



An
Bord
Pleanála

Inspector's Report ABP-321221-24

Development

A single storey dwelling on a partially developed residential site permitted under planning permissions P03/629 and P14/589, to include for ancillary garage / storage, completion of site entrance works, internal access drive, site boundary treatments, site drainage and all associated site development works. A Natura Impact Statement (NIS) has been prepared in respect of the proposed development.

Location

Canal Walk, Dukesmeadows,
Kilkenny, R95 P820.

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

2460360

Applicant(s)

Seán McMullan

Type of Application

Permission

Planning Authority Decision

Refusal

Type of Appeal

First Party v. Decision

Appellant(s)

Seán McMullan

Observer(s)

None.

Date of Site Inspection

14th February, 2025

Inspector

Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located along the southern side of a narrow roadway known as Canal Walk (or Canal Lane) in the townland of Dukesmeadows, Kilkenny, approximately 1.0km east-southeast of High Street in the City Centre, where it occupies a position towards the end of a cul-de-sac between an existing detached dwelling house to the southwest and a public car park to the northeast. A defining characteristic of the immediate site surrounds is the high stone walling which flanks both sides of the access road along most of its length, the northern extent of which forms the southernmost perimeter of the Kilkenny Castle Architectural Conservation Area. The roadway itself leads from Bennettsbridge Road to a small public car park that provides access to a canalside walkway and a linear park which extends alongside the River Nore further east / northeast. Although there are 2 No. existing detached dwelling houses situated along Canal Walk with more conventional housing schemes having been developed to the southwest along Bennettsbridge Road (Regional Road No. R700), the wider area is dominated by the grounds of Kilkenny Castle to the northwest, the canal walk / River Nore linear park to the northeast, and the 'Dukesmeadows' amenity / habitat area (which is understood to be managed by Kilkenny County Council) to the southeast.
- 1.2. The site itself has a stated site area of 0.223 hectares, is broadly rectangular in shape, and comprises a vacant plot of land which would appear to have undergone some historical disturbance, including the raising and levelling of ground levels. It is presently overgrown in places and is bounded by high stone walling to the north & east, timber panel fencing to the west, and a tree line / drainage ditch to the south. Access to the site is obtained via an existing splayed (but unfinished) entrance opening in the roadside boundary wall which is secured by timber post & rail fencing and field gates.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a contemporarily designed, single storey dwelling house based on an asymmetrical plan and positioned askew to the public road with a stated floor area of 343m² and an overall height of 3.9m (Finished Floor Level: 43.26m, Ridge Level: 47.16m). External

finishes include a selected coloured render, timber cladding, architectural concrete, stone clad base walls, timber or metal architectural fins, glass balustrade, composite aluminium timber windows, and a 'green' / 'blue' roof (with solar panels).

- 2.2. A free-standing garage (5.5m x 5.5m) of a similar contemporary design is proposed to be constructed to the rear of the house.
- 2.3. Access to the site will be obtained directly from the adjacent public road to the immediate north via a new splayed entrance arrangement. Water and sewerage services are available via connection to the public mains while stormwater will be managed on site using an array of Sustainable Urban Drainage Systems.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 17th October, 2024 the Planning Authority issued a notification of a decision to refuse permission for the following single reason:
 - The proposed development is a highly vulnerable residential use which is to be located within fluvial flood zone A where the probability of flooding from the river is greater than 1% or 1 in 100, which would, contrary to guidance, create an unnecessary risk to the life and health of the development's occupants and in the event of a flood, emergency services. The proposed development fails the Development Management justification test as provided for in the Planning System and Flood Risk Management Guidelines for Planning Authorities 2009. It is therefore considered the proposed development would be contrary to the safeguarding of life and health of the occupants of the developments and in the event of flooding, those of emergency services, and would therefore be contrary to the proper planning and development of the area.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

Details the site context, planning history, and the relevant policy considerations before considering the broader acceptability of the proposed house design from an

aesthetic / visual amenity perspective. It subsequently notes the site location in an area at risk of fluvial flooding with the site itself falling within Flood Zones 'A' & 'B' as defined by the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*'. The report proceeds to analyse the potential flooding implications of the proposed development by reference to the Site-Specific Flood Risk Assessment and 'Justification Test' provided with the application before determining that the '*highly vulnerable*' residential development proposed would not be justified and fails the 'Justification Test' for the following reasons:

- Access and egress during flooding could be impossible given the level of the adjacent road. This includes access for emergency vehicles.
- Water, wastewater and surface water infrastructure could become overwhelmed in the event of a flood.
- There is no reason the risk cannot be avoided as this is not a city centre area and there is no need for densification of vulnerable areas given the amount of land zoned within the city.

It is also stated that mitigation or substitution is not required as the risk can be avoided and that notwithstanding the site's planning history, land use zoning, and the proposal to raise the dwelling house over the area at flood risk, due to the location of both the development site and access road within the 1 in 100-year flood zone, the proposal, if permitted, could have serious long-term safety implications and would not satisfy the requirements of the justification test.

The report continues by noting the proximity of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and the River Nore Special Protection Area (Site Code: 004233) for the purposes of appropriate assessment and concurs with the submitted Natura Impact Statement that, subject to mitigation, the proposal, alone or in combination with other projects or plans, will not adversely affect the integrity of the SAC or SPA.

Further commentary is included in the report as regards the potential implications of the proposed development for an Active Travel link planned across the River Nore, although this is not considered to warrant a refusal of permission.

The report concludes by recommending that permission be refused for the reason stated.

Following an extension of the appropriate period in order to further investigate the adequacy of the Site-Specific Flood Risk Assessment (with a review of the document being carried out by JBA Consulting on behalf of the Planning Authority), an addendum was made to the Planner's Report which reaffirms the position that the proposed development fails the Development Management 'Justification Test' and reiterates the recommendation to refuse permission.

3.2.2. *Other Technical Reports*

Environment Section: Notes that the Flood Risk Assessment submitted with the application identifies substantial flooding in the area of the proposed development within Flood Zones 'A' (1 in 100 year / 1% AEP) and 'B' (1 in 1,000 year / 0.1% AEP) thereby necessitating a 'Justification Test'. It is further stated that the applicant has not adequately demonstrated that the site is capable of the safe disposal of treated effluent without risk to public health. The report subsequently recommends that permission be refused on the following grounds:

- Notwithstanding that the proposed development includes for the increasing of the ground levels of both the dwelling house and garage above the predictive flood levels, it is considered that the proposal fails the 'Justification Test' on the basis that it has not adequately addressed Parts 2 (ii) & (iii) of Box 5.1: '*Justification Test for Development Management*' of the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*'.

Area Engineer: Refers to the site location off a Local Secondary Road (LS-6644), which is subject to a speed limit of 30kph, and the presence of a car park to the east of the proposed entrance arrangement. The visibility splay shown to the east of the entrance is considered to be less than desirable as regards traffic exiting the car park and, therefore, it is recommended that the applicant be required to submit revised details taking account of this traffic.

Conservation Section: Refers to the site location and notes that the adjacent roadway is bounded by high limestone walls with the walling to the north forming the southern boundary of the Kilkenny Castle grounds while the wall opposite defines the roadside boundary of the proposed development site.

With respect to existing opening in the wall to the application site, it is stated that the proposed entrance arrangement is acceptable, although further details should be

provided as regards the methodology and specification for the construction of the new splayed stone entrance wall and piers (with the stone selection to match existing). In addition, given the proximity of SMR Ref. No. KK019-026206: 'Water Mill' (an archaeological monument), the site of a well (visible on 2nd Ed. OSi mapping), and the River Nore (which would have been a transport highway in prehistoric and medieval times), there is a possibility of features of archaeological interest being present on site and, therefore, it is recommended that an Archaeological Impact Assessment be sought by way of further information.

Road Design: Having regard to the available sightlines as shown, the position of the existing car park entrance to the east, and the potential Active Travel cycling / walking link from Lacken (on the eastern side of the River Nore) to the Bennettsbridge Road and onwards to Loughboy which may emerge out of the Local Transport Plan currently being developed, it is recommended that the applicant be requested to submit proposals / revised drawings to optimise the sightlines in the direction of the existing car park exit. It is further advised that the applicant consult with the Kilkenny Municipal District Office in respect of the proposed entrance layout and any potential Active Travel measures that may be planned for Canal Walk.

JBA Consulting (External Consultant: Flood Mentoring Services): Provides an overview of the Site-Specific Flood Risk Assessment and the relevant policy context, with particular reference to the circumstances that gave rise to the application site having been zoned as 'Existing Residential' despite the Strategic Flood Risk Assessment prepared as part of the Kilkenny City & County Development Plan, 2021-2027 not supporting this land use zoning (i.e. the Strategic Flood Risk Assessment and associated 'Justification Test for Development Plans' sought to rezone the subject site as 'Open Space' (formerly 'Existing Residential') on the basis of flood risk, however, the decision was made to zone the lands as 'Existing Residential' at Material Amendments stage, notwithstanding that such a change had not been formally assessed under the SFRA document and as the 'Justification Test for Development Plans' was neither applied nor passed in that context).

This report proceeds to state that (without considering any of the technical detail of the Site-Specific FRA) it would be possible to argue that the 'Existing Residential' land use zoning (and therefore the planning application itself) is contrary to both the

Development Plan and the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' on the basis that:

- That the lands are highly vulnerable;
- Are located almost entirely within Flood Zone 'A';
- Were not subject to assessment under the SFRA; and
- That in sequentially rezoning the lands to '*Open Space*' under Section 5.5 of the SFRA, the indication is that the Justification Test would not pass and zoning is fully in accordance with Plan Policy, the Guidelines and Circular PL2 2014 whereunder it is specifically intended to ensure that at plan preparation stage planning authorities reconsider 'existing use zonings' and rezone where the zoning is not appropriate.

It is further submitted that if the foregoing position were to be adopted by the Council then the Guidelines stipulate that if a planning application were to be received on lands that are at risk and are pending the application of the Guidelines then the proposals should technically be considered as if they are not zoned for development and the SFRA re-applied including application of the Justification Test for Development Plans (although it is acknowledged that such a course may not be preferable).

