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# An Bord Pleanála



## Inspector's Report

Ref.: PL08.247469

Development: To construct a dwelling house, ancillary services and areas.

Reen, Ross Road, Killarney, Co. Kerry.

### **PLANNING APPLICATION**

Planning Authority: Kerry County Council

Planning Authority Ref.: 16/755

Applicant: Rosaleen Randles

Type of Application: Permission

Planning Authority Decision: Refusal

### **APPEAL**

Type of Appeal: First Party v. Decision

Observers: An Taisce  
Killarney Nature Conservation Group

INSPECTOR: Robert Speer

Date of Site Inspection: 29<sup>th</sup> December, 2016

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## **1.0 INTRODUCTION**

1.1 The Board is advised to determine this appeal in conjunction with ABP Ref. No. PL08.247468 on the basis that they are located on immediately contiguous sites.

## **2.0 SITE LOCATION AND DESCRIPTION**

2.1 The proposed development site is located on the periphery of Killarney town, approximately 1.7km southwest of the town centre, along the southern side of Ross Road in an area surrounded by wet woodland and situated between a small cluster of housing to the northeast and the Killarney National Park to the southwest. The surrounding area is dominated by amenity land uses and is characterised by mature trees and impressive woodlands with Ross Road itself being of considerable local importance in providing access to Ross Castle. The site itself has a stated site area of c. 0.2048 hectares, is rectangular in shape, and consists of approximately half of a larger vacant plot of land which would appear to have been raised through the importation of fill material and which is presently in use for agricultural purposes (i.e. horse grazing). Notably, the existing roadside housing to the northeast presently represents the extent of the built-up area of Killarney town with no further development between same and Ross Castle.

## **3.0 DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1 The proposed development consists of the construction of a substantial single storey dwelling house based on a relatively complex building footprint with a stated floor area of 233.83m<sup>2</sup> and an overall ridge height of 6.364m. The overall design is generally conventional and employs an asymmetrical construction with projecting front gabled features. External finishes include blue / black slates / tiles, a smooth plaster render and the feature use of stonework.

3.2 Access to the site will be obtained via a new combined entrance arrangement shared with the dwelling house proposed on the adjacent site to the immediate northeast under PA Ref. No. 16756 / ABP Ref. No. PL08.247468. Water supply and foul water sewerage services are available from the public mains, although it will be necessary to install a pump and sump chamber in order to facilitate the pumping of foul effluent from the proposed dwelling house along a rising main for a distance of c. 340m in order to connect into the existing sewerage system. Surface water runoff will be disposed of via an on site soakaway.

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*N.B.* On 14<sup>th</sup> April, 2014 a Certification of Exemption pursuant to the provisions of Section 97 of the Planning and Development Act, 2000, as amended, was issued by the Planning Authority with regard to the subject site.

#### **4.0 RELEVANT PLANNING HISTORY**

##### **4.1 On Site:**

PA Ref. No. 145476. Application by Susan and Rosaleen Randles for permission to construct 2 No. dwelling houses, ancillary services and areas. This application was withdrawn.

##### **4.2 On Adjacent Sites:**

PA Ref. No. 16756 / ABP Ref. No. PL08.247468. Application by Susan Randles for permission to construct a dwelling house, ancillary services and areas at Reen, Ross Road, Killarney, Co. Kerry. Whilst a notification of a decision to grant permission was issued by the Planning Authority on 28<sup>th</sup> September, 2016, this decision has since been appealed and a determination by the Board is pending.

#### **5.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION**

##### **5.1 Decision:**

On 28<sup>th</sup> September, 2016 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following single reason:

- The site is located in an area identified as being at risk of flooding as part of the Catchment Flood Risk Assessment and Management Study (CFRAM). In particular, the lands flood in the 1 in 100 (1% AEP) and 1 in 1000 (0.1% AEP) year events. In accordance with the Department Guidelines, The Planning System and Flood Risk Management, these lands are located in Flood Zone A.

Section 13.2 of the County Development Plan 2015-2021 (Flood Risk Management Standards) states that all proposals for development shall avoid inappropriate development in areas at risk of flooding.

Accordingly, it is considered that the development within an area that is at risk of flooding would materially contravene the County Development Plan and would not be in accordance with the Planning System and Flood Risk

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Management Guidelines (DoEHLG 2009). The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

## **5.2 Objections / Observations:**

A total of 2 No. submissions were received from interested parties and the principle grounds of objection contained therein can be summarised as follows:

- A previous planning application on site for the construction of 2 No. dwelling houses (PA Ref. No. 14/5476) constituted speculative development.
- The application site has previously been infilled and it is unclear as to whether or not planning permission was obtained for same.
- The site adjoins Killarney National Park and the infilled lands are similar to those located elsewhere along this roadway.
- The proposed development site is zoned as 'Secondary Special' and should be considered to comprise a buffer zone.
- The site is almost surrounded by a Special Area of Conservation.
- The proposed development is located in a wetland area and the Killarney wetlands are one of Ireland's most important ecosystems.
- Those lands on the periphery of Killarney National Park should reflect the ambience of the park itself.
- The proposed development site is located in an area at risk of flooding.
- The application site forms part of a corridor used by deer between Muckross and Ross Castle.
- The proposed dwelling house would be visually obtrusive along a key tourist route.
- The site should be restored through the planting of wetland alder.

## **5.3 Internal Reports:**

*Biodiversity Officer:* States that the proposed development is located adjacent to the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation and the Killarney National Park Special Protection Area before noting that the subject application has been accompanied by a Stage 2 Appropriate Assessment Natura Impact Statement. The report proceeds to concur with the findings of the NIS and concludes by recommending that the implementation of the mitigation measures outlined in the NIS be required as a condition of any grant of permission.

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*Executive Planner (Flood Risk Assessment):* States that the site is located in an area identified as being at risk of flooding as part of the Catchment Flood Risk Assessment and Management Study (CFRAM) and, in particular, that the land in question floods in both 1 in 100 (1% AEP) and 1 in 1,000 (0.1% AEP) year events. It is further asserted that the subject site is located within 'Flood Zone A' in accordance with the Planning System and Flood Risk Management Guidelines (DoEHLG 2009). The report proceeds to note that the application site (and neighbouring site) has previously been filled and states that the proposal to raise the site and the finished floor level will not mitigate against the flood risk. It is also submitted that the flood depths on the public road adjacent to the proposed development site for the Q1000 event are predicted to be >0.5m and <1.0m which would render the application site inaccessible during a flood event whilst sanitary facilities would be inoperable during a flood event due to the surcharging of the foul sewerage network. The report subsequently references the following Departmental Guidance as regards development proposals within 'Flood Zone A':

*'Most types of development would be considered inappropriate in this zone including highly vulnerable development, such as hospitals, residential care homes, Garda, fire and ambulance stations, dwelling houses and primary strategic transport and utilities infrastructure. Development in this zone should be avoided and / or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Only water-compatible development, such as docks and marinas, dockside activities that require a waterside location, amenity open space, outdoor sports and recreation, would be considered appropriate in this zone.'*

The report concludes by stating that residential development should not be permitted on lands located within 'Flood Zone A' and that the subject application should be refused permission.

#### **5.4 Prescribed Bodies / Other Consultees:**

*Irish Water:* Recommends that further information be sought with regard to the applicant's proposals for connection to the mains sewerage network.

