related to appropriate assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed are:

- Compliance with Article 6(3) of the EU Habitats Directive.
- Screening the need for appropriate assessment.
- The Natura Impact Statement and associated documents.
- Appropriate assessment of implications of the proposed development on the integrity of each European site.

## 9.2. **Compliance with Article 6(3) of the EU Habitats Directive**

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

## 9.3. **Screening the need for Appropriate Assessment**

An AA Screening exercise has been completed (see Appendix 2 of this report for further details). In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, it has been determined that the likelihood of the proposed development having a significant effect 'alone' on the qualifying interests of the River Barrow and River Nore SAC and the River Nore SPA cannot be excluded. It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is required on the basis of the effects of the project 'alone'.

This determination is based on:

- Objective information presented in the applicant's reports;
- The zone of influence of potential impacts having regard to pathways to Natura 2000 Sites;

- The potential for construction and operational impacts on surface water and groundwater quality;
- The potential for construction stage impacts on water quality as a result of the foul sewer diversion works;
- The potential for operational impacts as a result of the foul sewer discharge via Thomastown Wastewater Treatment Plant to the River Nore;
- The application of the precautionary approach; and
- The nature and extent of predicted impacts, which could affect the conservation objectives of the European Sites.

The possibility of significant effects on other European sites has been excluded on the basis of objective information. The following European sites have been screened out for the need for appropriate assessment on the basis of the significant separation distances and lack of connectivity to the application site:

- Thomastown Quarry SAC
- Hugginstown Fen SAC

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

#### **9.4. The Natura Impact Statement (NIS)**

As outlined in Appendix 3 of this report, a Natura Impact Statement (NIS) has been submitted with the application. It considers the potential effects of the project on the River Barrow and River Nore SAC and the River Nore SPA. It concludes that with the implementation of the mitigation measures, the proposed works do not have the potential to significantly affect the conservation objectives or qualifying interests of the River Barrow and Nore SAC or the River Nore SPA, and the integrity of the site will not be adversely affected.

#### **9.5. Stage 2 Appropriate Assessment of implications of the proposed development**

Appendix 3 of this report outlines the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. The European Sites considered are:

- The River Barrow and River Nore SAC
- The River Nore SPA.

Following an Appropriate Assessment, it has been ascertained beyond reasonable scientific doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore SAC or the River Nore SPA, or any other European site, in view of the sites' Conservation Objectives. This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures and monitoring in relation to the Conservation Objectives of the River Barrow and River Nore SAC and the River Nore SPA.
- Detailed assessment of cumulative and in-combination effects with other plans and projects.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the River Barrow and River Nore SAC and the River Nore SPA.

## 10.0 Recommendation

I recommend that permission be **GRANTED** for the proposed development, subject to conditions, and for the reasons and considerations set out below.

## 11.0 Reasons and Considerations

Having regard to the provisions of the Thomastown Local Area Plan 2019 and the zoning of the site for residential development; the Kilkenny City and County Development Plan 2021-2027; the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities, issued by the Department of Housing, Local Government and Heritage (January 2024); the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage (July 2023); the pattern and character of development in the area and the design and scale of the proposed development; the Board considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum and quality of residential development at this location, would not seriously

injure the amenities of surrounding properties or detract from the character, heritage value or visual amenity of the area, would be adequately served by existing and proposed infrastructure, and would be acceptable in terms of traffic safety and convenience.

The Board considered that the proposed development would be compliant with the provisions of the Thomastown Local Area Plan 2019 and the Kilkenny City and County Development Plan 2021-2027, with the exception of a minor shortfall in the permitted number of car parking spaces to serve apartment units 27-30. However, the Board did not consider that this would materially contravene the Development Plan having regard to the discretion allowed in the application of car-parking standards under section 12.12 of the Development Plan, and concluded that the permitted number would be acceptable having regard to the application of maximum parking standards under SPPR 3 of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024).

The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 12th day of December 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of development, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** In the interest of clarity.

2. The mitigation measures contained in the Natura Impact Statement (NIS) submitted on the 12<sup>th</sup> of December 2023 shall be implemented.

**Reason:** To protect the integrity of European Sites.

3. The mitigation measures of the Bat Survey report submitted on the 12<sup>th</sup> of December 2023 shall be implemented.

**Reason:** In the interest of the protection of bats.

4. The proposed development shall be amended as follows:
  - (a) The apartment block containing unit nos. 27-30 shall be relocated a distance of 3 metres to the northwest and the adjoining parking area shall be redesigned, all in accordance with the suggested layout drawing as submitted to An Bord Pleanála on the 8<sup>th</sup> day of April 2024.
  - (b) The ground floor apartment units shall be provided with private amenity space (at least 7m<sup>2</sup>) adjoining the living room, which shall be bounded by privacy planting (at least 1.5 metres in width).
  - (c) The south-facing boundary of the balconies serving apartment units 28 and 30 shall consist of obscured glazing.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the residential amenities of existing and future residents.

5. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

6. Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the Planning

Authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

**Reason:** In the interest of urban legibility.

7. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, shall comply with the detailed standards of the planning authority for such road works, and shall comply, in all respects, with the standards set out in Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2019, as amended. Details of same shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

8. (a) The proposed access and associated alterations to No. 48 Mallfield shall be completed to the satisfaction and written agreement of the planning authority prior to the carrying out of further development on site.  
(b) The alterations to No. 48 Mallfield shall include the retention of tree numbers 55 and 56. This shall be clarified through the submission of a detailed plan for the relocated side boundary of No. 48 demonstrating that the boundary alignment and/or materials will ensure the protection of the trees and their root systems.

**Reason:** In the interest of traffic and pedestrian safety, visual amenity, and natural heritage.

9. All the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future

electric vehicle charging points. Details of how it is proposed to comply with these requirements and section 12.14 of the Kilkenny City and County Development Plan 2021-2027 shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of sustainable transport.

10. Public lighting shall be provided in accordance with a scheme which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes through open spaces and shall take account of existing trees to be retained. Such lighting shall be provided prior to the making available for occupation of any residential unit.

**Reason:** In the interests of amenity, public safety, and nature conservation.

11. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual and residential amenity.

12. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.

**Reason:** In the interest of public health and surface water management.

13. (a) Prior to the commencement of development, the developer shall enter into Connection Agreements with Uisce Éireann (Irish Water) to provide for service connections to the public water supply and wastewater collection network.