The report subsequently assesses the proposed development and the accompanying Site-Specific Flood Risk Assessment in the context of the 'Justification Test for Development Management' as per the Guidelines as follows:

Part	Comment	Opinion
1	The subject lands have not been zoned for use in accordance with the Guidelines (as set out above).	Fail
2(i)	<p>The SSFRA undertakes a detailed 1D/2D modelling study of the River Nore but the communication of local flood impacts is restricted to the display of 2 no. low resolution pre and post development flood extent images with a broad ranging statement under the Justification Test that flood risk is not predicted to result in an adverse impact to the existing hydrological regime of the area or to increase flood risk to lands and properties upstream and downstream of the site or elsewhere.</p> <p>The validity of this statement could be backed up with detailed water level output from the hydraulic model at the specific node points on the River</p>	Uncertain / lack of detail

	<p>Nore and also by provision of depth difference raster calculations in the 2D floodplain made using pre versus post development model results, at the 1% and 0.1% AEP events. It is unclear why, given the level of detail undertaken in the FRA, that the position is not made absolutely clear. It would be expected that there are some at least very minor water level increases around the edges of the land subject to raising, and it may well be possible to determine that these are not significant or do not impact local property, but this is not undertaken. There is no potential for compensatory storage at this location and it is not discussed in the SSFRA, given this point it is even more important to clearly demonstrate that flood levels are not increased.</p>	
2(ii)	<p>Mitigation is limited to the raising of FFLs to >300mm freeboard above the 0.1% AEP flood level, which is in accordance with the Kilkenny City & County Development Plan SFRA.</p> <p>Nowhere within the FRA is the issue of Emergency Response Planning or access and egress during flood events discussed (as set out in Section 4.7 and 4.8 of Appendix B of The Guidelines). It is the case that the flood levels on Canal Walk, the sole vehicular access route to the site, are identified in the CFRAM study as being up to 0.5m deep in the 10% AEP, 0.5-1.0m deep for the 1% AEP event and 1.5-2.0m deep in the 0.1% AEP event. It is possible the depths are greater under the SSFRA but the information is not provided. Flood depths of this magnitude will prevent any access to the property from private vehicles and most likely emergency services vehicles in events as frequent as the 10% AEP. The distance of flooded/inaccessible roadway from the entrance to the house is circa 80m in the 1% AEP CFRAM event. The duration of the access disruption is also not specified by the FRA but is likely to be greater than 24hrs.</p> <p>The above omission confirms that there are not sufficient measures to manage risk to the development itself.</p>	Fail
2(iii)	<p>Residual risk and reliance on pre-existing flood relief measures are not a significant issue for the site as pointed out in the SSFRA. However, the final part of this subsection requires provisions to be made for emergency services access. As stated in Point 2.ii above, the depth of floodwater on Canal Walk renders the site inaccessible to Emergency Services in flood events that are equal to or more extreme than the 10% AEP event. To put this in context there is a 27% chance that a 10% AEP flood will occur</p>	Fail

	within just a 3-year period, this rises to 52% over a 7-year period. The frequency of some disruption of access along Canal Walk to the property would in reality be even more frequent than stated, given that the threshold of flooding to Canal Walk is greater than the 10% AEP event.	
2(iv)	Not reviewed/not applicable for comment.	-

In reference to technical issues, it is noted that the SSFRA has used detailed hydraulic modelling to quantify the risk to baseline conditions, the results of which would suggest flood extents and depths greater than the OPW CFRAM study.

It is also stated that the SSFRA does not present an appropriately detailed assessment of post-development conditions with the details provided seriously limiting the confidence in (and transparency) of the findings / conclusions.

The JBA report concludes by stating that the SSFRA highlights that the subject proposal will introduce significant additional persons into the floodplain for what is arguably a new development, and that no consideration has been given to how the development will fully mitigate the risk to occupants in terms of access and Emergency Response Planning and that the risk cannot be appropriately mitigated in this context. Furthermore, it is the opinion of JBA that the proposed development fails the Justification Test and is inappropriate in the context of the Kilkenny City & County Development Plan, 2021-2027 and its Strategic Flood Risk Assessment in addition to the '*Planning System & Flood Risk Management, Guidelines for Planning Authorities*', including Circular PL2 2014.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

4.1. On Site:

- 4.1.1. PA Ref. No. P17/365. Was granted on 28th August, 2017 permitting Sean McMullan permission for alterations to existing Planning Permission Ref: 14/589 to include

raising the finished floor level of the previously permitted house along with associated elevational and site alterations at Canal lane, Dukesmeadows, Kilkenny.

- 4.1.2. PA Ref. No. P16/732. Application by Sean McMullan for permission for the construction of a two-storey dwelling, forming a new entrance off Canal Lane and all site and ancillary works at Site 02, Canal Lane, Dukesmeadows, Kilkenny. This application was declared withdrawn.
- 4.1.3. PA Ref. No. P16/731. Application by Sean McMullan for permission for the construction of a two-storey dwelling, forming a new entrance off Canal Lane and all site and ancillary works at Site 01, Canal Lane, Dukesmeadows, Kilkenny. This application was declared withdrawn.
- 4.1.4. PA Ref. No. P14/589. Was granted on 25th March, 2015 permitting Sean McMullan retention planning permission and planning permission for the following works: - Retention Permission for the provision of a culvert to the on-site stream of concrete pipework and for the levelling of the site and associated revision of ground levels - Permission for a new dwelling house and ancillary garage and carport, new entrance works to Canal Walk associated boundary treatments, and all site and ancillary works. All at Canal Lane, Dukesmeadows, Kilkenny.
- 4.1.5. PA Ref. No. P03/629. Was granted on 28th July, 2003 permitting Mr. & Mrs D. Wyley permission for the construction of a dormer dwelling house with detached garage and all associated site works at Canal Lane, Castle Road, Kilkenny.

4.2. On Adjacent Sites:

- 4.2.1. PA Ref. No. P22/111. Was refused on 19th April, 2022 refusing Gavin Wiley & Donagh Wiley permission for the subdivision of existing dwelling plot for the construction of 2 no. detached 4-bedroom dormer dwellings. Access to the proposed dwellings will be via the utilisation of the existing vehicular entrance to create a shared entrance to provide access to each individual dwelling plot. This application further proposes: demolition of existing domestic garage, amendments to existing dwelling site boundary, new boundary treatments between dwellings, site landscaping, provision of foul and surface water disposal and associated site works. All at Fontenoy, Canal Walk, Castle Road, Kilkenny.

- The proposed residential development of two houses falls within flood zones A and B of the River Nore and such development is classed as “Highly Vulnerable” in the Planning System and Flood Risk Management Guidelines, 2009. By virtue of the proposed development being avoidable and not passing the justification test, it is considered that the proposed development will be placing the prospective occupants and their property at risk from periodic flooding with associated risk to infrastructure being overwhelmed and of emergency services being at risk in case of need for evacuation. It is considered that the proposed development will be contrary to the Planning System and Flood Risk Management Guidelines, 2009 and the requirements of Section 10.2.6.2 of the Kilkenny City and County Development, 2021-2027 as regards flood risk requirements. Accordingly, it is considered that the proposed development is considered contrary to the proper planning and development of the area.
- The access road to the site from the Bennettsbridge Road is substandard in terms of width, with conflict between pedestrians, cyclists and private cars. It is an objective of the Kilkenny City and County Development Plan, 2021-2027 to provide a new pedestrians / cyclist bridge over the river at the approximate location of where this road intersects with the River Nore. This new cycling / walking route is currently being designed and will address the access road adjacent. Until such time as a design is finalised, intensification along this substandard road is considered to be premature.
- By virtue of the location of the site proximate to a Special Area of Conservation (River More / River Barrow SAC) and the River Nore Special Protection Area, it has not been demonstrated that the proposed development, either on its own or in combination with other development, will not adversely impact the Conservation Objectives of these two Natura 2000 sites.

4.3. On Sites in the Immediate Vicinity:

- 4.3.1. PA Ref. No. P23/60409. Was refused on 3rd November, 2023 refusing Dr. Therese White permission for a two-storey dormer residence, detached garage, new

vehicular entrance and all associated works at Castle Springs, Canal Walk, Dukesmeadows, Kilkenny.

- The proposed development is located along the Canal Walk which contributes significantly to the setting of the Castle, and is a popular area for walkers and tourists. The retaining random rubble boundary walls of the castle grounds which flank the south side of the Canal Walk make a strong contribution to the character of the Castle ACA. The development proposes another five meter wide break in the wall to permit access to and from the proposed dwelling. The wall has been punctured by recent developments: Notwithstanding these wall breaches, the road has maintained its sense of enclosure and tunnel like sense: the high wall and material finishes and narrow street support that sense of enclosure. The proposed development is considered inimicable to the character of the Castle ACA, the character of which it is an objective of the City and County Development Plan to preserve. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- The access to the site is along a local road which is substandard in terms of width with conflicts between pedestrians, cyclists and motorised vehicles. The proposed development would lead to additional motorised traffic movements along the route which would be contrary to the provisions of the City and County Development Plan which seeks to enhance the sustainable transport modes. The existing access road may form part of a strategic Active Travel cycling / walking link from Lacken on the East of the River Nore to the Bennettsbridge Road and onwards to Loughboy which may emerge out of the Local Transport Plan currently being developed. The proposed development is therefore considered premature pending the completion of the SUMP (Sustainable Urban Mobility Plan) process.
- The site of the proposed dwelling is significantly impacted by flood zones A and B and such development is considered highly vulnerable in the Flood Risk Management Guidelines 2009 and the City and County Development Plan 2021 -2027. It is considered that the proposed development would place the prospective occupants and their property at risk from periodic flooding. It is Council policy to adopt a comprehensive risk-based planning approach to

flood management to prevent or minimise future flood risk. The avoidance of development in areas where flood risk has been identified shall be the primary response. The proposed development is therefore considered contrary to the proper planning and development of the area.

- 4.3.2. PA Ref. No. 18215. Was granted on 29th June, 2018 permitting Dr Therese White permission for two storey dormer residence, detached garage, new vehicular entrance and all associated works at Castle Springs, Canal Walk, Dukesmeadows, Kilkenny.

5.0 Policy and Context

5.1. National and Regional Policy:

- 5.1.1. The '*Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities*' published by the Department of Housing, Local Government and Heritage in 2024 set out national planning policy and guidance in relation to the planning and development of urban and rural settlements, with a focus on sustainable residential development and the creation of compact settlements. They are accompanied by a companion non-statutory Design Manual that illustrates best practice examples of how the policies and objectives of the Guidelines can be applied. The Guidelines replace the 'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009' and build on and update previous guidance to take account of current Government policy and economic, social and environmental considerations. There is a renewed focus in the Guidelines on the renewal of existing settlements and on the interaction between residential density, housing standards and quality urban design and placemaking to support sustainable and compact growth.
- 5.1.2. The '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' published by the Department of the Environment, Heritage and Local Government in November, 2009 introduce comprehensive mechanisms for the incorporation of flood risk identification, assessment and management into the planning process. The core objectives of the Guidelines are to:
- Avoid inappropriate development in areas at risk of flooding;

- Avoid new developments increasing flood risk elsewhere, including that which may arise from surface water run-off;
- Ensure effective management of residual risks for development permitted in floodplains;
- Avoid unnecessary restriction of national, regional or local economic and social growth;
- Improve the understanding of flood risk among relevant stakeholders; and
- Ensure that the requirements of the EU and national law in relation to the natural environment and nature conservation are complied with at all stages of flood risk management.