*Health Service Executive / Environmental Health Officer:* No observations / comments.

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*Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs:* Notes that the proposed works are located immediately adjacent to the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation and states that the works should not negatively impact on the adjacent priority habitat of Wet Woodland which is dependent on suitable hydrological conditions. It is also stated that if construction is permitted care should be taken to ensure that no pollutants or building materials enter or impact upon the SAC.

*An Taisce:* States that the proposed development site is located in a very sensitive, high amenity area along Ross Road and that there are serious concerns that the type of development proposed would have significant negative environmental effects. In this regard, specific reference is made to the following:

- The site location along a key tourist route between Killarney town and Ross Castle / Killarney National Park. The area is popular with locals and visitors alike and provides access to the lake and woodlands for recreational purposes.
- It is essential that the surrounding natural landscape, which primarily comprises wet woodland, is protected as there has been a considerable increase in housing density in this area in recent years with an associated urbanisation of the landscape. The proposed dwelling house represents a further extension of development along this important tourist route and would also result in the creation of potential 'infill' sites.
- Contrary to the response contained in the planning application form, the subject site has had various environmental designations over the years.
- The site previously comprised a wetland area and would have flooded. It has since been infilled and the levels raised, but the potential for flooding remains.
- The infilling / trunking of the site is confirmed in Section 4.2.4 of the Natura Impact Statement which states that *'The proposal site was infilled c. 16 years ago with inert building material and now constitutes a raised grassland field, currently used for grazing horses'*. The source of the 'inert building material' is unknown and it would be good practice to check same in order to ensure that there are no undesirable foreign materials present.
- The proposals for the disposal of surface water runoff require further clarity.
- The wider area is primarily composed of wet woodland, a valuable habitat, and much of the surrounding land has been designated as a Special Area of Conservation whilst the north-western corner of the site adjoins a

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Special Protection Area. A map included in the Killarney Town Development Plan, 2009-2015 shows the SAC extending much further northeast with only the houses existing at the time being excluded from it, however, development pressures have since led to a large number of houses being permitted in the vicinity of Bunrower House and portions of the wet woodland were filled in to accommodate same. The result of the foregoing has been the moving of the SAC boundary much further southwest.

- The proposed development site is close to a migratory route used by a protected species, the lowland red deer, enabling travel from the adjoining Killarney National Park to other grazing areas south of the town and eventually linking up with the National Park lands at Muckcross. In normal times there is plenty of space for the animals to pass, but when the lake water rises this space narrows considerably and, therefore, the proposed development could impact on the movement of deer.
- Whilst the Flood Risk Assessment refers to the storm event of 18<sup>th</sup> / 19<sup>th</sup> November, 2009, it does not consider the floods of January, 2016 which are believed locally to be the worst ever experienced in the Ross Road area. Even if the proposed dwelling house were not to flood, water levels along the public road would make it difficult / dangerous to access same.
- Due to the impossibility of accurately predicting changes in rainfall levels attributable to climate change it could be difficult to undertake an accurate flood risk assessment. Any flooding of the proposed dwelling house could render it uninhabitable in a relatively short time and would result in difficulties obtaining home insurance.
- Due to the site location along a key tourist route, landscaping of the proposed development will not completely screen it from view. The proposal will be visually obtrusive in what could be described as an unspoilt wetland area.
- The current land use zoning of the site as 'Agriculture' (which permits landowners to build dwelling house for their own use) is inappropriate considering that the site is surrounded by wet woodland, is close to Natura 2000 sites, and is less than 300m from Killarney National Park.

## **6.0 GROUNDS OF APPEAL**

The grounds of appeal are summarised as follows:

- The *Flood Risk Management Guidelines* defines 3 No. flood zone types as follows:

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*Flood Zone A* – Where the probability of flooding from rivers and the sea is highest (greater than 1% or 1 in 100 for river flooding or 0.5% or 1 in 200 for coastal flooding)

*Flood Zone B* – Where the probability of flooding from rivers and the sea is moderate (between 0.1% or 1 in 1,000 and 1% or 1 in 100 for river flooding and between 0.1% or 1 in 1,000 year and 0.5% or 1 in 200 for coastal flooding); and

*Flood Zone C* – Where the probability of flooding from rivers and the sea is low (less than 0.1% or 1 in 1,000 for both river and coastal flooding). Flood Zone C covers all areas of the plan which are not in zones A or B.

Table 3.1 of the Flood Risk and Management Guidelines defines 3 No. vulnerability classes and indicates the land uses and types of development that are generally included in each. From a review of Table 3.2 of the Guidelines, the proposed dwelling house can be classified as a highly vulnerable development and is therefore appropriate to Flood Zone C only. Developments that are not listed as being appropriate require a 'Justification Test'.

The South Western CFRAM Study flood risk map of the area for the current climate scenario (as published by the OPW & Mott MacDonald Ireland in June, 2014) shows a predicted 1% AEP water surface level of 20.28mOD and a 0.1% AEP water surface level of 20.85mOD in Lough Leane. The corresponding maps for the 1% AEP and 0.1% AEP flood depths were published in June 2016. The CFRAMS future scenario flood levels, which take the possible effects of climate change into account, have not yet been published.

The subject site is shown on the CFRAM map as being partly covered by the extents of both the 1% AEP and 0.1% AEP flood events and partly outside the highest flood event. The site is therefore within all 3 No. flood zones.

- The flood risk at the site and the surrounding area is due solely to the potentially high water surface levels in the lake following sustained high levels of rainfall in the lake catchment. There are no other potential sources of flooding at the site. The development of the site cannot affect



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lake levels under any circumstances and therefore cannot alter the flood risk elsewhere. The flood risk relates only to the potential for flooding of the proposed dwelling.

- It is proposed to construct the dwelling house with a finished floor level that is high enough to ensure that it is within Flood Zone C. Part of the Curtailment of the dwelling will remain within Flood Zones A and B with no consequent risk to the dwelling. The finished floor level should be higher than the future 1% AEP flood level taking the effects of future climate change into account. The CFRAM study has yet to give a value for this level but it is unlikely to be higher than the current 0.1% AEP flood level. It is proposed to construct the dwelling house with a finished floor level of 21.29mOD, which is 0.44m higher than the predicted 0.1% AEP level.
- Since part of the application site is currently in Flood Zones A and B, the proposal must satisfy all the criteria of the Justification Test as outlined in Box 5.1 of the Flood Risk Management Guidelines. The proposed mitigation measure in relation to the finished floor level ensures that all of these criteria have been met and the proposed development is therefore appropriate in the context of the Flood Risk Management Guidelines.
- Notwithstanding the fact that the site includes small areas that are in Flood Zones A and B, the dwelling will be constructed with a finished floor level of 21.29mOD and this will be within Flood Zone C and will not be at risk of flooding. The development as proposed is therefore appropriate from the prospective of current and long-term flood risk.
- The proposed development complies with the policies and objectives of the Kerry County Development Plan, 2015-2021.

## **7.0 RESPONSE TO GROUNDS OF APPEAL**

### Response of the Planning Authority:

None.