(b) The diversion of the existing foul sewers on site shall comply with the requirements of Uisce Eireann and the mitigation measures outlined in the Natura Impact Statement and Construction and Environmental Management Plan. A detailed method statement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of public health, to ensure adequate water/wastewater facilities, and to protect the integrity of European Sites.

14. (a) All landscaping (hard and soft), tree/hedgerow protection and planting shall be carried out and completed in accordance with the landscaping plans, tree survey (aboricultural impact assessment) and related documentation submitted to the planning authority, as amended by the proposals submitted on the 12th of December 2023. All planting shall be completed within the first season following occupation of the first residential unit.

(b) The landscaping shall be updated to include a row of semi-mature deciduous trees along the shared boundary with No. 19 The Meadows.

(c) The existing stone wall in the centre of the site shall be retained and repaired/stabilised where necessary for the extent shown on the revised site layout plan submitted to the planning authority on the 12<sup>th</sup> day of December 2023. The stone from the section of the existing wall to be removed shall be retained and reused on site.

(d) Unless otherwise stated, boundary treatments shall be in accordance with the requirements of the planning authority.

Proposals in relation to (a) to (d) above shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

**Reason:** In the interest of residential and visual amenity.

15. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in

particular, recyclable materials and for the ongoing operation of these facilities for each unit shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

16. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at site offices at all times.

**Reason:** In the interest of sustainable waste management.

17. The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall confirm that the location of the construction compound will be in the vicinity of house nos. 15-18, and that it will be large enough to facilitate the eventual construction of houses 15-18. It shall provide details of intended construction practice for the development, including:
- (a) Location of area(s) identified for the storage of construction refuse, site offices and staff facilities;
  - (b) Details of site security fencing and hoardings;

- (c) Details of on-site car parking facilities for site workers during the course of construction;
- (d) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (e) Measures to obviate queuing of construction traffic on the adjoining road network;
- (f) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (g) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (h) Provision of parking for existing properties during the construction period;
- (i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- (m) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for inspection by the planning authority.

**Reason:** In the interest of amenities, public health and safety, and environmental protection.

18. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays, and not at all on Sundays and public holidays. Deviation

from these times will only be allowed in exceptional circumstances where prior written approval has been received from the Planning Authority.

**Reason:** In order to safeguard the amenities of property in the vicinity.

19. All areas not intended to be taken in charge by the local authority, shall be maintained by a legally-constituted management company. Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

20. (a) The developer shall engage a suitably qualified archaeologist (licensed under the National Monuments Acts) to carry out pre-development archaeological testing in areas of proposed ground disturbance and to submit an archaeological impact assessment report for the written agreement of the planning authority, following consultation with the National Monuments Service, in advance of any site preparation works or groundworks, including site investigation works/topsoil stripping/site clearance/dredging/underwater works and/or construction works.
- (b) The report shall include an archaeological impact statement and mitigation strategy. Where archaeological material is shown to be present, avoidance, preservation in-situ, preservation by record [archaeological excavation] and/or monitoring may be required.
- (c) Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer. No site preparation and/or construction works shall be carried out on site until the archaeologist's report has been submitted to and approval to proceed is agreed in writing with the planning authority.

(d) The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of any subsequent archaeological investigative works and/or monitoring following the completion of all archaeological work on site and the completion of any necessary post-excavation work. All resulting and associated archaeological costs shall be borne by the developer.

**Reason:** To ensure the continued preservation [either in situ or by record] of places, caves, sites, features or other objects of archaeological interest.

21. (a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all relevant residential units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

**Reason:** To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

22. Prior to the commencement of development, the applicant/developer shall enter into a legal agreement with Kilkenny County Council under Section 47 of the Planning and Development Act 2000 (as amended) in respect of future access and pedestrian/cycle links between the proposed development site and adjoining LAP zoned lands, estate roads and/or other suitable connection points. The applicant shall set aside such areas for such purpose as may be necessary, which shall be agreed in advance when and if Kilkenny County Council decides to require and/or implement such connection links either separately or in tandem with future adjoining development, with all costs borne by the applicant/developer and/or successors.

**Reason:** To ensure a satisfactory standard of development and to promote smarter travel permeability/links in the urban area in the interests of proper planning and sustainable development.

23. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority [in relation to the transfer of a percentage of the land, to be agreed with the planning authority, in accordance with the requirements of section 94(4) and section 96(2) and 96(3)(a), (Part V) of the Planning and Development Act 2000, as amended, and/or the provision of housing on lands in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended], unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall be referred by the planning authority or any other prospective party to the agreement, to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

24. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

25. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Stephen Ward  
Senior Planning Inspector

3<sup>rd</sup> March 2025



## Appendix 1 - Form 1

### EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>	ABP-319236-24			
<b>Proposed Development Summary</b>	Construction of 30 residential units comprising of 22 houses, 8 apartments within 2 two-storey apartment blocks and all associated works.			
<b>Development Address</b>	Grenan, Thomastown, Co. Kilkenny			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)			<b>Yes</b>	✓
			<b>No</b>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>				
<b>Yes</b>	✓	Part 2, Class 10(b)(i) – Construction of dwelling units. Part 2, Class 10(b)(iv) - Urban Development		
<b>No</b>				
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>				
<b>Yes</b>				
<b>No</b>	✓	Part 2, Class 10(b)(i) – More than 500 dwelling units. Part 2, Class 10(b)(iv) - An area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area.		
<b>4. Is the proposed development below the relevant threshold for the Class of Development [sub-threshold development]?</b>				
<b>No</b>				

<b>Yes</b>	✓	<p>Class 10(b)(i) – Construction of more than 500 dwelling units.</p> <p>Class 10(b)(iv) - Urban Development which would an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area.</p>	<p>Involves construction of 30 no. dwellings.</p> <p>Involves an area of 0.96ha in part of a built-up area</p>	Preliminary examination required (Form 2)
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<b>5. Has Schedule 7A information been submitted?</b>		
<b>No</b>	✓	<b>Preliminary Examination required</b>
<b>Yes</b>		

