



An
Bord
Pleanála

S. 4(1) of Planning and Development (Housing) and Residential Tenancies Act 2016

Inspector's Report ABP-307012-20

Strategic Housing Development

Demolition of existing buildings, construction of 120 no. residential units (36 no. houses, 84 no. apartments), childcare facility and associated site works.

Location

Sion Hermitage Lands, Sion Road, Kilkenny, Co. Kilkenny.

Planning Authority

Kilkenny County Council

Applicant

Torca Developments Limited

Prescribed Bodies

An Taisce

Transport Infrastructure Ireland

Irish Water

Minister for Culture, Heritage and the
Gaeltacht

Heritage Council

Coras Iompair Eireann

Kilkenny County Childcare Committee

Observers

As per Appendix 1

Date of Site Inspection

27th July 2020

Inspector

Rónán O'Connor

Contents

1.0 Introduction	4
2.0 Site Location and Description	4
3.0 Proposed Strategic Housing Development	4
4.0 Planning History.....	5
5.0 Section 5 Pre Application Consultation	6
6.0 Relevant Planning Policy	11
7.0 Third Party Submissions	18
8.0 Planning Authority Submission	31
9.0 Prescribed Bodies.....	36
10.0 Appropriate Assessment	39
11.0 EIA Screening	51
12.0 Assessment.....	51
13.0 Conclusion and Recommendation	71
14.0 Recommended Order.....	72

1.0 Introduction

- 1.1. This is an assessment of a proposed strategic housing development submitted to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016.

2.0 Site Location and Description

- 2.1. The development site is located on the eastern side of Kilkenny City, east of the N10 Ring Road and accessed off Sion Road. The lands comprise of c. 5.85ha and were the former residence of the Bishop of Ossary. There are existing structures on the site including a two-storey residential structure which gables the public road. There are other structures which were used as a former retreat centre.
- 2.2. There is mature landscaping/trees to the west and south of the site. A wall c. 2.5m in height is located along the northern (public road) boundary. The River Nore is located to the south of the site. The lands fall from north to south with a difference of approx. 8m.
- 2.3. Sion Road is characterised by ribbon development with a number of small low-density cluster type housing. There are a number of industrial/commercial business located at the junction of Sion Road with the Dublin Road to the north. There is also a local shop and pharmacy located along the Dublin Road.

3.0 Proposed Strategic Housing Development

- 3.1. The proposed development will consist of the following:
- Demolition of existing buildings (total gross floor area c.3,031 sq.m.).
 - Construction of a residential development of 120 no. units (36 no. 1-beds, 17 no. 2-beds and 67 no. 3+ beds) comprising 36 no. 2-storey houses and 84 no. duplexes/apartments arranged within 7 no. blocks. Building heights range 2-4 storey.
 - Provision of a community childcare facility.
 - 154 no. car parking spaces and 104 no. secure bike parking spaces. Bin stores, pumping station compound and ESB kiosk.

- Landscaping proposals to include a new public park (to be taken in charge by Kilkenny CoCo) providing access to/from the River Nore Valley Walk which runs through the southern portion of the application site.
- Vehicular access from Sion Road to the north. Upgrade of footpath along Sion Road as far as the junction with the Dublin Road and provision of cycle lanes.
- All other site works, landscaping, boundary treatments and services provision to facilitate development.

Key Figures

Site Area	c5.85 Ha
No. of units	120
Density (Net)	38 units/ha (Net)
Plot Ratio	0.41
Site Coverage	18%
Height	2 to 4 storeys
Communal/Public Open Space	2.22 Ha
Vehicular Access	From Sion Road
Car Parking	154 spaces
Bicycle Parking	104 spaces

4.0 Planning History

Relevant applications are as follows:

P.A. Ref 14586 Grant permission for Outline planning permission for 27 no. of two storey houses and the provision of 1 no. vehicular entrance from the Sion road and all associated landscaping and site works.