## **8.0 OBSERVATIONS:**

### 8.1 An Taisce:

- The proposed development site is located in a very sensitive, high amenity area along Ross Road and there are serious concerns that the type of development proposed would have significant negative environmental effects.
- The site is located along a busy tourist route between Killarney town and Ross Castle / Killarney National Park. The area is popular with locals and

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- visitors alike and provides access to the lake and woodlands for recreational purposes.
- There is a lack of clarity as regards some of the information provided in the planning application form as follows
    - Contrary to the response contained in the planning application form, the subject site has had various environmental designations over the years.
    - The site previously comprised a wetland area and would have flooded. It has since been infilled and the levels raised, but the potential for flooding remains.
    - The infilling / trunking of the site is confirmed in Section 4.2.4 of the Natura Impact Statement which states that *'The proposal site was infilled c. 16 years ago with inert building material and now constitutes a raised grassland field, currently used for grazing horses'*. The source of the 'inert building material' is unknown and it would be good practice to check same in order to ensure that there are no undesirable foreign materials present.
  - Due to its location relative to the town centre, Ross Road is a popular residential area, however, over the years there has been a high demand for both private residences and tourist accommodation along this roadway. An examination of the Killarney Town Development Plans since 1977 shows the gradual progression of residential development in the Bunrower area in addition to the change in land use zoning from 'amenity' to 'residential' and 'agricultural' use.
  - The site is located in a wet woodland area alongside an important tourist route (i.e. Ross Road) and it is considered to be essential that the existing natural landscape is protected.
  - Planting along the roadside boundary will not completely screen the proposed dwelling house from view and the site location close to Killarney National Park could give the impression that the dwelling is within the grounds of the park itself. Accordingly, the proposed dwelling house will appear as an obtrusive element in what should be an area of unspoilt wetland.
  - A number of new dwellings have been built in recent years to the northeast of the application site which has led to a considerable increase in housing density and the urbanisation of the landscape. The proposed dwelling house would constitute a further extension of development along this important tourist route.

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- The proposed dwelling house would be detached from the existing cluster of housing and would create a demand for infill housing.
  - The proposed dwelling house is likely to be more prominent than existing housing as the site has already been raised so that the finished floor level will be significantly above the adjacent roadway.
  - The wider area is primarily composed of wet woodland, a valuable habitat, and much of the surrounding land has been designated as a Special Area of Conservation whilst the north-western corner of the site adjoins a Special Protection Area. The SAC originally extended further northeast, however, as the land use zoning was changed to 'residential' portions of the wet woodlands were filled in to accommodate development and thus the SAC boundary was moved southwest.
  - The proposed development site is close to a migratory route used by a protected species, the lowland red deer, which enables travel from the adjoining Killarney National Park to other grazing areas south of the town and eventually linking up with the National Park lands at Muckross. In normal times there is plenty of space for the animals to pass, but when the lake water rises this space narrows considerably and, therefore, the proposed development could impact on the movement of deer.
  - Whilst the Flood Risk Assessment refers to the storm event of 18<sup>th</sup> / 19<sup>th</sup> November, 2009, when heavy rainfall over a number of days caused the lake to rise and the water came up Ross Road to the application site, it does not consider the floods of January, 2016 which are believed locally to be the worst ever experienced in the Ross Road area. In this instance it was clear that even if the proposed dwelling house were not to flood, the water level on the public road would make access to the site difficult / dangerous
  - The Local Authority has noted that during a flood event, sanitary facilities would be inoperable due to surcharging of the foul sewerage network.
  - The application site is located within Flood Zone A and the proposed development would be highly vulnerable.
  - It is difficult to accurately predict future rainfall levels as it is becoming clear that climate change is having a greater than expected effect. Any flooding of the proposed dwelling house could render it uninhabitable in a relatively short time and would result in difficulties obtaining home insurance.
  - The current zoning of the subject site as 'Agriculture' in the Killarney Town Development Plan, 2009-2015, which permits landowners to build dwelling houses for their own use, is inappropriate considering that the site is

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- surrounded by wet woodland, is close to Natura 2000 sites, and is less than 300m from Killarney National Park.
- The subject proposal would set an undesirable precedent for further development along Ross Road.
  - The public road adjoining the site floods frequently and the indications are that these flood events are happening more often and that the water reaches a higher level.
  - The site is located along a busy tourist route and the proposed dwelling house would have a negative visual impact.

### 8.2 Killarney Nature Conservation Group:

- The proposed development is located in a wetland area and the Killarney wetlands are one of Ireland's most important ecosystems.
- Those lands on the periphery of Killarney National Park should reflect the ambience of the park itself.
- The lake rises towards the top of the application site every year. In 2009 and 2016 the high water was level with the site.
- A nearby dwelling house was flooded last spring to a height of almost 3 ft.
- The application site forms part of a corridor used by deer to travel between Muckross and Ross Castle.
- The proposed development (in addition to the dwelling house proposed on the adjacent site under PA Ref. No. 16756 / ABP Ref. No. PL08.247468) would be visually obtrusive along this key tourist route.
- The site should be restored through the planting of wetland alder.

## **9.0 NATIONAL AND REGIONAL POLICY**

9.1 The 'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009' acknowledge the importance of smaller towns and villages and their contribution towards Ireland's identity and the distinctiveness and economy of its regions. It is accepted that many of these smaller towns and villages have experienced significant levels of development in recent years, particularly residential development, and that concerns have been expressed regarding the impact of such rapid development and expansion on the character of these towns and villages through poor urban design and particularly the impact of large housing estates with a standardised urban design approach. In order for small towns and villages to thrive and succeed, their development must strike a balance in meeting the needs and demands of modern life but in a way that is sensitive and responsive to the past. The Guidelines further note that in general, increased densities should be encouraged on residentially zoned lands and that

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the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure.

9.2 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

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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

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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.

## **10.0 DEVELOPMENT PLAN**

### **Killarney Town Council Development Plan, 2009-2015:-**

#### **Land Use Zoning:**

The proposed development site is located in an area zoned as 'Residential Phase 2'.

#### **Other Relevant Sections / Policies:**

##### ***Chapter 2: Population:***

- *Policy POP 01: It is a policy of the Council:*
  - a) To encourage and facilitate the sustainable development of the town and its environs and to promote a balanced distribution and mix of population throughout the town and its immediate environs.
  - b) To monitor and analyse the results from the new Census of Population (carried out in 2006), in order to assess the accuracy of the projections made and to adjust policies accordingly in the development plan.
  - d) To comply with national and regional population targets by zoning 25.4 hectares of land for residential development on a phased basis. This land is contained in the 'Residential Phase 1' land use zoning designation. It is proposed that 'Residential Phase 1' will provide adequate lands to meet the population projections in accordance with Kerry County Council Core Strategy and the South West RPGs. The remaining undeveloped zoned lands will be designated as Phase 2. Permission will not normally be granted for development on Phase 2 lands, unless 80% the lands included in Phase 1 have been developed

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to the satisfaction of the Planning Authority. Consideration will be given, in the case of an application, for the construction of a dwelling house for the landowner or the son or daughter of the landowner or the favoured niece or nephew of the landowner to be used as their full time permanent residence.

*Chapter 3: Housing*

*Chapter 7: Tourism*

*Section 7.6: Strategic Approach to Tourism Development*

*Section 7.7: Strategic Framework*

*Section 7.8: Strategic Objectives*

*Chapter 9: Natural Heritage, Biodiversity & Conservation:*

*Section 9.5: Overall Objectives*

*Section 9.11: Conservation and Protection areas - Relevant Legislation*

*Section 9.17: Killarney National Park*

*Section 9.18: Management Plan for Killarney National Park*

*Section 9.20: Landscape Preservation:*

*Section 9.20.4:* There will be a presumption against development where the proposed development is deemed to:

- Have a substantial adverse effect on a scenic vista
- Substantially degrade the existing visual character or quality of the site and its surroundings
- Require substantial terrain modifications
- Significantly alter public views or viewing corridors
- Create a new source of substantial light or glare which would adversely affect day or night time views in the area
- Result in a building scale that is not consistent with the surrounding community.