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

**Appendix 1 - Form 2**  
**EIA Preliminary Examination**

<b>An Bord Pleanála Case Reference</b>	319236-24
<b>Proposed Development Summary</b>	Construction of 30 residential units comprising of 22 houses, 8 apartments within 2 two-storey apartment blocks and all associated works
<b>Development Address</b>	Grenan, Thomastown, Co. Kilkenny
<p><b>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>	
<b>Characteristics of proposed development</b>	<p>The development is on a small site of less than 1 hectare and is effectively proposed as an extension to a long-established residential development of limited scale. The nature of the development is consistent with existing residential development and other supporting services in the area.</p> <p>The development does not involve significant demolition works. It does not require the use of substantial natural resources, and the water supply requirements are typical of residential development. The construction stage would be relatively simple and short and would not give rise to significant nuisance or pollution. The main emissions are surface water and wastewater, and they would be managed appropriately through connections to the existing public systems.</p> <p>The development, by virtue of its type, does not pose a risk of major accident and/or disaster, and would not be vulnerable to climate change. It presents no significant risks to human health.</p>
<b>Location of development</b>	The site is located to the southern side of Thomastown. It is surrounded by a typical context consisting of a mix of residential and commercial uses to the south and west, as well as agricultural land and buildings to the north and east. It is currently undeveloped and is in use for animal grazing.

	<p>The nearest Natura 2000 sites are the River Barrow and River Nore SAC, and the River Nore SPA, both located c. 30m northwest of the appeal site. Impacts on European Sites can be addressed under Appropriate Assessment, which I have addressed in Section 9 of my report.</p> <p>A Bat Survey has been carried out, which found no evidence of roosting and only low levels of activity. The site is of low importance to bats and there are much more suitable areas for activity nearby. I am satisfied with the conclusion of the report that the development will not have significant impacts on bats.</p> <p>The site is just within the designated 'Upland' as per the CDP Landscape Character Assessment but is within the existing/planned built-up footprint of Thomastown. The consideration of impacts on landscape/townscape is a standard part of planning assessment (See Section 8 of this report).</p> <p>There are a number of Protected Structures on/off Mill Street to the north and west of the site, and the Mill Street area is also a designated Architectural Conservation Area. The consideration of impacts on built heritage is a standard part of planning assessment (See Section 8 of this report).</p> <p>The site is not within the zone of any archaeological features identified on the Sites and Monuments Record. Archaeological Impact Assessment would be required as a condition of any permission.</p>
<b>Types and characteristics of potential impacts</b>	<p>The construction stage will not be significant in terms of duration or complexity and would be typical of previous local development. A Construction Environmental Management Plan has been included, and this will ensure that effects will be appropriately managed.</p> <p>The main operational effects relate to surface water and wastewater emissions. However, these will be directed to the existing public systems and will have only negligible impacts on networks and emissions.</p> <p>Appropriate Assessment has been carried out and it has been concluded that the integrity of the Natura 2000 network will not be adversely affected (See section 9 of this report).</p>

	<p>My assessment has also concluded that there would be no significant impacts on landscape/townscape character or the built heritage value of the area (See section 8 of this report).</p> <p>Having regard to the modest nature of the proposed development; its location relative to sensitive habitats/features; the likely limited magnitude and spatial extent of effects; and the absence of in combination effects; there is no potential for significant effects on the environmental factors listed in section 171A of the Act.</p>	
<b>Conclusion</b>		
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>	<b>Yes / No</b>
There is no real likelihood of significant effects on the environment.	EIA is not required	Yes
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment	EIAR Required.	No

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## Appendix 2

### AA Screening Determination

#### Screening for Appropriate Assessment Screening Determination

I have considered the proposed development in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

##### **1. Description of the project**

The subject site has a gross area of c. 0.96 ha and is located to the southern side of Thomastown, County Kilkenny. The nearest Natura 2000 sites (the River Barrow and River Nore SAC, and the River Nore SPA) are located c. 30m to the northwest of the site.

The proposed development mainly involves the construction of 30 dwellings; a new site entrance layout from the adjoining Mallfield estate; boundary treatments and landscaping; removal of existing trees/hedges; and all associated works including the proposed road network and necessary site services. Surface water will discharge to ground via soakaways and soil infiltration. Foul sewerage will connect to the existing Uisce Eireann sewer, including the diversion of a section around the northern site boundary. Although the applicant's NIS refers to a potential alternative foul sewer connection to the neighbouring housing estate, I am satisfied that it adequately considers the impacts of the proposed connection to the diverted sewer at the northern end of the site.

Third-party submissions made as part of the application and appeal process have highlighted the following:

- The requirements of the Habitats Directive;

- The site location within the zone of influence of Natura 2000 sites;
- Inadequate evidence of sewage disposal and diversion proposals;
- Inadequate mitigation measures in the NIS and CEMP;
- Impacts on protected species such as Kingfisher and bats;
- Impacts on water quality and the requirements of the Water Framework Directive;
- The proximity of the construction compound to Natura 2000 sites; potential hydrological impacts; and inadequate mitigation measures.

## **2. Potential impact mechanisms from the project**

### Habitats

The site is not within or directly adjoining any Natura 2000 sites. Accordingly, I do not consider that there is potential for any direct habitat impacts such as loss / modification, direct emissions, or species mortality/disturbance. Some loss of habitat (trees, hedgerows, grassland) will occur, and potential ex-situ impacts should be considered.

### Surface Water & Groundwater

While there are no surface water features on site, it is in close proximity to the River Nore and the groundwater is highly vulnerable. The potential deterioration of water quality in designated areas arising from pollution from surface water run-off or groundwater during site preparation and construction should be considered. Operational impacts should also be considered in terms of the quantity and quality of discharge to the ground.

### Wastewater

There is an indirect pathway to the River Nore via the proposed connection to Thomastown WTP which discharges to the Nore. The construction stage also involves the diversion of the existing sewer and potential pollutants should be considered.

### Disturbance

The construction and operational phases have the potential for species disturbance related to increased dust, noise, lighting, and human activity.

### 3. European Sites at risk

Having regard to the potential impact mechanisms from the proposal, the European site(s) and qualifying features potentially at risk are considered in the following table.