In achieving the aims and objectives of the Guidelines the key principles to be adopted should be to:

- Avoid the risk, where possible,
- Substitute less vulnerable uses, where avoidance is not possible, and
- Mitigate and manage the risk, where avoidance and substitution are not possible.

The Guidelines outline the need to identify flood zones and to categorise these according to their probability of flood events. Notably, these should be determined ignoring the presence of flood protection structures as such areas still carry a residual risk of flooding from overtopping or breach of defences and as there is no guarantee that the defences will be maintained in perpetuity.

A staged approach to Flood Risk Assessment is advocated with only such appraisal and / or assessment as is needed to be carried out for the purposes of decision-making at the regional, development and local area plan levels, and also at the site specific level. Stage 1 entails the identification of flood risk by way of screening of the plan / project in order to determine whether there are any flooding or surface water management issues related to the area or the site that may warrant further investigation. This is followed by Stage 2 (Initial flood risk assessment) which seeks to confirm the sources of flooding that may affect a plan area or site, to appraise the adequacy of existing information and to scope the extent of the risk of flooding which may involve preparing indicative flood zone maps. Where hydraulic models exist, the

potential impact of a development on flooding elsewhere and of the scope of possible mitigation measures can also be assessed. The third and final stage (Stage 3: Detailed flood risk assessment) aims to assess flood risk issues in sufficient detail and to provide a quantitative appraisal of potential flood risk to a proposed or existing development or land to be zoned, its potential impact on flood risk elsewhere and of the effectiveness of any proposed mitigation measures.

Chapter 3 of the Guidelines states that the key principles of a risk-based sequential approach to managing flood risk in the planning system are to:

- Avoid development in areas at risk of flooding;

If this is not possible, consider substituting a land use that is less vulnerable to flooding.

Only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks.
- Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.
- Exceptions to the restriction of development due to potential flood risks are provided for through the use of a Justification Test, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

It is a key instrument of the Guidelines to undertake a sequential approach in order to guide development away from areas at risk from flooding such as through the use of flood zones and the vulnerability of different development types, however, it is recognised that several towns and cities whose continued growth and development is being encouraged (through the National Development Plan, Regional Planning Guidelines etc.) in order to bring about compact and sustainable urban development and more balanced regional development, contain areas which may be at risk of flooding. Where a planning authority is considering the future development of areas at a high or moderate probability of flooding that would include types of development that are inappropriate in terms of their vulnerability, the 'Justification Test' set out in Box 5.1 of the Guidelines should be employed.

The vulnerability of development to flooding depends on the nature of the development, its occupation and the construction methods used. The classification of different land uses and types of development as highly vulnerable, less vulnerable and water-compatible is influenced by various factors including the ability to manage the safety of people in flood events and the long-term implications for the recovery of the function and structure of buildings.

5.2. Development Plan

5.2.1. Kilkenny City and County Development Plan, 2021-2027:

Land Use Zoning:

The proposed development site is located in an area zoned as '*Existing Residential*' with the stated land use zoning objective '*To protect, provide and improve residential amenities*'.

N.B. For the purposes of completeness, and by way of background, the Board is advised that the proposed development site was previously primarily zoned as '*Existing Residential*' with its eastern extent zoned for '*Amenity / Green links / Biodiversity*' in the now expired Kilkenny City & Environs Development Plan, 2014-2020 (Figure 3.3: '*Zoning Objectives*'). During the preparation of the Kilkenny City and County Development Plan, 2021-2027 it was initially proposed at draft stage that the subject lands at Canal Walk be (re)zoned as '*Amenity / Green links / Biodiversity*', however, at the 'Material Alterations' stage of the plan process the decision was made (contrary to the Chief Executive's recommendation) to change the proposed zoning of the lands at Canal Walk from '*Amenity / Green links and Biodiversity*' to '*Residential*'. This '*Existing Residential*' land use zoning was subsequently incorporated into the final Kilkenny City and County Development Plan, 2021-2027 as adopted.

Other Relevant Sections / Policies:

Vol. 1:

Chapter 6: Housing and Community:

Section 6.1: Housing

Section 6.7: Residential Development

Chapter 9: Heritage, Culture and the Arts:

Section 9.3.3: Architectural Conservation Areas:

Objective 9J: To ensure the preservation of the special character of each ACA listed in this Plan (See Table 9.2 and Volume 2 Heritage Strategy) with particular regard to building scale, proportions, historical plot sizes, building lines, height, general land use, fenestration, signage, and other appendages such as electrical wiring, building materials, historic street furniture, paving and shopfronts.

Chapter 10: Infrastructure & Environment:

Section 10.2.6: Flooding:

Section 10.2.6.1: Flood Management:

It is Council policy to adopt a comprehensive risk-based planning approach to flood management to prevent or minimise future flood risk. In accordance with the Planning System and Flood Risk Management – Guidelines for Planning Authorities, the avoidance of development in areas where flood risk has been identified shall be the primary response.

The Council will ensure that new developments do not reduce the effectiveness or integrity of any existing or new flood defence infrastructure, and will facilitate the provision of new, or the reinforcement of existing, flood defences and protection measures where necessary.

Section 10.2.6.2: Development Management Requirements:

- Where flood risk may be an issue for any proposed development, a detailed Flood Risk Assessment should be carried out appropriate to the scale and nature of the development and the risks arising. In particular, any area within or adjoining flood zone A or B, or flood risk area, shall be the subject of a site-specific Flood Risk Assessment appropriate to the type and scale of the development being proposed. This shall be undertaken in accordance with the Planning System and Flood Risk Management – Guidelines and the Strategic Flood Risk Assessment accompanying this Plan.

- If a Site Specific FRA demonstrates an unmanageable level of flood risk and/or impacts to 3rd party lands, development cannot proceed.
- Proposals for mitigation and management of flood risk will only be considered where avoidance is not possible and where development can be clearly justified with the Guidelines' Justification Test.

Chapter 13: Requirements for Developments

Section 13.5: Infill Development:

Objective 13A: To compile an analysis and a development guidance criterion for housing opportunities in Kilkenny City's backland areas, underutilised lands and brownfield sites.

Section 13.5.1.1: Development Management Requirements for Urban Infill Development:

Smaller single unit infill sites:

For single unit infill developments (permanent subdivision), the following requirements should be met:

- normal plot ratio and site coverage requirements
- in the case of development proposals with access from communal access roads (back lanes), such communal access roads shall be improved to comply with DMURS standards or such relaxation as determined by the Planning Authority;
- Where accessing from existing public roads, have direct access via an access road at least 3m in width along its entire length;
- the proposal must provide a minimum of 25sqm of consolidated usable private open space, reserved exclusively for use of the infill unit. The original unit should also retain at least a minimum 25 sqm of consolidated usable private open space;
- Structures should maintain a setback distance of at least 7.5m from the rear of any neighbouring house;

- Structures must not unduly overlook any neighbouring house or private open space from upper floor levels and orientation and setback are important in this regard (22m rule applies between opposing first floor windows unless good merit exists for relaxation);
- Structures must not unduly overshadow or encroach on any neighbouring house and a shadow path impact analysis may be required;
- The proposed development must not unduly affect the character of the immediate environs, including ACAs or neighbouring protected structures.

Each application shall be considered on its own merit and in accordance with the principles of proper planning and sustainable development.

Vol. 2:

Chapter 4: Heritage Strategy

Section 4.5: Kilkenny City ACA's

Chapter 6: Kilkenny City: Placemaking:

Section 6.3: Residential Development

Section 6.4: Infill Development

Chapter 7: Infrastructure and Environment:

Section 7.5: Flooding:

A Strategic Flood Risk Assessment has been carried out for the City and County Development Plan as part of the Strategic Environmental Assessment.

It is Council policy to adopt a comprehensive risk-based planning approach to flood management to prevent or minimise future flood risk. In accordance with the Planning System and Flood Risk Management – Guidelines for Planning Authorities, the avoidance of development in areas where flood risk has been identified shall be the primary response.

5.3. Natural Heritage Designations

- 5.3.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- River Barrow and River Nore Special Area of Conservation (Site Code: 002162), which extends into the eastern extent of the application site.
- River Nore Special Protection Area (Site Code: 004233), approximately 70m east of the site.
- Archersgrove Proposed Natural Heritage Area (Site Code: 002051), approximately 725m southeast of the site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and limited scale of the development, which comprises the construction of a single dwelling house and associated works within an established urban area where infrastructural services are available, the proximity of the site to nearby sensitive receptors, and to the criteria set out in Schedule 7 of the Regulations, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Please refer to the completed Forms 1 and 2 appended to this report.

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed development has been partially developed and is zoned for 'residential' purposes.
- Both the Natura Impact Statement and Site-Specific Flood Risk Assessment are indicative of there being no specific flood risk to either the development site or adjoining lands.
- No objections were raised to the proposed design by third parties or the Planning Dept. of Kilkenny County Council.
- It would appear that no account has been taken of the substantial level of defence afforded to the proposed development site by the walling erected along those boundaries where fluvial flooding concerns arise.

- Considerable efforts have been made over the last 20 No. years to build up the site and to mitigate surface flooding through the installation of culverting. During this time the site has never been breached despite its incomplete and open entrance and having been subject to a near 1 in 100-year flood event in 2017.
- The proposed finished floor levels will exceed the 1% and 10% flood risk levels.
- It would appear that the decision to refuse permission derives from the risk of flooding to the roadway which provides access to the application site. In this regard, it is submitted that the responsibility for flooding on Canal Lane cannot reasonably be undertaken by any individual resident.

There are obvious solutions (like flood barrier gates across Canal Lane) or existing drainage channels bordering the neighbouring Dukesmeadows (c. 3-4m below the proposed site ground level) that could be utilised for flood water egress (the applicant is amenable to cooperating with the Local Authority to incorporate floodwater egress from Canal Lane through the site to the much lower Dukesmeadows drainage canal – a solution which would also benefit other local residents, users of the nearby car park, and related Canal Walk flooding issues in the future).

- The Development Plan affords all citizens a level of certainty based on the rule of law and it is because of this certainty that the applicant expended considerable monies on the purchase and development of the subject site. Therefore, to exercise this right (in conformance with the Development Plan) and be rejected on the grounds that the adopted zoning is incorrect places an unreasonable and unfair burden on the individual.
- Flood mitigation for the access road (Canal Lane) is an issue for the Council and not one that can reasonably be assumed by any individual member of the public.