*Section 9.21: Tree Protection*

*Section 9.23: Flood Prevention:*

- *Policy NH-08:* It is a policy of the Council:
  - a) To liaise with the Office of Public Works in the undertaking of a detailed Flood Risk Assessment within zoned areas for development



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identified as potential flood zones as indicated on the Flood Zone Area Map so to obtain an accurate assessment of flooding impacts.

- b) To co-operate with the Office of Public Works in implementing the recommendations/measures of the detailed Flood Risk Assessment and to carry out the required material variations on foot of the recommendation of the detailed Flood Study which may include changes to the zoning objectives.
- c) To request flood risk assessments as part of planning applications in the areas indicated on the Flood Zone Area Map that are at risk from flooding to enable their proper consideration with regard to flood risk.
- d) To ensure that planning applications in close proximity to water courses are submitted to the Office of Public Works for their consideration.
- e) To ensure that planning applications in close proximity to all water courses are assessed in accordance with the provisions of the Flood Risk Management Guidelines for Planning Authorities and future related publications and assessments by the Office of Public Works.
- f) To ensure that planning conditions are imposed on all planning applications for new (or extensions to existing) development within the Flood Zone Area Map in particular which minimises significant hard surfacing and paving. Conditions imposed will require the use of sustainable drainage techniques include permeable paving or surfaces such as gravel or slate clippings.
- g) To ensure that all planning applications within the Flood Zone area includes proposals for sustainable drainage techniques include permeable paving or surfaces such as gravel or slate clippings.
- h) Implement the recommendations and provisions of the Planning Guidelines on the Planning System and Flood Risk Management (DoEHLG 2009), and the OPW Flood Risk Appraisal Maps and Catchment Flood Risk Management Plans (CFRAM) when available and ensure that flood risk assessment policies, plans or projects are compliant with Article 6 of the Habitats Directive and avoid or mitigate negative impacts on Natura 2000 sites.

*Chapter 12: Land Use Zoning Objectives and Development Management Standards:*

*Section 12.3: Land Use Zoning Objectives:*

*Section 12.3.3.1: Residential Phase 1:*

The objective here is to provide and improve the residential amenities.

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Section 12.3.3.2: *Residential Phase 2:*

Objective is as per objectives of Residential Phase 1 and to permit residential development in the identified area only on completion of development on 80% the lands within Phase 1. Consideration will be given, in the case of an application, for the construction of a dwelling house for the landowner or the son or daughter of the landowner or the favoured niece or nephew of the landowner to be used as their full time permanent residence.

Section 12.7: *Requirements for New Residential Developments*

Section 12.11: *Residential Layout and Design*

Section 12.15: *Trees and hedgerows Preservation*

*N.B.* The duration of the Killarney Town Development Plan, 2009-2015 has been extended until such time as it is superseded by a Municipal District Plan.

## **11.0 ASSESSMENT**

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Overall design and layout / visual impact
- Flooding implications
- Servicing / infrastructural arrangements
- Traffic implications
- Appropriate assessment
- Other issues

These are assessed as follows:

### **11.1 The Principle of the Proposed Development:**

11.1.1 The proposed development site is located in an area zoned as '*Residential Phase 2*' in the Killarney Town Council Development Plan, 2009-2015 (as varied) with the stated land use zoning objective '*to provide and improve the residential amenities*', however, in accordance with the provisions of Section 12.3.3.2 of the Development Plan, residential development will only be permitted on those lands identified as '*Residential Phase 2*' following the completion of the development on 80% of those lands designated as 'Phase 1', with the only exception being that consideration will be given to proposals which

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pertain to the construction of a dwelling house for the landowner, or the son or daughter of the landowner, or the favoured niece or nephew of the landowner, provided it is intended to be used as their full-time and permanent place of residence. In this respect the Board is advised that the applicant has indicated that she is presently the owner of the application site (which has been in her family's ownership since 1975) and that the proposed dwelling house is intended for her own occupation as a principle and permanent place of residence. Accordingly, it can be confirmed that the subject proposal complies with the aforementioned policy provision.

11.1.2 However, notwithstanding the provisions of Section 12.3.3.2 of the Development Plan, I would have serious reservations as regards the overall suitability of the application site for residential development and the appropriateness of permitting the subject proposal. In this respect it should be noted at the outset that the designation of developable lands as *'Residential Phase 1'* and *'Residential Phase 2'* in the Development Plan arose in response to the Planning and Development (Amendment) Act, 2010 which introduced a requirement for a *'core strategy which shows that the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives set out in the National Spatial Strategy and regional planning guidelines'*. Accordingly, Variation No. 1 of the Killarney Town Council Development Plan, 2009-2015 provided for the incorporation of a Core Strategy which was reflective of the South-West Regional Planning Guidelines, 2010-2022 and included for the phased development of residentially zoned lands. The purpose of this variation was to comply with national and regional population targets with the *'Residential Phase 1'* land use zoning providing adequate lands to meet the population projections in accordance with the Kerry County Council Core Strategy and the South West RPGs. Notably, it was expressly stated that permission would not normally be granted for development on Phase 2 lands, unless 80% the lands included in Phase 1 had been developed to the satisfaction of the Planning Authority. However, Variation No. 3 of the Killarney Town Council Development Plan, 2009-2015 introduced a provision under Policy POP 01 whereby consideration would be given to proposals for the construction of dwelling houses on lands zoned as *'Residential Phase 2'* provided the dwelling house was intended for occupation by the landowner, the son or daughter of the landowner, or the favoured niece or nephew of the landowner, as their full-time permanent residence. In my opinion, the introduction of this *'caveat'* to the wider provisions of Policy POP 01 serves to undermine the key objectives of the Core Strategy in the Development Plan and the rationale for its inclusion is unclear. It would appear that the aforementioned

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'exceptional' provision may be derived in part from the *'Sustainable Rural Housing, Guidelines for Planning Authorities'* given the emphasis on accommodating landowners and their family members in developing housing for their own full-time occupation, but perhaps the most notable aspect of the exception provided by Policy POP 01 (as varied) is the absence of any requirement for prospective applicants to establish a housing need or to satisfy any other eligibility criteria. Accordingly, in my opinion, it is questionable whether or not it is appropriate to permit the subject proposal on lands zoned as 'Residential Phase 2' prior to the development of those lands designated as 'Residential Phase 1'.