**Table 1 European Sites at risk from impacts of the proposed project**

European Site (distance)	Effect mechanism	Impact pathway/Zone of influence	Qualifying interest features at risk
<b>River Barrow and River Nore SAC (c. 30 metres)</b>	Surface / groundwater drainage	Construction and operational stages have the potential for impacts on water quality via surface water run-off and groundwater ingress.	Estuaries; Mudflats and sandflats not covered by seawater at low tide; Reefs; Salicornia and other annuals colonising mud and sand; Atlantic salt meadows; Mediterranean salt meadows; Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation; European dry heaths; Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels; Petrifying springs with tufa formation; Old sessile oak woods with Ilex and Blechnum in the British Isles; Alluvial forests with Alnus glutinosa and Fraxinus excelsior; Desmoulin's Whorl Snail; Freshwater Pearl Mussel; White-clawed Crayfish; Sea Lamprey; Brook Lamprey; River Lamprey; Twaite Shad; Salmon; Otter; Killarney Fern.
	Ex-situ habitat impacts	There are no watercourses linking to the Natura 2000 site. Ex-situ impacts would not be significant.	None.



	Wastewater	Indirect pathway via Thomastown WWTP and potential wastewater run-off associated with sewer diversion works. May impact water quality.	As per QIs listed above.
	Species disturbance	The site is distanced from the Natura 2000 site and is separated by existing development. The development is not likely to disturb any QI species.	None.
<b>River Nore SPA (c. 30 metres)</b>	Surface / groundwater drainage	Construction and operational stages have the potential for impacts on water quality via surface water run-off and groundwater ingress.	Kingfisher
	Ex-situ habitat impacts	On a precautionary basis, the loss of on-site vegetation may impact on the Kingfisher.	Kingfisher
	Wastewater	Indirect pathway via Thomastown WWTP and potential wastewater run-off associated with sewer diversion works. May impact water quality.	Kingfisher
	Species disturbance	On a precautionary basis, any ex-situ use of the site by the Kingfisher may result in disturbance.	Kingfisher

<b>Thomastown Quarry SAC (c. 1km north)</b>	Surface / groundwater drainage	There is no hydrological or ecological connectivity and significant effects can be ruled out.	The only QI is 'Petrifying springs with tufa formation' and the potential for significant effects can be ruled out.
	Ex-situ habitat impacts	None	
	Wastewater	There is no connectivity, and significant effects can be ruled out.	
	Species disturbance	None.	
<b>Hugginstown Fen SAC (c. 12km southwest)</b>	Surface / groundwater drainage	There is no hydrological or ecological connectivity and significant effects can be ruled out.	The only QI is 'Petrifying springs with tufa formation' and the potential for significant effects can be ruled out.
	Ex-situ habitat impacts	None	
	Wastewater	There is no connectivity, and significant effects can be ruled out.	
	Species disturbance	None.	

Having regard to the above table, the Natura 2000 sites that are considered to be at risk from the proposed development are: River Barrow and River Nore SAC and River Nore SPA.

The other Natura 2000 sites in the area are distanced further from the proposed development and, having regard to the lack of connectivity based on the source-pathway-receptor model, I do not consider that they are within the Zone of Influence. The following is a brief overview of the sites at risk:

**River Barrow and River Nore SAC:** This site consists of most of the freshwater stretches of the Barrow/Nore River catchments. A wide range of habitats associated with the rivers are included within the site, including substantial areas of woodland (deciduous, mixed), dry heath, wet grassland, swamp and marsh vegetation, salt marshes, a small dune system and intertidal sand and mud flats. Areas of improved grassland, arable land and coniferous plantations are included in the site for water quality reasons. The site supports many Annexed habitats including the priority habitats of alluvial woodland and petrifying springs. The quality of habitat is generally good. The site also supports a number of Annex II animal species - *Salmo salar*, *Margaritifera margaritifera*, *M.m. durrovensis*, *Alosa fallax fallax*, *Austropotamobius pallipes*, *Petromyzon marinus*, *Lutra lutra*, *Lampetra fluviatilis* and *L. planeri*. Annex I Bird species include *Anser albifrons flavirostris*, *Falco peregrinus*, *Cygnus cygnus*, *Cygnus columbianus bewickii*, *Limosa lapponica*, *Pluvialis apricaria* and *Alcedo atthis*. A range of rare plants and invertebrates are found in the woods along these rivers and rare plants are also associated with the saltmarsh.

**River Nore SPA:** A survey in 2010 recorded 22 pairs of Kingfisher (based on 16 probable and 6 possible territories) within the SPA. Other species which occur within the site include Mute Swan (35), Mallard (267), Cormorant (14), Grey Heron (45), Moorhen (14), Snipe (17) and Sand Martin (1,029) – all figures are peak counts recorded during the 2010 survey. The River Nore SPA is of high ornithological importance as it supports a nationally important population of Kingfisher, a species that is listed on Annex I of the E.U. Birds Directive.

#### **4. Likely significant effects on the European site(s) 'alone'**

Taking account of baseline conditions and the effects of ongoing operational plans and projects, this section considers whether there is a likely significant effect 'alone' as a result of the mechanisms discussed below.

##### Surface water/groundwater

Given the nature and scale of the proposed construction works; the proximity of the site to the River Nore; the high vulnerability of groundwater; and the proposal to discharge surface water to the ground; I would acknowledge that the construction and operational stages involve potential hydrological connections to the River Barrow and River Nore SAC, and to the River Nore SPA. The applicant's AA Screening Report also acknowledges that there are potential impacts in this regard.

##### Ex-situ Habitat Impacts

While it is acknowledged that there will be loss of habitat on site, I consider that there is an abundance of more suitable habitat for Kingfishers adjoining the river, including overhanging trees providing suitable perches for birds to hunt from. Accordingly, I am satisfied that there is no potential for significant effects as a result of habitat loss on site.

##### Wastewater

Having regard to the indirect pathway via the WWTP discharge and the proximity of the foul sewer diversion works, I do not consider that the potential for impacts on the water quality associated with the Natura 2000 sites can be ruled out.

##### Species Disturbance

Having regard to the separation distance and buffer formed by existing development; the lack of connectivity; and the absence of significant ex-situ effects; I am satisfied that there is no potential for significant effects as a result of the disturbance of any QI/SCI species associated with the River Barrow and River Nore SAC or the River Nore SPA.