6.2. Planning Authority Response

- The Strategic Flood Risk Assessment undertaken for the Draft Kilkenny City and County Development Plan, 2021-2027 relied on information contained in the Site-Specific Flood Risk Assessment submitted as part of a previous planning application (PA Ref. No. 14/589) on the proposed development site. That Strategic Flood Risk Assessment concluded that the subject site should be rezoned from '*Existing Residential*' to '*Open Space*' and, therefore, the draft Development Plan sought to zone the lands in question as '*Amenity / Green Links / Biodiversity / Open Space / Recreation*'. Although a submission was subsequently received on behalf of the applicant, the report of the Chief Executive recommended that "*no change*" be made to the proposed zoning, however, the elected members subsequently directed that the zoning of the subject land parcel be amended from the proposed "*Open Space*' to '*Existing Residential*'. Accordingly, the Kilkenny City and County Development Plan, 2021-2027 as adopted has zoned the subject site as '*Existing Residential*'.

With respect to the foregoing, it is submitted that the '*Existing Residential*' land use zoning does not imply that the site is safe to develop over the longer term. In this regard, the final assessment of the subject proposal was completed with due consideration of the Site-Specific Flood Risk Assessment, which was peer-reviewed for the Council before a decision was made in order to come to a fair conclusion based solely on the risks associated with the development.

6.3. Observations

None.

6.4. Further Responses

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principle of the proposed development
- Flooding implications
- Other issues
- Appropriate assessment

These are assessed as follows:

7.2. The Principle of the Proposed Development:

- 7.2.1. The proposed development site is located on the margins of a well-established residential area on suitably zoned (*‘Existing Residential: To protect, provide and improve residential amenities’*) and serviced lands. In this respect, I would suggest that the subject proposal concerns a potential infill site where the development of appropriately designed housing would typically be encouraged provided it integrates successfully with the existing pattern of development and adequate consideration is given to the need to protect the amenities of existing properties. Such an approach would correlate with the wider strategic outcomes set out in the National Planning Framework ‘Project Ireland: 2040’, including the securing of more compact and sustainable urban growth such as is expressed in National Policy Objective 35 which aims to *‘increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights’*.
- 7.2.2. Further support is lent to the proposal by reference to the broader provisions of the Kilkenny City and County Development Plan, 2021-2027, with particular reference to Section 13.5: *‘Infill Development’* wherein it is stated Council policy to facilitate infill development where minimum requirements can be met and where the proposed development will not materially impact the residential amenity or character of neighbouring developments. These provisions are supplemented further by the guidance set out in Section 13.5.1.1: *‘Development Management Requirements for*

Urban Infill Development’ which details the criteria to be used in the assessment of proposals that involve new infill development.

7.2.3. The ‘*Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities, 2024*’ also acknowledge the potential for infill development within established residential areas and assert that in order to achieve compact growth there will be a need to support the more intensive use of previously developed land and infill sites. In this regard, it is of note that as Kilkenny has been identified as a ‘Key Town’ in the Regional Spatial and Economic Strategy for the Southern Region, the Guidelines state that a key priority for its growth will be to realise opportunities for adaptation and reuse of existing buildings and for incremental backland, brownfield and infill development.

7.2.4. Therefore, having considered the available information, including the site context and land use zoning, and the design, scale & infill nature of the proposed dwelling, I am satisfied that the overall principle of the development is acceptable, subject to the consideration of all other relevant planning issues, including flood risk management.

7.3. Flooding Implications:

7.3.1. From a review of the available information, including the decision to refuse permission and the grounds of appeal, it is apparent that particular consideration needs to be given to the potential flooding implications of the proposed development given that lands in the immediate site surrounds are known to be at risk of flooding from the River Nore. In this respect, I would advise the Board that on examination of the most up-to-date flood mapping for the area prepared by the Office of Public Works as part of its CFRAM programme (which is available on www.floodinfo.ie and has informed the development of Flood Risk Management Plans for specific areas), it can be confirmed that the entirety of the proposed development site is located within Flood Zone ‘A’ (where the probability of flooding is highest) and Flood Zone ‘B’ (where the probability of flooding is moderate) as defined by the ‘*Planning System and Flood Risk Management, Guidelines for Planning Authorities*’ although it must also be accepted that this mapping has limitations in terms of identifying flood risk in any given area. By way of further analysis, a review of the flood zones detailed in the Consolidated Strategic Flood Risk Assessment prepared as part of the Kilkenny City

and County Development Plan, 2021-2027 establishes a broad correspondence with the CFRAM mapping.

- 7.3.2. At this point, I would draw the Board's attention to the Site-Specific Flood Risk Assessment (SSFRA) that has accompanied the planning application with a view to identifying and quantifying the risk of flooding associated with the proposed development. At the outset, this report sets out the initial screening exercise carried out in order to establish whether there is a potential flood risk issue pertinent to the proposed development, which involved the collation and interrogation of various data from a number of sources, including the South Eastern Catchment Flood Risk Assessment and Management (CFRAM) Study, the OPW's Preliminary Flood Risk Assessment Mapping (PFRA, 2011), Ordnance Survey Ireland historic mapping, and the Consolidated Strategic Flood Risk Assessment undertaken for the Kilkenny City and County Development Plan, 2021-2027. This investigation subsequently concluded that the proposed development site is located within a fluvial flood zone arising from its proximity to the River Nore. Most notably, the South Eastern CFRAM Flood Extent Mapping details the application site as falling entirely within a 1% AEP (1 in 100 year) and a 0.1% AEP (1 in 1,000 year) current scenario fluvial flood zone while the associated predictive Flood Depth Mapping indicates that the site may be impacted by flood depths in the range of 0-2.0m for the 1% AEP flood event and 0.25->2.0m for the 0.1% AEP fluvial flood event.
- 7.3.3. Following this initial screening of the proposal, a scoping assessment was undertaken which determined that in consideration of the information collated as part of that exercise, and the availability of other data specific to the proposed development site, there was not sufficient quantitative information available to complete an appropriate flood risk assessment. In particular, it was noted that there was a need to quantify and assess the potential impact of the proposed development on the existing hydrological regime of the area in greater detail. Accordingly, the decision was made to undertake a more detailed and robust analysis of the existing and proposed fluvial flooding scenarios at and in the vicinity of the development site for both the undeveloped and proposed development scenarios.
- 7.3.4. The methodology for the detailed site specific flood risk assessment subsequently carried out is set out in Sections 6 & 7 of the SSFRA. Details are provided as to the calculation of a final adjusted Urban QMED (index flood) value of 216.37m³/s for the

River Nore at the selected Hydrological Estimation Point (HEP) chosen for the proposed development site (using the OPW's Flood Studies Update portal software). Growth factors derived from the South Eastern CFRAM study were then applied to estimate the final 1% AEP and 0.1% AEP peak flows (Table 6) with these figures then being compared to the flows at the John's Bridge gauged station (upstream of the application site) in the South Eastern CFRAMS hydrology report. Although the calculated HEP flows are slightly higher than at John's Bridge, this is due to the HEP being located c. 900m downstream, and it has been submitted that the applicant's peak flow calculations broadly match those of the South Eastern CFRAMS hydrology report. Hydrographs to simulate an unsteady flow in the River Nore for the 1% AEP and the 0.1% AEP flood events were then generated for the subject site which established a 1% AEP Peak Fluvial Flood Flow of $423.43\text{m}^3/\text{s}$ and an 0.1% AEP Peak Fluvial Flood Flow of $583.07\text{m}^3/\text{s}$. To account for the impacts of climate change in accordance with the guidelines and based on the Mid-Range Future Scenario projection, a 20% increase was then applied which equates to a 1% AEP + Climate Change peak fluvial flood flow of $508.11\text{m}^3/\text{s}$.

- 7.3.5. A hydraulic model for a selected reach of the River Nore was then developed in order to estimate flood water levels at the development site (the methodology of which is set out in Section 7.0 of the SSFRA with account having been taken of factors including topographical survey data, a detailed Digital Terrain Model and contour mapping, river channel & flood plain roughness coefficients, and cross-sectional data for the River Nore derived from the OPW's CFRAM study). The results of this hydraulic modelling are set out in Section 8 of the SSFRA with Table 10 detailing that the predictive 1% AEP, 1% AEP+CC and 0.1% AEP upstream fluvial flood levels (at Node Label: 01KILK00020) relative to the location of the proposed development site are 42.26m OD, 42.64m OD and 42.94m OD respectively. Longitudinal profiles of this flooding are provided in Figures 27, 28 & 29 of the SSFRA which show overtopping of the riverbank at the application site, however, it is Figure 30 (and Drg. No. IE2685-002-A of Appendix A of the SSFRA) which provides a graphic illustration of flood zones in and around the proposed development site in the existing undeveloped scenario. By way of summation, fluvial flooding is predicted to extend across the site for the 1% AEP, 1% AEP+CC & 0.1% AEP fluvial flood events.

- 7.3.6. Given that the hydraulic modelling undertaken in the SSFRA has established that the proposed development site (undeveloped) is predicted to experience significant flooding for the 1% AEP, 1% AEP+CC & 0.1% AEP flood events, which would generally correspond with the mapping for the South Eastern Catchment Flood Risk Assessment and Management (CFRAM) Study, it is clear that the application site falls within Flood Zones 'A' & 'B' as defined by the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'*. By extension, on the basis that the subject proposal involves the construction of a *'Highly Vulnerable'* dwelling house within Flood Zones 'A' & 'B', it has been submitted that the proposed development should be subject to the 'Justification Test' for development management as set out in Box. 5.1 of the Guidelines.
- 7.3.7. In advance of the Justification Test, Section 10 of the SSFRA considers the hydrological impact of the proposed development and recommends that the finished floor level of the proposed dwelling house be set at 43.24mOD to provide for 0.3m of freeboard above the predicted 0.1% AEP peak fluvial flood level of 42.94mOD, although the site layout plan indicates a finished floor level of 43.26mOD for the proposed dwelling which is in excess of the aforementioned recommendation (by extension, the finished floor level of the proposed dwelling will be an even greater height over the predicted 1% AEP and 1% AEP+CC peak flood levels). The finished floor level of the proposed garage is also to be set over the predicted 0.1% AEP flood level at 43.00mOD.
- 7.3.8. In order to achieve the foregoing, it will be necessary for the footprint of the proposed structures and the immediately adjacent areas of the site to be raised above the predictive flood level, however, it has been acknowledged that this could potentially impact on the existing hydrological regime of the area (i.e. through the displacement of floodwaters). Accordingly, the SSFRA has re-run its hydraulic model in consideration of the proposed developed scenario and asserts that the results obtained for the 1% AEP, 1% AEP+CC & 0.1% AEP flood events indicate that there will be no significant, notable or quantifiable increase in extreme flood water levels within the River Nore when compared to the undeveloped baseline scenario. Furthermore, it has been submitted that the modelling calculations have established that there will be no predictive upstream or downstream increase or alteration of the 1% AEP, 1% AEP+CC & 0.1% AEP fluvial flood extents in the developed scenario

when compared to the undeveloped baseline conditions. In effect, the proposed development is not predicted to have any adverse impact on the existing hydrological regime of the surrounding area or to increase the flood risk to lands and properties beyond the site.