11.1.3 In the event that the Board is amenable to consideration of the subject application pursuant to Policy POP 01 (as varied), I would nevertheless have concerns as regards the fragmented nature of the submitted proposal given that it does not provide for a sequential pattern of development. In this respect I would refer the Board to Section 2.3 of the *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009'* which states the following:

*'The sequential approach as set out in the Department's Development Plan Guidelines (DoEHLG, 2007) specifies that zoning shall extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, encouraging infill opportunities, and that areas to be zoned shall be contiguous to existing zoned development lands and that any exception must be clearly justified in the written statement of the development plan'.*

11.1.4 Notwithstanding my reservations as regards the development of these 'Residential Phase 2' lands in advance of those zoned as 'Residential Phase 1' (which would seem to conflict with the aforementioned guidance), the subject proposal (including when taken in combination with PA Ref. No. 16756 / ABP Ref. No. PL08.247468) serves to 'leapfrog' undeveloped (and similarly zoned) lands further northeast adjacent to an existing cluster of housing alongside Ross Road. Whilst I would acknowledge that the 'Residential Phase 2' land use zoning does extend to include those lands situated between the application site and the existing housing, given that the ground level of the intervening lands has not been raised to the same extent as the subject site and that it would be preferable to avoid creating an undesirable pattern of ribbon development along this visually sensitive tourist route, I am inclined to suggest that the subject proposal would give rise to an unacceptable piecemeal and haphazard form of development

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which would be detrimental to the visual amenity of this scenic area. Furthermore, in the event that the proposed development were to proceed, I would concur with the concerns raised by third parties that the subject proposal would result in the creation of an 'infill' site which would serve to exacerbate an undesirable pattern of linear type development along Ross Road which in turn would contribute to the continued suburbanisation of this peripheral area.

**11.2 Overall Design and Layout / Visual Impact:**

11.2.1 The proposed development site is located on the periphery of Killarney town along the southern side of Ross Road in an area surrounded by wet woodland between a small cluster of housing to the northeast and the Killarney National Park to the southwest. The wider area is dominated by high value amenity land uses, including Killarney Racecourse, Ross Golf Club and, in particular, Killarney National Park, and is generally characterised by mature trees and impressive woodlands with Ross Road itself being of considerable local importance in providing access to Ross Castle / the National Park. In this respect it is noteworthy that the trees along the north-western side of Ross Road (opposite the application site) are the subject of a Tree Preservation Order. Accordingly, the surrounding area can be categorised as a landscape which is increasingly sensitive to development with the existing roadside housing to the northeast presently representing the extent of the built-up area of Killarney town with no further development between same and Ross Castle.

11.2.2 The proposed development involves the construction of a substantial, conventionally designed, single storey dwelling house based on a relatively complex building footprint and should be considered in conjunction with the similar development proposed on the adjacent site under PA Ref. No. 16756 / ABP Ref. No. PL08.247468. In this respect it should be noted that the subject site is specifically zoned for residential development and that the overall design of the proposed dwelling house is generally comparable to those properties to the northeast, although said dwellings enjoy a somewhat more suburban context given their location within a recently constructed development of individual serviced sites which is set back from the public road and screened from view from Ross Road.

11.2.3 Having conducted a site inspection, it is clear that the subject site is located in a particularly sensitive area along a key tourist route within Killarney town and that there is a need to preserve the overall scenic quality and wider visual amenity of this approach to Killarney National Park. Notably, the existing roadside housing to the northeast presently represents the extent of the built-up

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area of Killarney town with no further development between same and Ross Castle and, therefore, I would have serious reservations that, notwithstanding the residential zoning objective for the area as set out in the current development plan, the subject proposal would result in inappropriate urban sprawl and ribbon development which would not accord with the orderly expansion of Killarney town. In my opinion, the proposed development represents an unwarranted erosion of the distinctive character of this sensitive area which will have a wider impact on the prevailing landscape quality by contributing towards its gradual suburbanisation and detracting to an undue degree from its overall scenic and visual amenity. In support of the foregoing, I would refer the Board to Section 9.20.4 of the Killarney Town Development Plan which states that there will be a presumption against development in instances where the submitted proposal is deemed to *'have a substantial adverse effect on a scenic vista', 'substantially degrade the existing visual character or quality of the site and its surroundings'* or otherwise *'significantly alter public views or viewing corridors'*.

11.2.4 Whilst Policy NH-05 of the Town Development Plan states that a Landscape Character Assessment for Killarney town, its environment and the three action Areas (Inner Core, Flesk River Valley and the Northern Gateway) was to have been prepared within 2 years of the adoption of the Plan and that the designation of landscapes as 'high amenity areas' or of 'high scenic quality' would be undertaken as part of the landscape assessment, which would similarly inform the identification of those scenic viewing points and scenic routes of special amenity, value and interest, which contribute significantly to the visual amenity and character of the town, it would appear that no such Landscape Character Assessment has been undertaken or incorporated into the current Development Plan for the area. Accordingly, whilst I would acknowledge that the views along Ross Road are not expressly identified for preservation in the Development Plan, I am nevertheless satisfied that the scenic and visual quality of this section of Ross Road is of particular amenity value and should be afforded protection and, therefore, the proposed development should be refused permission.

### **11.3 Flooding Implications:**

11.3.1 The proposed development site is located in an area which has historically flooded and in this respect it is of relevance to note that the subject application, as initially submitted to the Planning Authority, was accompanied by a *'Flood Level Assessment for Lough Leane'* prepared by Malachy Walsh and Partners, Consulting Engineers, dated 2014, which sought to determine the 1 in 100 year flood level of the lake by extrapolating data (including rainfall) recorded during the

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course of a storm event experienced on 18<sup>th</sup> / 19<sup>th</sup> November, 2009 which resulted in an 'exceptionally' high water level of 20.18mOD in Lough Leane on 20<sup>th</sup> November, 2009. This report states that, given the circumstances, whilst it was not possible to accurately assign an exceedance probability to the water level that was achieved in the lake on 20<sup>th</sup> November, 2009, it was nevertheless considered to be an exceptional event and that it is also a matter of certainty that this level will be achieved or exceeded at some time in the future, although the probability of this happening in any given year is low. The report proceeds to estimate that the rainfall which resulted in the high water level of 20.18mOD in Lough Leane recorded on 20<sup>th</sup> November, 2009 is likely to have a return period in the order of 20 years and that a 1 in 100 year water surface level of 20.60mOD can be calculated from an analysis of the 2009 flood event. Accordingly, it has been asserted in further correspondence which accompanied the application that the proposed development is acceptable on the basis that the finished floor level of the proposed dwelling house will be 21.3mOD i.e. 0.7m above the estimated 1 in 100 year flood level.

11.3.2 Notwithstanding the foregoing 'flood impact assessment', the Planning Authority concluded that the proposed development site is located in an area at risk of flooding and that the subject proposal does not accord with the provisions of 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. In this regard the Planner's Report asserts that the application site is located in an area identified as being at risk of flooding as part of the Catchment Flood Risk Assessment and Management Study (CFRAM) and, in particular, that the lands in question flood in both 1 in 100 (1% AEP) and 1 in 1,000 (0.1% AEP) year events. It is further stated that the site is located within 'Flood Zone A' as defined by the aforementioned Guidelines and that the construction of a 'highly vulnerable development' such as a dwelling house on said lands would be inappropriate. In addition, it has been noted that the application site (and the neighbouring site) have previously been filled and that the proposal to raise the site and the finished floor level of the proposed dwelling house will not mitigate against the flood risk. In this respect reference has been made to the predicted flood depths along the public road adjacent to the proposed development site for a Q1,000 event (i.e. >0.5m and <1.0m) and the fact that this would render the application site inaccessible during a flood event whilst any sanitary facilities would be inoperable due to surcharging of the foul sewerage network.