**Table 2: Could the project undermine the conservation objectives 'alone'**

European Site and qualifying feature	Conservation objective (summary)	Could the conservation objectives be undermined (Y/N)?
<b>River Barrow and River Nore SAC</b>		
Estuaries; Mudflats and sandflats not covered by seawater at low tide; Salicornia and other annuals colonising mud and sand; Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation; European dry heaths; Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels; Petrifying springs with tufa formation; Desmoulin's Whorl Snail; White-clawed Crayfish; Killarney Fern.	To maintain the favourable conservation condition.	Yes
Sea Lamprey; Brook Lamprey; River Lamprey; Twaite Shad; Salmon; Atlantic salt meadows; Otter; Mediterranean salt meadows; Nore freshwater pearl mussel; Old sessile oak woods with Ilex and Blechnum in the British Isles; Alluvial forests with Alnus glutinosa and Fraxinus excelsior.	To restore the favourable conservation condition.	Yes
Freshwater pearl mussel	Status as a qualifying Annex II species is currently under review, which will determine whether a site-specific	Yes

	conservation objective is set for this species.	
<b>River Nore SPA</b>		
Kingfisher	To maintain the favourable conservation condition.	Yes

### **Conclusion**

I conclude that the likelihood of the proposed development having a significant effect 'alone' on the qualifying interests of the River Barrow and River Nore SAC and the River Nore SPA cannot be excluded. The potential effects relate to construction and operational stage impacts associated with surface water quality and ground water quality as a result of potential pollutants; construction stage effects on water quality as a result of pollution associated with the foul sewer diversion works; and operational stage effects on water quality as a result of the foul sewer discharge to the River Nore. In accordance with the precautionary principle, an Appropriate Assessment is required on the basis of the effects of the project 'alone'. Further assessment of in-combination effects with other plans and projects is not required at this time.

### **Overall Conclusion- Screening Determination**

In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that the likelihood of the proposed development having a significant effect 'alone' on the qualifying interests of the River Barrow and River Nore SAC and the River Nore SPA cannot be excluded. It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is required on the basis of the effects of the project 'alone'.

This conclusion is based on:

- Objective information presented in the applicant's reports;
- The zone of influence of potential impacts having regard to pathways to Natura 2000 Sites;
- The potential for construction and operational impacts on surface water and groundwater quality;
- The potential for construction stage impacts on water quality as a result of the foul sewer diversion works;
- The potential for operational impacts as a result of the foul sewer discharge via Thomastown Wastewater Treatment Plant to the River Nore;
- The application of the precautionary approach; and
- The nature and extent of predicted impacts, which could affect the conservation objectives of the European Sites.

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

## **Appendix 3**

### **Appropriate Assessment**

#### **1.0 The Natura Impact Statement (NIS)**

A Natura Impact Statement (NIS) has been submitted with the application. It considers the potential effects of the project on the River Barrow and River Nore SAC and the River Nore SPA. The NIS evaluates the potential for direct and indirect effects, alone or in combination with other plans and projects having taken into account the use of mitigation measures.

The NIS takes full account of the legislative context and outlines how it has been prepared in accordance with relevant national and European guidance. It has been carried out by ORS consultants and the experience and qualifications of the author are included. I am satisfied that it has been prepared by competent experts. NPWS site synopses and Conservation objectives of relevant sites were examined, and a comprehensive range of references have been listed as information sources.

The applicant's NIS was prepared in line with current best practice and includes an assessment of the direct and indirect effects on habitats and species, as well as an assessment of the in-combination impact of other plans and projects. It concludes that with the implementation of the mitigation measures, the proposed works do not have the potential to significantly affect the conservation objectives or qualifying interests of the River Barrow and Nore SAC and the River Nore SPA, and the integrity of the site will not be adversely affected.

Having reviewed the documents, submissions and consultations included within the appeal file, I am satisfied that the information allows for a complete assessment of any adverse effects of the development, on the conservation objectives of the following European sites alone, or in combination with other plans and projects:

- River Barrow and River Nore SAC
- River Nore SPA.



## **2.0 Stage 2 Appropriate Assessment of implications of the proposed development**

The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

In carrying out this assessment, I have adhered to relevant guidance including:

- DoEHLG (2009). Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service.
- EC (2002) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC.
- EC (2018) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC.

## **3.0 European Sites**

A description of the European Sites, their Conservation Objectives and Qualifying Interests/Special Conservation Interests has been set out in the NIS and is summarised in Appendix 2 of this report as part of my assessment. I have also examined the Natura 2000 data forms as relevant and the Conservation Objectives supporting documents for these sites available through the NPWS website.

The River Barrow and River Nore SAC covers an extensive area of the south-east of Ireland. Consistent with the NIS, I would accept that there are certain features within the SAC that will not be potentially impacted upon from the proposed development, either due to the distance involved or because they are features that are not sensitive to changes in water quality. These features can be screened out for further assessment in the AA process for the reasons outlined in the following table.

Designated Features	Reason for Exclusion
Allis shad	No evidence of an established breeding population being present in the Barrow/Nore system. It is generally considered a vagrant species (NPWS, 2013).
Desmoulin's Whirl Snail	Found in wetlands and the main threat to this species is drainage. The proposed development will not lead to the draining of any wetlands, therefore no impacts upon this species are predicted. In addition, there are no records for this species within the 10km square of this application site.
Freshwater pearl mussel	The habitat is acid/neutral waters which flow over non-calcareous rocks (Moorkins, 1999). While it remains listed as a feature of the River Barrow and River Nore SAC, this is being reviewed as suitable conditions for this species don't occur within the lime rich Barrow / Nore catchments (NPWS, 2008, 2011).
Killarney Fern	This is a terrestrial species that occurs in the southern reaches of the Barrow/Nore system. This species does not occur within the zone of influence of the application site.
Nore Freshwater pearl mussel	Only occurs within the Nore system, upstream and downstream of Durrow. The proposed development will have no impacts as it occurs 51km upstream of Thomastown, and therefore it is outside of its Zone of Influence.
Twaite shad	Found in the River Barrow downstream of St. Mullins, in the south of Co. Kilkenny. Within this SAC, the populations of Twaite shad occur in the Barrow and are therefore outside of the zone of influence of this proposed development.
Sea lamprey	Occurs in the lower reaches of the Barrow and Nore systems, in Co. Kilkenny. It does not occur within the Zone of Influence of the application site.
Atlantic salt meadows	No impacts upon this marine habitat are predicted given the distances involved (over 40km downstream).
Estuaries	No impacts upon this marine habitat are predicted given the distances involved (over 40km downstream).
Mediterranean salt meadows	No impacts upon this marine habitat are predicted given the distances involved (over 40km downstream).
Mudflats and sandflats not covered	No impacts upon this marine habitat are predicted given the distances involved (over 40km downstream).