- 7.3.9. Section 11 of the SSFRA proceeds to subject the proposed development to the 'Justification Test' set out in Box. 5.1 of the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* with a view to establishing that the proposal is acceptable from a flood risk management perspective. The implication is that the proposal passes the 'Justification Test' with the conclusions and recommendations contained in Section 12 of the SSFRA serving to summarise the overall findings of the assessment.
- 7.3.10. At this point of my assessment, and in advance of further detailed analysis, I would suggest that cognisance be taken of the broader strategy that underpins the assessment of flood risk in line with the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'*. At the outset, the Guidelines advocate a risk-based sequential approach to flood risk management which aims to minimise the risk to persons and property by avoiding inappropriate development in areas at risk of flooding with the substitution of less vulnerable uses where avoidance is not possible followed by suitable mitigation and management where avoidance and substitution are not possible. Chapter 3 of the Guidelines sets out the key principles of the risk-based sequential approach by stating that developments in areas at risk of flooding are to be avoided in the first instance with consideration to be given to substituting a land use that is less vulnerable to flooding when avoidance is not possible. Only when both avoidance and substitution cannot take place should consideration be given to the mitigation and management of flood risk. In my opinion, this approach places an onus on applicants to provide some level of explanation as to why a particular site at risk of flooding has been selected for a given development.
- 7.3.11. Although the proposed development site is zoned as *'Existing Residential'* in the Kilkenny City and County Development Plan, 2021-2027 whereupon a 'dwelling' would constitute a 'permitted use' (Vol. 2: Section 2.9.3), it would appear that this land use zoning is not in fact supported by the Strategic Flood Risk Assessment prepared for the Development Plan. During the preparation of the Kilkenny City and County Development Plan, 2021-2027 it was initially proposed at draft stage that

(part of) the subject lands at Canal Walk be rezoned from '*Existing Residential*' (as then zoned in the Kilkenny City & Environs Development Plan, 2014-2020) to '*Amenity / Green links / Biodiversity*' on the basis that this zoning change was supported by the Strategic Flood Risk Assessment appended to the Strategic Environmental Assessment of the Draft Plan (wherein it was noted that the subject lands formed part of '*Area 5: From Lacken Mill to City's eastern boundary around the River Nore*' and that the River Nore floods along the Canal Walk (affecting the Canal Walk footpath and preventing vehicular access to three residences). Therefore, by applying the sequential approach with a view to avoiding vulnerable development within Flood Zones 'A' or 'B' it was proposed to rezone these greenfield lands from 'residential' to 'open space'). However, at the '*Material Alterations*' stage of the plan process the Elected Members of Kilkenny County Council opted to change the proposed zoning of the lands at Canal Walk from '*Amenity / Green links and Biodiversity*' to '*Residential*'. Despite the '*Report of the Chief Executive on Submissions to the Proposed Material Alterations to the Draft Kilkenny City & County Development Plan 2021-2027*' stating that the proposed '*Existing Residential*' zoning on site failed the '*Plan-making Justification Test*' (as per Appendix 'A' of that report) and a recommendation that the site should revert to the zoning proposed under the Draft Plan as '*Amenity / Green Links / Biodiversity Conservation / Open Space / Recreation*', the decision was made by the Members to zone the lands as '*Existing Residential*' with this provision subsequently being incorporated into the final Kilkenny City and County Development Plan, 2021-2027 as adopted. Notably, the Consolidated Strategic Flood Risk Assessment attached to the Development Plan continues to refer to flooding along Canal Walk and maintains its finding that the subject lands should be zoned as '*Open Space*'.

- 7.3.12. The effect of the foregoing serves to establish that although the proposed development site is zoned as '*Existing Residential*' in the current Development Plan, this is not supported by the Strategic Flood Risk Assessment undertaken as part of the Plan process with the zoning also having been found to fail the '*Plan-Making Justification Test*' (Box 4.1: 'Justification Test for development plans') of the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*'. At this point I would draw the Board's attention to Section 4.27a of the Guidelines (as inserted by Circular PL 2/2014) which states that in instances where a residential /

vulnerable land use zoning has been considered as part of the development plan preparation, including use of the Justification test as appropriate, and it is considered that said zoning remains appropriate, the development plan must specify the nature and design of structural or non-structural flood risk management measures required prior to future development in such areas in order to ensure that flood hazard and risk to the area and to other adjoining locations will not be increased. Not only has the subject zoning of the application site failed the 'Justification Test for development plans'), but no specific provision has been made in the adopted Plan for any necessary '*structural or non-structural flood risk management measures*' relevant to the development of the site. In this regard, I would suggest that no reliance can be placed on the recommendations set out in Section 6.1: '*Development Management and Flood Risk*' of the Consolidated Flood Risk Assessment attached to the Development Plan as this section of the SFRA begins from the point that all land zoned for development has passed the Justification Test for Development Plans, and therefore passes Part 1 of the Justification Test for Development Management.

7.3.13. The foregoing analysis is of relevance in the context of the Planning Authority's submission that the '*Existing Residential*' land use zoning does not imply that the site is safe to develop over the longer term. Further credence is given to this position by the caveat included in Section 2.9: '*Zoning Objectives for Kilkenny City*' of Vol. 2 of the Development Plan which emphasises that any 'permitted use' on zoned lands will still be subject to the normal planning process. While I would acknowledge the applicant's assertion that the '*Existing Residential*' land use zoning should afford a degree of certainty to the development proposal, from a review of the planning history of both the application site (including PA Ref. Nos. P16/731 & P16/732) and adjoining lands, the issue of flood risk has long been a concern for this area.

7.3.14. It is clear from the Site-Specific Flood Risk Assessment that the subject proposal involves the construction of a 'highly vulnerable' form of development (i.e. a dwelling house) within Flood Zone 'A' on lands where there is a high probability of flooding and where development should be avoided in the first instance and only considered following application of the 'Justification Test'. Accordingly, the SSFRA includes an appraisal of the proposed development pursuant to Box 5.1: 'Justification Test for development management' of the Guidelines (as has been examined by external

consultants on behalf of the Planning Authority) which I propose to analyse against the relevant criteria as follows:

1. *The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of these Guidelines:*

It has already been detailed in the preceding paragraphs that while the proposed development site is zoned as '*Existing Residential*' in the Kilkenny City and County Development Plan, 2021-2027, that land use zoning is not supported by the Strategic Flood Risk Assessment undertaken as part of the Plan process. Moreover, the zoning was specifically found to fail the 'Plan-Making Justification Test' (Box 4.1: 'Justification Test for development plans') of the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' (as per Appendix 'A' of the '*Report of the Chief Executive on Submissions to the Proposed Material Alterations to the Draft Kilkenny City & County Development Plan 2021-2027*'). Furthermore, despite a recommendation that the site should revert to the zoning proposed under the Draft Plan as '*Amenity / Green Links / Biodiversity Conservation / Open Space / Recreation*', the decision was made to zone the lands as '*Existing Residential*' in the final Plan notwithstanding that the Consolidated Strategic Flood Risk Assessment attached to the Development Plan continues to state that the subject lands should be zoned as '*Open Space*'.

In my opinion, although the subject site has been zoned as '*Existing Residential*' and the Development Plan as a whole has been adopted taking account of the Guidelines, it is questionable whether the final decision to zone the application site for residential purposes can be considered as having taken account of the guidance given that 1) the zoning was found to have failed the 'Justification Test for development plans'; 2) the Strategic Flood Risk Assessment of the Development Plan does not support the existing zoning; and 3) the development plan does not specify the nature and design of structural or non-structural flood risk management measures required for the development of the site (given the adopted land use zoning).

More broadly, there would seem to be legitimate reasons to avoid this flood risk area given its location outside of the city centre / core area and as there are alternative lands for the development proposed in areas at lower risk of flooding.

2. *The proposal has been subject to an appropriate flood risk assessment that demonstrates:*

(i) *The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk;*

The case has been put forward that the hydraulic modelling undertaken in consideration of the proposed developed scenario has yielded results which show that for the 1% AEP, 1% AEP+CC & 0.1% AEP flood events, there will be no significant, notable or quantifiable increase in extreme flood water levels within the River Nore when compared to the undeveloped baseline scenario i.e. the proposed development is not predicted to have any adverse impact on the existing hydrological regime of the surrounding area or to increase the flood risk to lands and properties beyond the site.

In its assessment of this analysis, the Planning Authority (as informed by its external consultants) has questioned why more detailed water level output data has not been provided using the results of the hydraulic modelling undertaken for the 'undeveloped' and 'developed' scenarios for the 1% and 0.1% AEP events to support the statement that the proposed development "*is not predicted to result in an adverse impact to the existing hydrological regime of the area or to increase flood risk to lands and properties upstream and downstream of the site or elsewhere*".

Given that the proposed development will involve the raising of ground levels by approximately 1.5m across a considerable extent of the application site in order to ensure that the finished floor levels of the proposed dwelling (FFL: 43.26mOD) and garage (FFL: 43.00mOD) are situated above the flood levels predicted within Flood Zones 'A' & 'B' as shown in the Site-Specific Flood Risk Assessment, it is my opinion that the proposed development will inevitably result in the displacement of flood waters during the 1% AEP, 1% AEP+CC & 0.1% AEP flood events to lands elsewhere with a loss of functional floodplain,

particularly in the absence of any compensatory storage at this location (which has not been discussed in the SSFRA). In this regard, I would concur with the Planning Authority that the information provided does not demonstrate that the proposed development would not increase the flood risk elsewhere. Therefore, the proposal fails the Justification Test.

(For the purposes of clarity, and in response to the grounds of appeal wherein it has been submitted that no account has been taken of the level of defence afforded to the proposed development site by the existing perimeter walling along those boundaries where fluvial flooding concerns arise (with reference also having been made to the building up of the site in recent years and the effort to mitigate surface flooding through the installation of culverting}, Section 2.25 of the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009*' states that the presence of flood protection structures should be ignored in determining flood zones as any areas protected by such flood defences still carry a residual risk of flooding from overtopping or breach of defences and as there may be no guarantee that the defences will be maintained in perpetuity).