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11.3.3 In response to the decision to refuse permission, the grounds of appeal have been accompanied by a further flood risk analysis undertaken by Malachy Walsh and Partners, Engineering and Environmental Consultants, which states that the flood risk mapping of the area for the current climate scenario as set out in the South Western CFRAM Study (as published by the OPW & Mott MacDonald Ireland in June, 2014) shows a predicted 1% AEP water surface level of 20.28mOD and a 0.1% AEP water surface level of 20.85mOD in Lough Leane. This report proceeds to reference the corresponding maps for the 1% AEP and 0.1% AEP flood depths published in June 2016 and asserts that whilst the northern and southern margins of the subject site are shown on the CFRAM map as being within the 1% and 0.1% AEP flood event levels (i.e. Flood Zones 'A' & 'B'), the majority of the site is outside the highest flood extent and is thus within Flood Zone 'C'. Accordingly, it has been submitted that the proposed dwelling house will be constructed entirely within Flood Zone 'C' and that the finished floor level will be higher than the future 1% AEP flood level taking the effects of future climate change into account (*N.B.* It is proposed to construct the dwelling house with a finished floor level of 21.29mOD, which is 0.44m higher than the predicted 0.1% AEP level). It has also been suggested that due to the location of the proposed works within Flood Zone 'C' the development of the application site cannot affect lake levels under any circumstances and therefore cannot alter the flood risk elsewhere. In this regard the applicant is thus satisfied that although part of the application site is within Flood Zones 'A' & 'B', the proposed development satisfies all the criteria set out in the Justification Test contained in Box 5.1 of the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'*.

11.3.4 From a review of the available information, it is clear that there are various concerns as regards the potential flooding implications of the proposed development, however, I would suggest at the outset that it is of particular relevance to note that ground levels within the application site would appear to have been raised in recent years through the importation of *'inert building material'* with the result that the majority of the site is now approximately 1m higher than the adjacent lands. In this regard I would refer the Board to Section 4.2.4 of the submitted Natura Impact Statement which specifically states that *'The proposal site was infilled c. 16 years ago with inert building material and now constitutes a raised grassland field'*. Accordingly, I propose to assess the potential flooding implications of the proposed development from first principles having regard to the site location in an area at increased risk of flooding and the fact that infilling works would appear to have been undertaken within an area at risk of flooding.



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11.3.5 In the first instance I would refer the Board to the National Flood Hazard Mapping available from the Office of Public Works which does not record the extent of any flood events in the immediate surrounds of the subject site, however, whilst this serves as a useful tool in highlighting the potential for flood events in a particular area, it must be conceded that it is not definitive. Therefore, it is perhaps of greater relevance to consider the updated mapping prepared by the Office of Public Works and published in 2016 as part of its Draft Flood Risk Management Plan for UoM 22: Laune-Maine-Dingle Bay which clearly shows that the north-eastern and south-western margins of the application site are within the predicted 0.1% AEP Flood Extent for the current climate scenario and that access to the site will be severely inhibited due to flooding along Ross Road in both a 1% and 0.1% flood event.

11.3.6 Whilst I would accept that the majority of the application site, including the siting of the proposed dwelling house, is presently above the predicted 0.1% AEP Flood Extent for the current climate scenario and thus is within Flood Zone 'C' as defined by the Guidelines, in my opinion, it is readily apparent from a review of the available mapping that this situation has arose as a direct result of the infilling of the subject site with a view to raising ground levels above the known floodplain (*N.B.* Mapping of future scenario flood levels, which take the possible effects of climate change into account, have not been published).

11.3.7 At this point I would reiterate that the applicant has acknowledged that the proposed development site was infilled c. 16 No. years with '*inert building material*', however, from a review of the planning history of the site there is no record of any grant of permission having been issued for any such works. In this regard I would advise the Board that Section 3 of the Planning and Development Act, 2000, as amended, specifically states that where land becomes used for '*the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris*' the use of the land shall be taken as having materially changed and thus amounts to '*development*'. Accordingly, in the absence of any applicable exemption for the infilling works carried out on site, it would appear that said works have materially changed the use of the land and thus constitute unauthorised development. Therefore, I am not satisfied that it would be appropriate in this instance to permit the subject proposal given my concerns as regards the potential impact of the apparent infilling of the application site on the flood regime of the surrounding area and possibility that those works may have had wider environmental impacts downstream.

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#### **11.4 Servicing / Infrastructural Arrangements:**

11.4.1 Although foul water sewerage services are available from the public mains, it will be necessary to install a pump and sump chamber in order to facilitate the pumping of foul effluent from the proposed dwelling house along a rising main for a distance of c. 340m in order to connect into the existing mains sewerage system. In this regard I would advise the Board that Irish Water has requested that further information be sought in relation to the applicant's proposals for connection to the mains sewerage network, with specific reference to the siting of the proposed sump on private property and the consent of the affected landowner, and that the applicant should also be required to enter into a pre-connection enquiry process with Irish Water.

11.4.2 With regard to the siting of the proposed pump and sump, it is evident from a review of the submitted site layout plan that this infrastructure will be positioned along the centreline of the site boundary shared with the adjacent property to the immediate northeast. Accordingly, it is apparent that the subject proposal should be assessed in tandem with ABP Ref. No. PL08.247468 on the basis that they are located on immediately contiguous sites and as they will avail of the same sewerage infrastructure in order to connect to the public mains system i.e. both the subject application and ABP Ref. No. PL08.247468 are reliant on the favourable consideration of each other in order to allow the respective developments to proceed.

11.4.3 In relation to the request for the applicant to engage in pre-connection enquiries with Irish Water, I would suggest that this a matter which should be addressed directly with that regulatory authority.

11.4.4 With respect to the collection and disposal of surface water runoff generated on site, I would suggest that such matters can be satisfactorily addressed by way of an appropriate condition in the event of a grant of permission.

#### **11.5 Traffic Implications:**

11.5.1 The proposed dwelling house will be accessed via a new shared entrance arrangement which will be constructed in conjunction with the ABP Ref. No. PL08.247468 in the event that favourable consideration is given to same. This access will open directly onto an existing bicycle lane which extends along Ross Road and will necessitate the removal of several mature tree specimens alongside the roadside site boundary.

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11.5.2 Whilst Ross Road is a heavily trafficked tourist route during the peak summer season in that it provides access to the Killarney Lakes and Ross Castle whilst also serving as one of the main entry points to Killarney National Park, having regard to the overall alignment of the carriageway and the applicable speed limit of 50kph, it is my opinion that adequate sightlines are available from the proposed entrance arrangement onto the public road and that the submitted proposal would not endanger public safety by reason of traffic hazard.

**11.6 Appropriate Assessment:**

11.6.1 From a review of the available mapping, including that contained in the Killarney Town Development Plan, 2009 and the data maps available from the website of the National Parks and Wildlife Service, it is apparent that although the proposed development site is not located within any Natura 2000 designation, it is situated immediately adjacent to the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365) whilst the Killarney National Park Special Protection Area (Site Code: 004038) is located only a short distance away to the northwest / west. In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 9: *'Natural Heritage, Biodiversity & Conservation'* of the Development Plan, to protect all natural heritage sites, both designated or proposed for designation, in accordance with National and European legislation. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on same. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

*11.6.2 Stage 1: Screening:*

11.6.2.1 In screening the subject proposal for the purposes of appropriate assessment, I would refer the Board at the outset to the screening exercise undertaken by the applicant which has identified the following 4 No. European Sites within a 15km radius of the proposed works pursuant to the advice contained in the *'Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities (Rev. 2010)'* published by the Department of Environment, Heritage and Local Government:

- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365)
- Killarney National Park Special Protection Area (Site Code: 004038)
- Sheheree Bog Special Area of Conservation (Site Code: 000382)
- Castlemaine Harbour Special Area of Conservation (Site Code: 000343)

*N.B.* For the purposes of clarity, the Board is advised that the submitted screening assessment undertaken by the applicant also includes for consideration of the development proposed under PA Ref. No. 16756 / ABP Ref. No. PL08.247468.