by seawater at low tide	
European dry heaths	Any change in water quality will not impact upon this habitat. It is not within the zone of influence as it occurs on the steep, free draining river valley sides of the Barrow and its tributaries in the foothills of the Blackstairs Mountains.
Old sessile oak woods with Ilex and Blechnum in British Isles	This habitat is not water dependent and potential changes in water quality will not impact this habitat. Although mapped at a point 1.3km south of the site, there will be no direct or indirect habitat loss or fragmentation of this habitat arising from the development and significant effects upon this habitat will not arise.
Alluvial forests with Alnus glutinosa and Fraxinus excelsior	Identified on the southern banks of the River Nore to the south-east of the application site (~317m). The main threats include problematic and invasive species, tree removal and felling and plant pathogens, while it can also be sensitive to groundwater enrichment. The development will not give rise to any impacts upon this habitat and there will be no effects on groundwater that could lead to negative effects upon this QI. Groundwater flow beneath the site is likely to move north, so the alluvial forest habitat is above the influence of the site.
Petrifying springs with tufa formation	There is only one known location within the SAC, at Dysert which is 2.3km south of the site. Having regard to the separation distance and the lack of hydrological connectivity, it can be concluded that significant effects upon this QI arising from deteriorations in water quality can be ruled out.
Salicornia and other annuals colonizing mud and sand	No impacts upon this marine habitat are predicted given the distances involved (over 40km downstream).
Spartina swards	No impacts upon this marine habitat are predicted given the distances involved (over 40km downstream).

Following the 'screening out' of the QIs above, the 'Attributes', 'Measures' and 'Targets' for the remaining relevant QIs as set out in the Conservation Objectives (CO) for each European Site are summarised in the following table.

<b>River Barrow and River Nore SAC</b>		
<b>Attribute</b>	<b>Measure</b>	<b>Target</b>
<b>QI - Hydrophilous Tall Herb Fringe Communities</b>		
Habitat distribution	Occurrence	No decline, subject to natural processes.
Habitat Area	Hectares	Area is stable or increasing, subject to natural processes.
Hydrological regime: Flooding depth/height of water table	Metres	Maintain appropriate hydrological regimes
Vegetation structure:sward height	Centimetres	30-70% of sward is between 40 and 150cm in height
Vegetation composition: broadleaf herb: grass ratio	Percentage	Broadleaf herb component of vegetation between 40 and 90%
Vegetation composition: typical species	Number	At least 5 positive indicator species present
Vegetation composition: negative indicator species	Occurrence	Negative indicator species, particularly non-native invasive species, absent or under control- NB Indian balsam, monkeyflower, Japanese knotweed, and giant hogweed.
<b>QI - Water Courses of Plain to Montane Levels</b>		
Habitat distribution	Occurrence	No decline, subject to natural processes.
Habitat area	Kilometres	Area is stable or increasing, subject to natural processes.
Hydrological regime: river flow	Metres per second	Maintain appropriate hydrological regimes
Hydrological regime: groundwater discharge	Metres per second	The groundwater flow to the habitat should be permanent and sufficient to maintain tufa formation
Substratum composition: particle size range	Millimetres	The substratum should be dominated by large particles and free from fine sediments
Water chemistry: minerals	Milligrammes per litre	The groundwater and surface water should have sufficient concentrations of minerals to allow deposition and persistence of tufa deposits
Water quality: suspended sediment	Milligrammes per litre	The concentration of suspended solids in the water column should be sufficiently low to prevent excessive deposition of fine sediments
Water quality: nutrients	Milligrammes per litre	The concentration of nutrients in the water column should be sufficiently low to prevent changes in species composition or habitat condition

Vegetation composition: typical species	Occurrence	Typical species of the relevant habitat sub-type should be present and in good condition
Floodplain connectivity	Area	The area of active floodplain at and upstream of the habitat should be maintained
<b>QI – River Lamprey</b>		
Distribution: extent of anadromy	% of river accessible	Greater than 75% of main stem and major tributaries down to second order accessible from estuary
Population structure of juveniles	Number of age/size groups	At least three age/size groups of river/brook lamprey present
Juvenile density in fine sediment	Juveniles/m <sup>2</sup>	Mean catchment juvenile density of brook/river lamprey at least 2/m <sup>2</sup>
Extent and distribution of spawning habitat	m <sup>2</sup> and occurrence	No decline in extent and distribution of spawning beds
Availability of juvenile habitat	Number of positive sites in 2nd order channels (and greater), downstream of spawning areas	More than 50% of sample sites positive
<b>QI – Brook Lamprey</b>		
Distribution	% of river accessible	Access to all watercourses down to first order streams
Population structure of juveniles	Number of age/size groups	At least three age/size groups of river/brook lamprey present
Juvenile density in fine sediment	Juveniles/m <sup>2</sup>	Mean catchment juvenile density of brook/river lamprey at least 2/m <sup>2</sup>
Extent and distribution of spawning habitat	m <sup>2</sup> and occurrence	No decline in extent and distribution of spawning beds
Availability of juvenile habitat	Number of positive sites in 2nd order channels (and greater), downstream of spawning areas	More than 50% of sample sites positive
<b>QI - Salmon</b>		
Distribution: extent of anadromy	% of river accessible	100% of river channels down to second order accessible from estuary
Adult spawning fish	Number	Conservation Limit (CL) for each system consistently exceeded

Salmon fry abundance	Number of fry/5 minutes electrofishing	Maintain or exceed 0+ fry mean catchment-wide abundance threshold value. Currently set at 17 salmon fry/5 min sampling
Out-migrating smolt abundance	Number	No significant decline
Number and distribution of redds	Number and occurrence	No decline in number and distribution of spawning redds due to anthropogenic causes
Water quality	EPA Q value	At least Q4 at all sites sampled by EPA
<b>QI - Otter</b>		
Distribution	Percentage positive survey sites	No significant decline
Extent of terrestrial habitat	Hectares	No significant decline. Area mapped and calculated as 122.8ha above high water mark (HWM); 1136.0ha along riverbanks / around ponds
Extent of marine habitat	Hectares	No significant decline. Area mapped and calculated as 857.7ha
Extent of freshwater (river) habitat	Kilometres	No significant decline. Length mapped and calculated as 616.6km
Extent of freshwater (lake) habitat	Hectares	No significant decline. Area mapped and calculated as 2.6ha
Couching sites and holts	Number	No significant decline
Fish biomass available	Kilograms	No significant decline
<b>QI – White-clawed crayfish</b>		
Distribution	Occurrence	No reduction from baseline
Population structure: recruitment	Percentage occurrence of juveniles and females with eggs	Juveniles and/or females with eggs in at least 50% of positive samples
Negative indicator species	Occurrence	No alien crayfish species
Disease	Occurrence	No instances of disease
Water quality	EPA Q value	At least Q3-4 at all sites sampled by EPA
Habitat quality: heterogeneity	Occurrence of positive habitat features	No decline in heterogeneity or habitat quality
<b>River Nore SPA</b>		
<b>Attribute</b>	<b>Measure</b>	<b>Target</b>
<b>SCI - Kingfisher</b>		
Population size	Number of breeding territories/pairs	No significant decline in the long term