(ii) *The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible;*

Although the proposal to raise the finished floor level of the proposed dwelling house to >300mm freeboard above the 0.1% AEP flood level will protect that property and accords with the Kilkenny City & County Development Plan SFRA, I would reiterate that no provision has been made for compensatory storage to balance the floodplain loss as a result of raising ground levels within Flood Zone 'A'. In this regard, it is of note that Section 6.4.1.2 of the SFRA sets out a number of criteria which should be complied with before the raising of ground and / or floor levels etc. can be considered a valid approach. These requirements specify that compensatory storage should be provided to balance the total area that will be lost through infilling where the floodplain provides static storage; that compensatory storage should be in close proximity to the area that storage is being lost from (i.e. within the same flood cell); and that any land proposed to provide the compensatory storage area

be within the ownership / control of the developer. Therefore, given the displacement of floodwaters consequent on the proposed development and the potential for increased flooding off site, I am not of the opinion that the proposal could be held to minimise the risk to people, property, the economy and the environment elsewhere.

Further concerns arise as regards access and egress (including flood escape routes) during flood events. Given the considerable depth and extent of flooding along Canal Walk / Canal Lane during the 10%, 1% & 0.1% flood events, it is clear that access / egress to and from the proposed development site will be significantly impeded (potentially for a prolonged period) both for occupants of the proposed dwelling house and for emergency services. Indeed, the analysis undertaken on behalf of the Planning Authority notes that flood levels on Canal Walk, the sole vehicular access route to the site, have been identified in the CFRAM study as being up to 0.5m deep in the 10% AEP, 0.5-1.0m deep for the 1% AEP event and 1.5-2.0m deep in the 0.1% AEP event, the effect of which will be to prevent any access to the property from private vehicles and most likely emergency services vehicles in events as frequent as the 10% AEP. The applicant's response to these concerns has been to state that he cannot be held solely responsible for addressing any incidences of flooding along Canal Walk / Canal Lane although he is prepared to cooperate with the Council with a view to accommodate possible flood relief works. In my opinion, this response does not address the wider risks arising from the introduction of an increased number of persons into a known and functional floodplain nor can it be held to minimise the flood risk to people, including emergency services.

Therefore, on the basis of the foregoing, I am not satisfied that the development as proposed can be considered to pass this aspect of the Justification Test.

(iii) *The development proposed includes measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk*

*management measures and provisions for emergency services access;
and*

The SSFRA has not identified any potential residual flood risk to the proposed development and states that it will not be dependent on any existing flood protection measures or on the design, implementation and funding of any future flood risk management measures. This conclusion would seem to derive primarily from the proposal to raise the ground levels on site to ensure that the finished flood levels of the proposed dwelling house and garage are set above the 0.1% AEP flood level.

While I would accept that the residual flood risk to the proposed dwelling house would appear to have been minimised, no consideration has been given to the potential residual impact attributable to the displacement of floodwaters onto surrounding lands. Furthermore, as previously mentioned, no provision has been made for escape routes from the proposed development or access by emergency services during flood events (i.e. the risks to persons) which is of relevance given the predicted frequency, depth and extent of flood events in the area.

(iv) The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.

It has been submitted that the proposed development site has previously had the benefit of planning permission for a dwelling house, the design of which was deemed acceptable and considered to add to the vibrancy and level of activity along Canal Walk as a public thoroughfare.

On balance, while I would accept that the overall design and layout of the proposed development is acceptable from a visual perspective and could make a positive contribution to the area, given that the proposal seeks to locate a 'highly vulnerable' development type (i.e. a dwelling house) on lands that are known to be at flood risk and were zoned for residential development despite not passing the 'Justification Test for Development Plans', I would

have reservations in reconciling the proposal with Section 7.5 of Volume 2 of the Development Plan which states the following:

‘It is Council policy to adopt a comprehensive risk-based planning approach to flood management to prevent or minimise future flood risk. In accordance with the Planning System and Flood Risk Management – Guidelines for Planning Authorities, the avoidance of development in areas where flood risk has been identified shall be the primary response’.

7.3.15. On the basis of the foregoing, it is my opinion that the proposed development fails several of the criteria set out in the ‘Justification Test for Development Management’ (Box. 5.1 of the Guidelines)

7.3.16. Accordingly, having considered the available information, it has been established that the current land use zoning of the proposed development site as ‘*Existing Residential*’ is not supported by the (Consolidated) Strategic Flood Risk Assessment prepared as part of the Kilkenny City and County Development Plan, 2021-2027 which continues to refer to flooding along Canal Walk and maintains its finding that the subject lands should be zoned as ‘*Open Space*’. It is also evident from Appendix ‘A’ of the ‘*Report of the Chief Executive on Submissions to the Proposed Material Alterations to the Draft Kilkenny City & County Development Plan 2021-2027*’ that the ‘*Existing Residential*’ zoning on site failed the ‘Plan-making Justification Test’ (Box 4.1: ‘Justification Test for development plans’) of the ‘*Planning System and Flood Risk Management, Guidelines for Planning Authorities*’ and that despite a recommendation that the site be zoned as ‘*Amenity / Green Links / Biodiversity Conservation / Open Space / Recreation*’, the decision was made by the Members to zone the lands ‘*Existing Residential*’ with this provision being incorporated into the Kilkenny City and County Development Plan, 2021-2027 as adopted.

7.3.17. Furthermore, it is apparent that the proposed development site is located within the predicted 1% AEP, 1% AEP+CC & 0.1% AEP fluvial flood events, which would generally correspond with the mapping for the South Eastern Catchment Flood Risk Assessment and Management (CFRAM) Study, and thus the site falls within Flood Zones ‘A’ & ‘B’ as defined by the ‘*Planning System and Flood Risk Management, Guidelines for Planning Authorities*’. In turn, it has been determined that the proposed construction of a ‘*Highly Vulnerable*’ dwelling house within Flood Zones ‘A’

& 'B' fails several of the criteria set out in the 'Justification Test for Development Management' (Box. 5.1 of the Guidelines).

7.3.18. By way of further comment, given that the subject the proposal will necessitate the raising of ground levels within a considerable extent of the development area in order to ensure that the proposed dwelling house etc. is situated above the flood levels predicted within Flood Zones 'A' & 'B' as shown in the Site-Specific Flood Risk Assessment, it is my opinion that the proposed development will result in the displacement of flood waters during 1% AEP, 1% AEP+CC & 0.1% AEP flood events to undefended lands located elsewhere alongside the River Nore (and potentially beyond). Although the design parameters of the development are such as to protect the proposed dwelling house, no provision has been made to compensate for the loss of floodplain storage consequent on the proposal and I do not accept that the application site is defended against flood risk or that the proposal will not result in the loss of any functional floodplain.

7.3.19. Therefore, on balance, in view of the site location and the risk of flooding, the sequential approach to flood risk whereby 'highly vulnerable' (residential) development should be avoided in areas at risk of flooding in the first instance, and having regard to the policies and objectives of the Development Plan in conjunction with the precautionary approach advocated by the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009'*, I am not satisfied that the submitted proposal accords with the provisions of the Guidelines or that it will not have a detrimental impact on the flood regime of the area to the detriment of other properties.

7.4. Other Issues:

7.4.1. Traffic Considerations:

The proposed development will be accessed from a narrow public road known as Canal Walk / Canal Lane which extends northeast / east from Bennettsbridge Road before terminating in a cul-de-sac at a public car park serving the canal walk / River Nore linear park. Notably, its carriageway is of limited width and without dedicated footpaths while there are minimal opportunities for vehicles to pass safely side-by-side due to the high stone walling which flanks both sides of the roadway along most of its length. In this respect, it is of note that the reports of both the Area Engineer

and the Road Design Section of the Local Authority have raised concerns as regards the adequacy of the available sightlines from the proposed entrance arrangement (particularly in an easterly direction towards the existing car park entrance) with the latter also referencing the implications for a potential Active Travel cycling / walking link from Lacken (on the eastern side of the River Nore) to the Bennettsbridge Road which may emerge out of the Local Transport Plan currently under development.

7.4.2. *Archaeological Implications:*

Given the proximity of SMR Ref. No. KK019-026206: 'Water Mill' (an archaeological monument), the site of a well (visible on 2nd Ed. OSI mapping), and the River Nore (which would have been a transport highway in prehistoric and medieval times), the Conservation Section has suggested that there is a possibility of features of archaeological interest being present on site and has therefore recommended that an Archaeological Impact Assessment be sought by way of further information.

- 7.4.3. While I would acknowledge the potential for features of archaeological interest to be present on site, I would advise the Board that no such concerns were raised during the assessment and approval of the previous development proposals permitted on site under PA Ref. Nos. P14/589 & P17/365 (which included for the retention of infilling works). Accordingly, on balance, I am inclined to suggest that any requirement for archaeological investigation could be addressed by way of condition should the Board be minded to grant permission.

7.5. *Appropriate Assessment:*

7.5.1. *Compliance with Article 6(3) of the Habitats Directive:*

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under Part XAB, Section 177U of the Planning and Development Act, 2000 (as amended) are considered fully in this section.

7.5.2. *Background on the Application:*

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive 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.

7.5.3. The applicant has submitted a screening exercise for Appropriate Assessment with the planning application which has been incorporated into Section 3 of the Natura Impact Statement prepared by NM Ecology Ltd. and dated 1st March, 2024.

7.5.4. This screening exercise has been prepared in line with current best practice guidance and provides a description of the proposed development (by reference to Section 2 of the NIS document) and identifies the potential for significant effects on European Sites within a possible zone of influence of the development and whether the proposed development is likely to have any significant effects upon any Natura 2000 sites found to have connectivity with the proposed development. By employing the source-pathway-receptor model of assessment, connectivity pathways for potential impacts within the Zone of Influence of the proposed development have been found in respect of the following 2 No. sites:

- *The River Barrow and River Nore Special Area of Conservation (Site Code: 002162):*

The proposed development site is located c. 80m from the River Nore (and 15m from a mill race' associated with the river). There is also a pond within the north-eastern corner of the site which may have a connection to the mill race. Accordingly, there is potential **hydrological** connectivity via surface water pathways between the proposed development site and the SAC.

The site is underlain by karst limestone which allows for the free movement of groundwater. In this regard, pollutants generated within the site could infiltrate to groundwater and pass through the underlying bedrock and subsoil to reach the SAC. Although it is unclear as to whether the river has any connection to surrounding groundwater, on a precautionary basis, it is considered that there is a potential **hydrological** connectivity via groundwater pathways between the proposed development site and the SAC.