11.6.2.2 In addition to the foregoing, using the precautionary principle, I have also given consideration to those Natura 2000 sites located outside of the defined 15km radius (e.g. Castlemaine Harbour Special Protection Area: Site Code: 004029), however, as there are no likely potential pathways for any significant impacts on those sites (such as by way of hydrological connectivity), it can be determined that there is no potential for any impacts on those Natura 2000 sites located outside the 15km buffer.

11.6.2.3 Accordingly, having considered the available information, I would concur with the findings of submitted screening exercise that consideration for the purposes of appropriate assessment should be focused on the following Natura 2000 Sites:

European Site: Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365):

*Distance & Direction:* The application site directly abuts this Natura 2000 site to the immediate southeast, southwest and northwest.

*Qualifying Interests:* [3110] Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*)  
 [3130] Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or *Isoeto-Nanojuncetea*  
 [3260] Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation  
 [4010] Northern Atlantic wet heaths with *Erica tetralix*

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[4030] European dry heaths  
[4060] Alpine and Boreal heaths  
[5130] *Juniperus communis* formations on heaths or calcareous grasslands  
[6130] Calaminarian grasslands of the *Violetalia calaminariae*  
[6410] *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*)  
[7130] Blanket bogs  
[7150] Depressions on peat substrates of the *Rhynchosporion*  
[91A0] Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles  
[91E0] Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)  
[91J0] *Taxus baccata* woods of the British Isles  
[1024] Kerry Slug *Geomalacus maculosus*  
[1029] Freshwater Pearl Mussel *Margaritifera margaritifera*  
[1065] Marsh Fritillary *Euphydryas aurinia*  
[1095] Sea Lamprey *Petromyzon marinus*  
[1096] Brook Lamprey *Lampetra planeri*  
[1099] River Lamprey *Lampetra fluviatilis*  
[1106] Salmon *Salmo salar*  
[1303] Lesser Horseshoe Bat *Rhinolophus hipposideros*  
[1355] Otter *Lutra lutra*  
[1421] Killarney Fern *Trichomanes speciosum*  
[1833] Slender Naiad *Najas flexilis*  
[5046] Killarney Shad *Alosa fallax killarnensis*

*Conservation Objectives:* To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.

*European Site:* Killarney National Park Special Protection Area (Site Code: 004038):

*Distance & Direction:* Approximately 40m northwest.

*Qualifying Interests:* [A098] Merlin *Falco columbarius*

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[A395] Greenland White-fronted Goose *Anser albifrons flavirostris*

*Conservation Objectives:* To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

*European Site:* *Sheheree (Ardagh) Bog Special Area of Conservation (Site Code: 000382):*

*Distance & Direction:* Approximately 2.8km southeast.

*Qualifying Interests:* [7110] Active raised bogs  
[7120] Degraded raised bogs still capable of natural regeneration

*Conservation Objectives:* To restore the favourable conservation condition of Active raised bogs in Sheheree (Ardagh) Bog SAC (which is defined by as specified list of attributes and targets).

The long-term aim for Degraded raised bogs still capable of natural regeneration is that its peat-forming capability is re-established; therefore, the conservation objective for this habitat is inherently linked to that of Active raised bogs (7110) and a separate conservation objective has not been set in Sheheree (Ardagh) Bog SAC.

*European Site:* *Castlemaine Harbour Special Area of Conservation (Site Code: 000343):*

*Distance & Direction:* Approximately 6.6km northwest.

*Qualifying Interests:* [1095] Sea lamprey *Petromyzon marinus*  
[1099] River lamprey *Lampetra fluviatilis*  
[1106] Atlantic salmon (*Salmo salar*) (only in fresh water)  
[1130] Estuaries  
[1140] Mudflats and sandflats not covered by seawater at low tide  
[1210] Annual vegetation of drift lines  
[1220] Perennial vegetation of stony banks

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[1310] Salicornia and other annuals colonizing mud and sand  
[1330] Atlantic salt meadows (Glauco-Puccinellietalia maritimae)  
[1355] Otter *Lutra lutra*  
[1395] Petalwort *Petalophyllum ralfsii*  
[1410] Mediterranean salt meadows (*Juncetalia maritimi*)  
[2110] Embryonic shifting dunes  
[2120] Shifting dunes along the shoreline with *Ammophila arenaria* ("white dunes")  
[2130] Fixed coastal dunes with herbaceous vegetation ("grey dunes")  
[2170] Dunes with *Salix repens* ssp. *argentea* (*Salix arenariae*)  
[2190] Humid dune slacks  
[91E0] Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)  
[A001] Red-throated Diver *Gavia stellata* wintering  
[A017] Cormorant *Phalacrocorax carbo* wintering  
[A046] Light-bellied Brent Goose *Branta bernicla hrota* wintering  
[A050] Wigeon *Anas penelope* wintering  
[A053] Mallard *Anas platyrhynchos* wintering  
[A054] Pintail *Anas acuta* wintering  
[A062] Scaup *Aythya marila* wintering  
[A065] Common Scoter *Melanitta nigra* wintering  
[A130] Oystercatcher *Haematopus ostralegus* wintering  
[A137] Ringed Plover *Charadrius hiaticula* wintering  
[A144] Sanderling *Calidris alba* wintering  
[A157] Bar-tailed Godwit *Limosa lapponica* wintering  
[A162] Redshank *Tringa totanus* wintering  
[A164] Greenshank *Tringa nebularia* wintering  
[A169] Turnstone *Arenaria interpres* wintering  
[A346] Chough *Pyrrhocorax pyrrhocorax* non-breeding  
[A999] Wetlands & Waterbirds

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*Conservation Objectives:* To maintain or restore the favourable conservation condition of the habitat(s) and/or species for which the SAC (and SPA) has been selected.

11.6.2.4 In terms of assessing the potential direct, indirect or secondary impacts of the proposed development on the conservation objectives of the aforementioned Natura 2000 sites, it should be noted at the outset that due to the location of the proposed works outside of any Natura 2000 designation, it is clear that the subject proposal will not directly impact on the integrity of any European Site (such as by way of habitat loss or reduction), however, I would accept that consideration should be given, in particular, to the potential for the proposal to indirectly impact on the qualifying interests of some of the identified sites as a result of any deterioration in water quality which could be attributable to the proposed works due to the hydrological connectivity / links between the application site and those European sites.

11.6.2.5 Following further consideration of the 'source-pathway-target' model, Section 4.5 of the submitted screening exercise proceeds to detail that some of the identified European Sites are considered to be outside of the 'zone of significant impact influence' of the proposed development on the basis that the ecology of the relevant qualifying interests (i.e. the species and / or habitats in question) is neither structurally, nor functionally, linked to the application site. Accordingly, as no potential impact pathways were identified to connect those designated sites to the location of the proposed works, it has been submitted that it can be objectively concluded that no significant impacts on those sites is reasonably foreseeable as a result of the proposed development. In this respect the following European Sites have been screened out from further assessment:

- *Sheheree Bog SAC:*

The qualifying interests of this site occur within an upland area approximately 3.0km southeast of the proposed development site and thus in the absence of any complete impact source-pathway-receptor chain (i.e. no hydrological link or similar mechanism for effecting impact) between the SAC and the proposed site, and the nature of the qualifying interest of the site (i.e. active and degraded raised bog), it is considered that significant impacts on the European Site in question can be screened out.