Productivity rate	Number of fledged young per confirmed breeding pair	Sufficient productivity to maintain the population trend as stable or increasing
Spatial distribution of territories	Numbers and distribution of occupied territories across site	No significant loss of distribution in the long term, other than that occurring due to natural patterns of variation
Extent and quality of nesting banks and other suitable nesting features	Hectares; condition assessment	Sufficient area of high-quality nesting habitat to support the population target
Forage spatial distribution, extent, abundance and availability	Location, hectares, and forage biomass	Sufficient number of locations, area of suitable forage habitat and available forage biomass to support the population target
Water quality	Water quality indicators	Both biotic (i.e. Q-value) and abiotic indices reflect overall good-high quality status
Barriers to connectivity	Number, location, shape and hectares	No significant increase
Disturbance to breeding sites	Intensity, frequency, timing and duration	Disturbance occurs at levels that do not significantly impact upon breeding Kingfisher

Having considered the above Attributes, Measures, and Targets for each site, the NIS acknowledges the potential for significant effects on the qualifying interests of the Natura 2000 sites. It then considers whether the impacts are likely to occur and whether or not they are significant with respect to the conservation objectives of the Natura 2000 sites identified. The impacts are examined in terms of construction, operational, and cumulative impacts, and are summarised and assessed below.

#### Construction Impacts

The NIS considers the potential deterioration in water quality in the SAC/SPA as a result of excavation of soil and the pouring of concrete for foundations and other hard surfaces. It highlights that the absence of watercourses on site reduces the overall probability that run off will mobilise towards the River Nore, but concludes that mitigation measures are required to control run-off, especially in the case of a large pollution event or extreme rainfall. Possible direct impacts would include the pollution of water with silt, oil, cement, hydraulic fluid etc. This

would directly affect the habitat of protected QI habitats and species by reducing water quality. These substances would also have a toxic effect on the ecology of the water in general, directly affecting certain species and their food supplies.

The NIS acknowledges that the site is also within an area of high groundwater vulnerability. Deep excavations could expose groundwater resources to pollution with chemicals and other hydrocarbons. Groundwater quality can impact upon surface water quality as these two resources mix at the hyporheic zone, which is the region just under a river or stream bed where there is a mixing of shallow ground water and surface water.

Therefore, the NIS concludes that as there is a potential risk of direct and indirect impacts arising from site preparation and construction, appropriate mitigation will be required to maintain the conservation status of the River Barrow and Nore SAC and the River Nore SPA and their protected habitats and species.

In addition to the above, I have acknowledged potential concerns in relation to the wastewater diversion works and the construction compound. However, I consider that the potential impact mechanisms and associated effects are consistent with those identified above, i.e. that construction-related pollutants may impact on water quality as a result of surface water run-off or groundwater. Accordingly, I am satisfied that the NIS has adequately considered the potential construction impacts.

#### Operational Impacts

The NIS acknowledges the potential for negative impacts upon local ground or surface water quality arising from the operation of the development. It outlines that appropriate SUDS measures will be required to effectively deal with run-off during operation to ensure that pollution to groundwater does not arise.

In addition to this, I have raised the potential for operational impacts on water quality as a result of the foul sewer discharge from Thomastown WWTP to the River Nore. However, the latest Annual Environmental Report (AER)(2023) for this plant outlines that it is compliant with its Emission Limit Values as set out in the Wastewater Discharge Licence; the annual mean/maximum hydraulic loading is less than the peak Treatment Plant Capacity; and the discharge does not have an observable negative impact on Water Framework Directive status. The Uisce



Eireann Wastewater Treatment Capacity Register (published December 2024) also confirms that there is available capacity at the plant. It has a plant capacity of 7500 PE, and I do not consider that an additional 30 dwellings would have a significant impact in this regard.

### Cumulative Impacts

The NIS has considered other developments within the Thomastown area that could lead to cumulative impacts upon the designated sites when considered in combination with this application. In the five years previous to this, it notes a large number of domestic/commercial/industrial developments have been granted permission, and that where necessary, these applications were accompanied by Appropriate Assessment reports (Stage 1 Screening or Stage 2 NIS) which ruled out significant effects on Natura 2000 sites. In addition to those developments referenced in the NIS, I have also considered other residential developments as per section 8.2 of this report.

The NIS highlights that the site has been zoned as residential under the Thomastown Local Area Plan 2019. This plan was screened for AA and significant effects on designated sites arising from the implementation of the plan were ruled out. Similarly, I note that the CDP is supported by a Natura Impact Report which concludes that, having incorporated mitigation measures, the plan is not foreseen to give rise to any significant effects on the integrity of European Sites, alone or in combination with other plans or projects.

The NIS outlines that agriculture is a dominant feature of the area and most fields in the area are managed as improved agricultural grassland. All agricultural activities within this catchment area are required to operate within the legalisation defined in the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 (S.I. 113 of 2022). This legalisation covers practices regarding manure storage and land-spreading, minimisation of soiled water and general good agricultural practice. It concludes that cumulative impacts arising from the combined operation of these agricultural activities with the proposed development will be negligible.

In relation to cumulative impacts on the WWTP, the NIS highlights that the plant is fully Licensed by the EPA. It has been screened for Appropriate Assessment and its operation in combination with the proposed development will not give rise to cumulative impacts upon the SAC / SPA. It references an earlier AER (2021), the findings of which are consistent with the latest 2023 AER.

The NIS concludes that with the implementation of the proposed mitigation measures, it is unlikely that the proposed development will lead to any cumulative impacts upon the River Barrow and Nore SAC and the River Nore SPA when considered in combination with other developments.