(While it is acknowledged that the SAC appears to include the stone walling along the eastern perimeter of the site, this feature is considered unsuitable

for any of the qualifying interests of the SAC and thus there is no risk of direct impacts).

- *The River Nore Special Protection Area (Site Code: 004233):*

This SPA is located c. 70m east of the proposed development site and therefore it is considered that the potential also arises for **hydrological** connectivity via surface and ground water pathways between the proposed development site and the SPA.

(The River Nore SPA has been designated for the protection of a population of Kingfisher. This an exclusively riparian species that nests in riverside earth banks and feeds on fish. The application site does not contain suitable habitat for the species and thus there is no risk of impact).

7.5.5. No pathways to any other European Sites have been identified.

7.5.6. The applicant's screening exercise has thus concluded as follows:

'In Section 3 of Appropriate Assessment Screening for Development Management (OPR 2021), it is stated that the first stage of the AA process can have two possible conclusions:

- *No likelihood of significant effects: Appropriate assessment is not required and the planning application can proceed as normal. Documentation of the screening process including conclusions reached and the basis on which decisions were made must be kept on the planning file.*
- *Significant effects cannot be excluded: Appropriate assessment is required before permission can be granted. A Natura Impact Statement (NIS) will be required in order for the project to proceed.*

Potential surface water and groundwater pathways between the Site and River Barrow and River Nore SAC and River Nore SPA were identified in Section 3.2. Therefore, the second of the conclusions above would apply, as significant effects on the SAC cannot be ruled out at the screening stage. It will be necessary to proceed to Stage 2 of

the Appropriate Assessment to consider potential impacts on the qualifying interests of the SAC and mitigation measures.

However, it is possible to rule out direct effects on European sites (Section 3.1) and on birds associated with SPAs (Section 3.3), so it is not necessary to consider these impacts at Stage 2'.

7.5.7. Having reviewed the documentation submitted with the application, and the submissions received, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

7.5.8. Screening for Appropriate Assessment - Test of likely significant effects:

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

7.5.9. The proposed development is examined in relation to any possible interaction with European sites, i.e. designated Special Conservation Areas (SAC) and Special Protection Areas (SPA), to assess whether it may give rise to significant effects on any European Site.

7.5.10. Brief description of the development:

The applicant provides a description of the project in Section 2 of the NIS and elsewhere in the application documentation (including the 'letter of support' prepared by Peter Thomson Planning Solutions, the Engineering Services Design Report and the Site-Specific Flood Risk Assessment). In summary, the subject proposal comprises the construction of a single storey dwelling house with an ancillary garage structure and all associated site development works, including connection to water and foul sewerage mains services and the completion of an access arrangement onto the adjacent public road.

7.5.11. The application has been accompanied by a 'letter of support' (Peter Thomson Planning Solutions), Engineering Services Design Report, Site-Specific Flood Risk Assessment, Natura Impact Statement (incorporating an appropriate assessment screening exercise), plans and drawings, and the relevant statutory particulars.

- 7.5.12. The proposed development site is located along the southern side of a narrow roadway known as Canal Walk (or Canal Lane) on the edge of a mature suburban area and comprises a vacant plot of land, which would appear to have undergone some historical disturbance, including the raising and levelling of ground levels. It is presently overgrown by grassland and ruderal vegetation (Fossitt: 'dry meadows and grassy verges'). In addition to the existing detached dwelling houses along Canal Walk and the more conventional housing developed to the southwest along Bennettsbridge Road, the wider area is dominated by the grounds of Kilkenny Castle to the northwest, the canal walk / River Nore linear park to the northeast, and the 'Dukesmeadows' recreational / amenity / habitat area to the southeast.
- 7.5.13. An overview of the baseline environment is given in Section 2 of the NIS. This notes that the site is underlain by karstified limestone and a regionally important aquifer. In addition, although the soils on site are described as comprising 'made ground' (likely attributable to the raising and levelling of ground levels as previously permitted under PA Ref. No. P14/589), the subsoils are noted to be a mixture of limestone gravel and alluvium.
- 7.5.14. The closest major watercourse is the River Nore (approximately 80m east of the site) while a 'mill race' associated with that river passes c. 10-15m east of the site. There is a small pond in the north-eastern corner of the site, which is supplied by existing culverts to the north and east, and although the outflow from this pond is unclear, it may either soak to ground or have a connection to the mill race.
- 7.5.15. The River Nore flows southeast and merges with the River Barrow c. 40km downstream. Under the Water Framework Directive status assessments 2016 – 2021, the River Nore is of Good status for most of its course, but the estuarine waters (downstream of Inistioge) are of Moderate status downstream of New Ross.
- 7.5.16. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:
- Construction related – uncontrolled surface water / silt / construction related pollution.

7.5.17. Submissions and Observations:

All submissions and observations received from interested parties are set out in Section 3.0 of this report.

7.5.18. European Sites:

The proposed development site is encroached by the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) which extends into the eastern extent of the application site. In this regard, the applicant's screening exercise has stated that only the stone walling along the eastern perimeter of the development site falls within the SAC and that this feature is unsuitable for any of the qualifying interests of the SAC i.e. there is no risk of direct impacts. Having reviewed the available mapping from the National Parks and Wildlife Service, in my opinion, it would appear that the SAC extends further into the application site over an existing ditch / watercourse, however, no works are proposed in this area. The River Nore Special Protection Area (Site Code: 004233) is also located approximately 70m east of the site.

7.5.19. Sections 3.1 - 3.4 of the applicant's screening exercise consider the potential interactions of the proposed development with those Natura 2000 sites within a possible zone of influence of the proposed development. These are presented in the table below. Where a possible connection between the development and a European site has been identified, these sites are examined in more detail.

European Site	Qualifying Interest / Special Conservation Interest	Distance from the proposed development	Connections (source-pathway-receptor)	Considered Further in Screening
River Barrow and River Nore Special Area of Conservation (Site Code: 002162)	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Salicornia and other annuals colonising mud and sand [1310]	Extends into the eastern extent of the proposed development site.	Hydrological	Yes.

	<p>Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p> <p>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260]</p> <p>European dry heaths [4030]</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]</p> <p>Petrifying springs with tufa formation (Cratoneurion) [7220]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]</p>			
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	<p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p>Nore freshwater pearl mussel <i>Margaritifera durrovensis</i> [1990]</p> <p><i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Alosa fallax fallax</i> (Twaite Shad) [1103]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Lutra lutra</i> (Otter) [1355]</p> <p><i>Trichomanes speciosum</i> (Killarney Fern) [1421]</p>			
River Nore Special Protection Area (Site Code: 004233)	Kingfisher <i>Alcedo atthis</i> [A229]	c. 70m east of the site.	Hydrological	Yes.

7.5.20. Identification of Likely Effects:

The construction phase of the proposed development will involve excavations and the disturbance of soil etc. which gives rise to the possibility of indirect negative

impacts on downstream water quality through the accidental release of suspended solids / sediment etc. or the discharge of hydrocarbons and / or other pollutants by way of contaminated surface water runoff. In this regard, drains or watercourses can act as a hydrological conduit for contaminated surface waters between development sites and any downstream Natura 2000 sites with any associated deterioration in water quality having a potentially negative impact on downstream aquatic habitats and / or species identified as qualifying interests / special conservation interests. Given that the proposed development site is likely to be hydrologically linked to the River Barrow and River Nore SAC and the River Nore SPA via surface and ground water pathways, the potential arises for any contaminated waters released during the construction phase to enter the aquatic environment thereby resulting in a deterioration in downstream water quality.

7.5.21. Section 4.2 of the Natura Impact Statement documentation references the potential indirect effects of changes in water quality attributable to pollution incidents during the construction phase of the proposed development. It states that while significant effects on the qualifying interests of the European Sites are unlikely given the dilution capacity of freshwater within the River Nore, from a precautionary perspective, it is possible that a large-scale or sustained pollution event could result in significant impacts which would conflict with some of the relevant conservation objectives. By extension, consequential negative effects would include a degradation of the aquatic environment and a reduction in water quality which could detrimentally impact on aquatic species designated as qualifying interests of the SAC as well as on prey species (for Otter and Kingfisher as qualifying interests of the SAC and SPA respectively).

7.5.22. No impacts on water quality are anticipated during the operational phase of the development as foul sewerage will be discharged to the public mains system while stormwater will be managed on site by an array of a Sustainable Urban Drainage System.

7.5.23. Cumulative / In-combination Effects:

It is not envisaged that the proposed development will give rise to any in-combination / cumulative effects.

7.5.24. Mitigation Measures:

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

7.5.25. Screening Determination:

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act, 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European Site Nos. 002162 & 004233 in view of the sites' Conservation Objectives and Appropriate Assessment (and submission of a NIS) is therefore required.

7.5.26. Stage 2: Appropriate Assessment:

The subject application has been accompanied by a Natura Impact Statement (March, 2024) prepared by NM Ecology Ltd. which examines and assesses the potential adverse effects of the proposed development on the River Barrow and River Nore Special Area of Conservation and the River Nore Special Protection Area.

7.5.27. This NIS has been informed by a desk-top analysis of various source material, including details of the qualifying interests and conservation objectives for the European Sites, data derived from the Geological Survey of Ireland (bedrock, soil, subsoil, surface water & groundwater mapping), and information from the National Biodiversity Data Centre

7.5.28. The NIS includes a description of the project and the receiving environment and is stated to be based on standard methods and current best practice guidance, including '*Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities*' (DoEHLG, 2009). It outlines the characteristics of the relevant designated sites before subsequently setting out the potential impacts arising from the construction and operation of the development on those European Sites. Details are also provided of those mitigation measures necessary to ensure that any direct or indirect impacts on the Natura 2000 sites are abated. No likely significant cumulative or in-combination impacts are anticipated.

7.5.29. The NIS thus concludes as follows:

‘The proposed mitigation measures will avoid the release of pollutants to surface water or groundwater during the construction of the proposed development, and thus reduce the magnitude and likelihood of potential pollution events to negligible levels. Subject to these measures, it can be objectively concluded that the proposed development will not adversely affect the integrity of the River Barrow and River Nore SAC, River Nore SPA or any other European sites, either alone or in combination with other plans or projects. There is no scientific doubt in relation to this conclusion.

This concludes Stage 2 of the AA process. Regulation 42(16) of the EC (Birds and Natural Habitats) Regulations 2011 (as amended) states that “a public authority shall give consent for a plan or project, or undertake or adopt a plan or project, only after having determined that the plan or project shall not adversely affect the integrity of a European site”. The information presented in this NIS is sufficient for Kilkenny City & County Council to reach this conclusion’.