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- *Castlemaine Harbour SAC:*

The majority of the habitats within this SAC are of a coastal variety and are in excess of 20km from the application site whilst there are only indirect links between the proposed development site and the SAC via Lough Leane which drains the catchment area and discharges to the River Laune c. 6.9km northwest of the site. It is further considered that there are no direct surface water pathways linking the proposed development site with the SAC.

11.6.2.6 Accordingly, having reviewed the available information, including Section 4.6 of the submitted screening report wherein the applicant has acknowledged the potentially negative impacts on downstream water quality which could arise during the construction stage of the proposed development due to the pollution of watercourses through the release of suspended solids or the discharge of hydrocarbons / other contaminants, and following consideration of the 'source-pathway-receptor' model, I would concur with the findings of the screening exercise undertaken by the applicant and thus it is my opinion that, in accordance with the precautionary principle, it is not possible to rule out the likelihood of the proposed development significantly impacting on certain identified Natura 2000 sites and that further consideration needs to be given to the likelihood of the proposal to have a significant effect on the conservation objectives of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC and the Killarney National Park SPA. Therefore, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the likelihood of the proposed development significantly and negatively affecting the aforementioned Natura 2000 sites cannot be objectively ruled out and therefore it is necessary to proceed to 'Appropriate Assessment (Stage 2)'.

*11.6.3 Stage 2: 'Appropriate Assessment':*

11.6.3.1 With regard to the Stage 2 Appropriate Assessment which has accompanied the subject application, I am generally satisfied that it has adequately identified the key characteristics of the potential impacts arising as a result of the proposed development which would be likely to undermine the stated conservation objectives of the designated sites. These include the potential for contaminated ground and surface waters to impact on the integrity of the identified Natura 2000 sites and several of their qualifying interests. The NIS has subsequently concluded that, subject to adherence to a series of specified mitigation measures, there would be no significant effects on hydrology and,

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therefore, no significant adverse effects on the integrity of those downstream Natura 2000 sites as a result of the proposed development.

11.6.3.2 By way of elaboration, I would refer the Board to Sections 5.1 & 5.2 of the Natura Impact Statement (with particular reference to Table 2) which identifies those potentially significant impacts on certain qualifying features (habitats and species) of both the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC and the Killarney National Park SPA associated with the proposed development. In summary, these impacts primarily concern the potential for a deterioration in surface water quality within tributaries / watercourses draining to the SAC consequent on the proposed development which could potentially have a significant indirect impact on both downstream habitat types (i.e. Watercourses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation) and aquatic species such as Freshwater Pearl Mussel, brook lamprey, salmon and otter. For example, potentially negative impacts during the construction stage of the development on the wider aquatic environment and fisheries would include the sedimentation / pollution of watercourses with suspended solids due to runoff of soil from construction areas and the contamination of surface waters through the accidental release or discharge of hydrocarbons or other contaminated site runoff.

11.6.3.3 With regard to the potential for in-combination / cumulative impacts with other plans or projects, I am also satisfied that the proposed development (including that proposed under PA Ref. No. 16756 / ABP Ref. No. PL08.247468), subject to suitable mitigation, would not be likely to give rise to any in-combination / cumulative impacts with other plans or projects which would significantly affect the integrity of any Natura 2000 sites and would not undermine or conflict with the Conservation Objectives applicable to same.

11.6.3.4 Section 5.4 of the NIS proceeds to recommend that the proposed development should provide for best practice construction management and that the following measures should be implemented in order to mitigate against the potential impacts identified:

- *Set back buffer distance:*
  - A 5m vegetated buffer zone should be established around the perimeter of the site ahead of any site clearance and permanently maintained between the site and the woodland.

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- This exclusion zone will provide a natural buffer to any potential spillage and runoff owing to construction activities and will prevent ingress of potentially polluting material to the woodland habitats.
  - There shall be no encroachment into the woodland habitat by construction personnel or equipment.
  - *Protection of adjacent downgradient woodland:*
    - Screening barriers should be erected between the site and the 5m exclusion zone.
    - Silt traps should be incorporated into this screening barrier to prevent runoff to the downgradient woodland habitat.
  - *Protection of watercourses:*
    - Concrete wash out will not occur on site.
    - Refuelling and overnight storage of plant and machinery will not occur on site.
    - Any spillage of fuels, lubricants or hydraulic oils should be immediately contained and the contaminated soil removed from the site and properly disposed of.
    - Waste oils and hydraulic fluids should be collected in leak-proof containers and removed from the site for disposal or recycling.
    - Prior to any work it should be ensured that all construction equipment is mechanically sound to avoid leaks of oil, fuel, hydraulic fluids and grease.
    - Silt traps and screening barrier should be inspected regularly to ensure potentially polluting runoff does not leave the site.
  - *Waste control:*
    - Correct management of waste is to be maintained throughout the development. Sufficient waste storage should be supplied in close proximity to all working areas, and positioned on flat ground away from watercourses and drains where there is no potential risk of runoff.

11.6.3.5 Having reviewed the foregoing, I would accept that the implementation of best practice and the foregoing mitigation measures which pertain to construction management will serve to avoid any impacts on downstream water quality thereby ensuring that no significant adverse effects on the integrity of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC arise as a result of the construction of the proposed development.

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11.6.3.6 Therefore, I consider it reasonable to conclude, on the basis of the information available, that the proposed development, when taken individually and in combination with other plans or projects, will not adversely affect the integrity of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC and the Killarney National Park SPA, in view of the sites' conservation objectives.

**11.7 Other Issues:**

11.7.1 With regard to the submission that the proposed development site is located close to a migratory route used by a protected species (i.e. the lowland red deer) for movement between Killarney National Park and other grazing areas south of the town (with said species having previously been observed on the site) and that the proposed development could potentially impact on same, particularly during the course of flood events, it should be noted that the subject site is not presently the subject of any specific environmental designation pertaining to the protection of the species referenced.

**12.0 RECOMMENDATION**

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:

**Reasons and Considerations:**

1. Having regard to the location of the site in an area which is prone to flooding, and on the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the proposed development would not give rise to an increased risk of flooding of the site or of property in the vicinity. Furthermore, arising from the historical raising of ground levels on site through the infilling of land, the Board is not satisfied that the development carried out to date has not adversely affected the flood storage regime of the surrounding area, which would give rise to the risk of exacerbation of flooding elsewhere, and that the said works have not had a serious adverse impact on downstream hydrology and aquatic ecology. The proposed development would, therefore, be prejudicial to public health and safety and would be contrary to the proper planning and sustainable development of the area.

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2. Having regard to the site location in a visually sensitive area along a key tourist route, it is considered that the proposed development, by reason of its prominent position and the nature and extent of the works concerned, would be detrimental to the high scenic amenity value of the area and would be unduly visually obtrusive thereby interfering with the character of the surrounding rural landscape. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Signed: \_\_\_\_\_

Robert Speer  
Inspectorate

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