Consistent with the applicant's conclusion, I am satisfied that the proposed development and other projects would incorporate suitable measures for the management of groundwater, surface water, and wastewater, and that any approvals have satisfactorily addressed the potential for significant effects on Natura 2000 sites through AA Screening and/or Appropriate Assessment. Accordingly, I am satisfied that the potential for in-combination / cumulative effects with other plans and projects has been adequately considered and that the proposed development would not result in any residual cumulative effects with regard to any European Site.

#### **4.0 Mitigation Measures**

In order to protect the water quality and overall integrity of the River Barrow and Nore SAC and the River Nore SPA, a number of mitigation measures are included in the NIS. Measures have also been suggested to protect local biodiversity and local wildlife. These are site specific measures, and it is stated that their implementation will ensure the protection of Natura 2000 habitats and species, and the local non-designated ecological receptors. It is also recommended that these measures are incorporated into a Construction and Environmental Management Plan for agreement with the Local Authority prior to the commencement of works.

The proposed measures can be summarised as follows:

##### Pre-Construction and Construction

- Site preparation and construction must be confined to the development site only and should adhere to all standard best practice measures and the measures outlined in the NIS. Work areas should be kept to the minimum area required, which should be clearly marked out in advance of the proposed works.
- No disturbances to any area of the River Barrow and Nore SAC or the River Nore SPA should occur during the construction or operation of the development.

- Prior to the commencement of development on site, the site engineer and the contractors should be made aware of the ecological sensitivity of the site and its surrounding habitats. They must be made familiar with the mitigation measures outlined in the NIS and if possible, a statement signed by them acknowledging these mitigation measures should be presented to the Local Authority along with the Notice of Commencement.
- Efficient construction practices and sequences should be employed on site, and this will minimise soil erosion and potential pollution of the River Nore with soil and sediment. Supplemental planting and careful management of these areas will increase the biodiversity value of the site in the future. The retention of these areas will also help retain storm water run-off from the site during construction and operation. Works within the site should be avoided during periods of heavy rainfall.

In relation to the above, I consider that the 'development site' includes the area of the proposed sewer diversion. It is different to the 'application site' as outlined in red.

I have also had regard to the mitigation measures outlined in the CEMP. It is standard practice that elements of the construction phase would be subject to detailed agreement in a final CEMP prior to the commencement of development. However, I am satisfied that the submitted construction details and CEMP measures provide adequate assurance that impacts will be appropriately managed, including those relating to the foul sewer diversion and the construction compound.

#### Pollution Control

- There should be no discharges of contaminated waters to ground or surface waters from this development, either during the construction or operation of the development. The control and management of hydrocarbons on site will be vital to prevent deteriorations in surface and groundwater quality locally. A comprehensive range of related measures are outlined in the NIS.
- Best practice concrete / aggregate management measures should be employed on site. A comprehensive range of related measures are outlined in the NIS.

- During construction, surface water must be controlled and managed to avoid any impacts upon local ground or surface water receptors. Construction water should not be discharged directly into any watercourse. Good construction practices such as wheel washers and dust suppression measures must be undertaken. There must be no discharges of silt laden surface water into the public sewer.
- Guidelines within The Construction Industry Research and Information Association (CIRIA) provides guidance on the control and management of water pollution from construction sites ('Control of Water Pollution from Construction Sites, guidance for consultants and contractors', CIRIA, 2001) must be followed.
- SUDs techniques should be applied to all hydrological engineering aspects of the development.
- All waste associated with the development should be disposed of in an environmentally friendly manner. Registered contractors should only be used. This includes any excavated soil. There must be no placement of soil or waste within any SAC or SPA.

#### Site Operation and Landscaping

- The surface water infrastructure must include for hydrocarbon interceptors on all lines and interception must occur before discharge to ground or public sewer.
- Silt interceptors should be used to ensure that minimal silt is discharged to the public sewer from surface water run-off.
- Trees must be removed outside of the bird nesting season (March-September).
- The recommendations of the Bat Survey should be carried out.
- The recommendations of the Arboricultural Impact Statement for the protection of trees and hedgerows must be adhered to and incorporated into the Construction and Environmental Management Plan.
- During operation, only low intensity and approved mammal friendly lighting should be used. Lights should not be directed on known bat roosts.
- Any landscaping should involve the planting of native Irish species that are indigenous to the site.
- Site verges and garden should be managed at a low intensity level to provide maximum habitat availability for pollinators.

#### Installation of underground waste water pipeline

- A project sediment and erosion control plan will be adopted to prevent soil erosion and sediment runoff during installation works.
- Silt fences, sediment basins, and vegetative buffers will be constructed as required.
- An in-situ water quality monitoring program will be implemented to track potential contamination of nearby water bodies.
- Regular inspections will be conducted by the project ecologist / clerk of works to ensure the timely detection of downstream impact arising from the construction.

The NIS concludes that following mitigation, the proposed project does not have the potential to significantly affect the conservation objectives of the River Barrow and River Nore SAC and the River Nore SPA, and that the integrity of these sites as a whole will not be adversely impacted.

Overall, I have considered the proposed mitigation and monitoring measures as outlined in the NIS, particularly with regard to potential effects relating to surface water and groundwater. I consider that the mitigation and monitoring measures are robust and comprehensive, and I am satisfied that they are adequate to ensure that there will be no significant impacts associated with the proposed development on Natura 2000 sites.

#### **5.0 Appropriate Assessment Conclusion**

The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.

Having carried out screening for Appropriate Assessment of the project, it was concluded that the likelihood of significant effects on the River Barrow and River Nore SAC and the River Nore SPA could not be excluded.

Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives. I am satisfied that an examination of the potential impacts has been analysed and evaluated using best scientific

knowledge. Where potential significant effects on Natura 2000 sites have been identified, key design features and mitigation measures have been prescribed to remove risks to the integrity of the European sites. I am satisfied based on the information available, which I consider to be adequate in order to carry out a Stage 2 Appropriate Assessment, that if the key design features and mitigation measures are undertaken, maintained and monitored as detailed in the NIS, adverse effects on the integrity of Natura 2000 sites will be avoided.

Therefore, following an Appropriate Assessment, it has been ascertained beyond reasonable scientific doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore SAC or the River Nore SPA, or any other European site, in view of the sites' Conservation Objectives. This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures and monitoring in relation to the Conservation Objectives of the River Barrow and River Nore SAC and the River Nore SPA.
- Detailed assessment of cumulative and in-combination effects with other plans and projects.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the River Barrow and River Nore SAC and the River Nore SPA.