7.5.30. Having reviewed the documentation available to me, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation objectives of the European sites listed above, alone, or in combination with other plans and projects.

7.5.31. Appropriate Assessment of Implications of 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.

7.5.32. I have relied on the following guidance as part of this assessment:

- 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 (2009).

- 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.
- Managing Natura 2000 sites, The provisions of Article 6 of the Habitats Directive 92/43/EEC, EC (2018).

7.5.33. European Sites:

The relevant European sites subject to Stage 2 Appropriate Assessment are as follows:

- The River Barrow and River Nore Special Area of Conservation (Site Code: 002162)
- The River Nore Special Protection Area (Site Code: 004233)

7.5.34. A description of the sites and their Conservation and Qualifying Interests / Special Conservation Interests is set out in the NIS as well as the screening assessment set out above. I have also examined the Natura 2000 data forms where relevant and the Conservation Objectives supporting documents for these sites available through the NPWS website (www.npws.ie).

7.5.35. The main aspects of the proposed development that could adversely affect the conservation objectives of European sites include:

- Surface and ground water-related pollution during the construction phase giving rise to a change in water quality as a result of sediment-laden run-off and pollutants (hydrocarbons and other contaminants) entering the River Barrow and River Nore Special Area of Conservation and the River Nore Special Protection Area.

7.5.36. Evaluation of Likely Effects:

Details of the River Barrow and River Nore Special Area of Conservation and the River Nore Special Protection Area and their qualifying interests are set out in Table 1 (and Sections 3 & 4) of the NIS with the pertinent conservation objectives aiming to maintain or restore the favourable conservation condition of the Annex I habitat(s) and / or Annex II species for which the SAC & SPA has been selected.

(The status of the freshwater pearl mussel (*Margaritifera margaritifera*) as a qualifying Annex II species for the River Barrow and River Nore SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this species).

- 7.5.37. Although the River Barrow and River Nore Special Area of Conservation extends into the easternmost extent of the proposed development site, no works are proposed in this area and, therefore, the proposal will not directly impact on the SAC through the loss or fragmentation of habitats either listed as qualifying interests (noting the absence of any such habitats on site) or otherwise supportive of qualifying species. Furthermore, given the separation distance between the proposed development and the River Nore SPA, and as the application site does not contain any habitat that would support its qualifying interest (i.e. Kingfisher, an exclusively riparian species that nests in riverside earth banks and feeds on fish), there will be no direct impact through the loss or fragmentation of habitats utilised by that species for which the SPA has been designated.
- 7.5.38. The potential for hydrological connectivity via ground and surface water pathways between the proposed development site and onwards to the SAC & SPA gives rise to the possibility of indirect adverse effects on qualifying interests (including both aquatic species designated as qualifying interests of the SAC as well as on prey species for Otter and Kingfisher which are designated as qualifying interests of the SAC and SPA respectively), due to changes in water quality as a result of sediment-laden run-off and / or pollution incidents (such as the release of hydrocarbons and other contaminants) during the construction phase of the proposed development entering the River Barrow and River Nore Special Area of Conservation and the River Nore Special Protection Area.
- 7.5.39. In response to the foregoing, Section 4.3 of the NIS sets out a series of mitigation measures intended to avoid impacts on SAC & SPA during the construction of the proposed development, by preventing fine sediments, concrete / cement, hydrocarbons or any other pollutants from reaching the river. These are all standard pollution control measures that are regularly used on construction sites and have been developed with reference to the '*Guidelines on protection of fisheries during construction works in and adjacent to waters*' (Inland Fisheries Ireland, 2016).

These measures can be summarised as follows:

- *Suspended sediments:*
 - Excavation works will be suspended if high intensity local rainfall events are forecast (e.g. >10 mm/hr, >25 mm in a 24 hour period, or high winds).
 - If any excavations need to be dewatered, waters contaminated with SS will be pumped into a settlement pond or tank, and discharged at greenfield runoff rates to a soakaway located in the south of the site.
 - Stockpiles of mud, sand or other sediments will be levelled and compacted, and will be covered with thick plastic membranes to limit wind / rainwater erosion.
 - Dust suppression and road cleaning measures will be implemented, as outlined in Section 8 of the IFI guidelines.
- *Concrete and cement:*
 - Concrete pouring / mixing will only take place in dry weather conditions. It will be suspended if high-intensity local rainfall events are forecast (e.g. >10 mm/hr, >25 mm in a 24 hour period or high winds).
 - If any cement-based products will be stored on-site, they will be kept in a sheltered area, and will be covered (e.g. with a thick plastic membrane) to prevent spread by wind.
 - Ready-mix lorries and concrete-batching plant will be cleaned off-site at the concrete-batching plant. If on-site wash out facilities for concrete are required, they will be located in the south of the site.
- *Hydrocarbons and chemicals:*
 - Any fuel, oil or chemical containers must be stored in a designated bunded area that has sufficient capacity to retain any spills.
 - If any on-site refuelling is required, it will take place in the south of the site, and over drip trays.
 - While in operation, diesel pumps, generators or other similar equipment will be placed on drip trays to catch any leaks.

- A spill kit will be kept on-site. If any spills occur, appropriate measures will be taken to intercept hydrocarbons or chemicals on-site before they can leave the site.

7.5.40. Proposed Mitigation Measures:

On balance, I would accept that the implementation of best practice and adherence to the mitigation measures set out in the NIS will serve to avoid any impacts on down-gradient water quality as well as any associated disturbance of habitats and / or species of qualifying interest thereby ensuring that there are no significant adverse effects on protected sites or species within Natura 2000 sites.

7.5.41. Cumulative and In-Combination Effects:

I have considered cumulative / in-combination effects with regard to the National Planning Framework, the Regional Spatial and Economic Strategy for the Eastern and Midland Region, the Kilkenny City & County Development Plan, and surrounding developments. No likely significant cumulative effects on any Natura 2000 sites are expected as a result of the proposed development.

7.5.42. In this regard, having considered the planning history of the surrounding area, I am satisfied that the proposed development, subject to suitable mitigation, would not be likely to give rise to any in-combination / cumulative impacts with other plans or projects which would adversely affect the integrity of any Natura 2000 site and would not undermine or conflict with the Conservation Objectives applicable to same.

7.5.43. Integrity Test:

Following the Appropriate Assessment and the consideration of mitigation measures, I can ascertain with confidence that the project would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) or the River Nore Special Protection Area (Site Code: 004233) in view of the Conservation Objectives of these sites. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

7.5.44. 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.

7.5.45. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on two European Sites, the River Barrow and River Nore Special Area of Conservation and the River Nore Special Protection Area. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of these European sites in light of their conservation objectives.

7.5.46. Following an Appropriate Assessment, it has been ascertained 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 Special Area of Conservation or the River Nore Special Protection Area, or any other European site, in view of the sites' Conservation Objectives.

7.5.47. This conclusion is based on:

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

8.0 Recommendation

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. Having regard to the location of the proposed development in an area liable to flood events and to the provisions of 'The Planning System and Flood Risk Management Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in November 2009, the Board is not satisfied, on the basis of submissions made in connection with the planning application and the appeal, that the subject site is an appropriate location for the scale and type of development proposed or that the proposed development would not result in serious injury to the amenities of persons and property as a result of this. It is considered that the proposed development would negatively impact on the flood regime of the surrounding area and the amenities of surrounding properties and would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Robert Speer
Senior Planning Inspector

28th February, 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-321221-24		
Proposed Development Summary	A single storey dwelling on a partially developed residential site permitted under planning permissions P03/629 and P14/589, to include for ancillary garage / storage, completion of site entrance works, internal access drive, site boundary treatments, site drainage and all associated site development works.		
Development Address	Canal Walk, Dukesmeadows, Kilkenny, R95 P820.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	✓	Class 10(b)(i) – Part 2 of Schedule 5 Class 10(b)(iv) – Part 2 of Schedule 5	Proceed to Q3.
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			
No	✓	Class 10(b)(i) - Part 2, Schedule 5: Construction of more than 500 dwelling units Class 10(b)(iv) – Part 2, Schedule 5: Urban development which would involve an area greater than 2 hectares in the case of a business district, 10	Proceed to Q4

		hectares in the case of other parts of a built-up area and 20 hectares elsewhere.	
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	✓	<u>Class 10(b)(i):</u> Threshold: 500 No. dwelling units Proposal: 1 No. dwelling house <u>Class 10(b)(iv):</u> Threshold: Urban development which would involve 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 and 20 hectares elsewhere. Proposal: 0.223 hectares	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	✓	Pre-screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Form 2

EIA Preliminary Examination

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Proposed Development Summary	A single storey dwelling on a partially developed residential site permitted under planning permissions P03/629 and P14/589, to include for ancillary garage / storage, completion of site entrance works, internal access drive, site boundary treatments, site drainage and all associated site development works.
Development Address	Canal Walk, Dukesmeadows, Kilkenny, R95 P820.
<p>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.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
<p>1. Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The proposed development comprises the construction of a single dwelling house on an infill site on the edge of a mature suburban area characterised by residential development. Given the surrounding pattern of development, the proposal is not considered exceptional in the context of neighbouring housing and the receiving environment.</p> <p>The standalone development is comparatively modest and does not require the use of substantial natural resources or give rise to any significant waste, emissions or pollutants. By virtue of the design, nature and scale of the development proposed, it does not pose a risk of major accident and/or disaster, or is vulnerable to climate change (noting that finished floor levels will be raised over predicted flood levels). It presents no overt risk to human health.</p>

2. Location of development

(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).

The proposed development is located in an established residential area. Water and foul sewerage services are available via connection to the public mains while stormwater is to be managed on site using Sustainable Urban Drainage Systems. Access is available directly from the adjoining public road.

The River Barrow and River Nore Special Area of Conservation (Site Code: 002162) extends into the easternmost extent of the application site over an existing ditch / watercourse – no works are proposed in this area. The River Nore Special Protection Area (Site Code: 004233) is located approximately 70m east of the site. Potential impacts on European Sites are addressed in the accompanying Natura Impact Statement.

The development site is not subject to any architectural or archaeological designations. It is outside the Kilkenny Castle Architectural Conservation Area and beyond the limits of any recorded features of archaeological interest.

The site is located within an identified fluvial floodplain (Flood Zones 'A' and 'B') and the proposal has been accompanied by a Site-Specific Flood Risk Assessment.

Owing to the serviced urban nature of the site and the infill character of the development, I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.

3. Types and characteristics of potential impacts Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Having regard to the modest nature and scale of the proposed development, the site location on serviced lands in a built-up urban area, the availability of mains water and foul sewerage services, 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.
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA is not required.

Inspector: _____

Date: _____

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)