5.0 Section 5 Pre Application Consultation

- 5.1. A Section 5 Consultation meeting took place at the offices of Kilkenny County Council on 9th September 2019, commencing at 11.30am. Representatives of the prospective applicant, the planning authority and An Bord Pleanála were in attendance. An agenda was issued by An Bord Pleanála prior to the meeting.
- 5.1.1. Copies of the record of the meeting and the Inspector's report are on this file.
- 5.1.2. In the Notice of Pre-Application Consultation Opinion dated 12th September 2019 (ABP Ref. ABP-305012), ABP stated that it was of the opinion that the documentation submitted with the consultation request under section 5(5) of the Act **required further consideration and amendment** in order to constitute a reasonable basis for an application under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016.
- 5.1.3. In the opinion of An Bord Pleanála, the following issues needed to be addressed in the documents submitted to which section 5(5) of the Act of 2016 relates that could result in them constituting a reasonable basis for an application for strategic housing development:
1. Local Development Plan Policy
 - Further consideration of the documents as they relate to the planning rationale/ justification for the proposed increase in density on the subject lands which are zoned for 'existing low density residential' and the provisions of the core strategy as provided for in the Kilkenny City Development Plan 2014-2020.
 - Notwithstanding national policy, consideration should be given to the nature and scale of development relative to the local zoning and zoning objective and the materiality or otherwise of the quantum of development proposed in this context. Specific regard should be given to the provisions of Section 9 (6) (b) of the Planning and Development (Housing) and Residential Tenancies Act 2016 as amended, whereby the Board shall not grant permission under paragraph (a) of Section 9(6) where the proposed development, or part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the land.

- Further consideration of these issues may require amendment to the documents and/or design proposals submitted.

2. Movement and transportation including parking

- Further consideration of movement (pedestrian, cyclist and vehicular) within and through the development site and to key transport routes in the vicinity of the site in particular how pedestrian movements will be facilitated in a safe manner across the Dublin Road and the N10 towards the City.
- Further consideration of the provision of the Design Manual for Urban Roads and Streets and how the proposed layout and urban design response including the arrangement of parking spaces will contribute to the creation of attractive and safe streetscapes. Consideration should be given to the ease of pedestrian movements through the site, in particularly at key crossing points.

3. Design and Layout

- Further consideration/justification of the documents as they relate to the layout of the proposed development particularly in relation to the 12 criteria set out in the Urban Design Manual which accompanies the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas', May 2009.

4. Childcare Guidelines

- Further consideration/justification of the documents as they relate to the Childcare Guidelines, and necessity or otherwise to provide childcare on site.
- Further consideration of these issues may require amendment to the documents and/or design proposals submitted.

5.1.4. The following specific information was requested.

- A statement as to how the proposed net density is calculated.
- Photomontages and cross sections.
- An Appropriate Assessment screening report and/or Natura Impact Statement if considered necessary.

- All existing utilities that may traverse the site including any proposal to culvert/re-route/underground existing drains/utilities should be clearly identified on a site layout plan.
- A construction and demolition waste management plan.
- A Building Life Cycle Report
- Phasing plan.
- A site layout plan indicating all areas to be taken in charge.

5.2. **Applicant's Statement**

- 5.2.1. The application includes a Statement of Response to the An Bord Pleanála Opinion (set out in Section 10 of the Planning Report & Statements of Consistency), as provided for under section 8(1)(iv) of the Act of 2016, which may be summarised as follows:

Item 1 – Local Development Plan Policy

- Zoning of the majority of the lands is “Existing Low-density Residential”
 “To protect, provide and improve residential amenities at low density. Low density housing is defined as not more than 10 units per ha (4 per acre) on average and must have regard to the character of the area.”
- The 2000 Act makes separate provisions for regulating and controlling land (through measures such as density, heights, etc), beyond the primary zoning of the land which establishes use.
- The density of the development is therefore not relevant to the question of how the lands are “zoned” for the purposes on the 2000 Act, despite the particular wording of the zoning in this instance.
- The Board, therefore, is not restricted from granting permission for the current residential proposal as the development in principle is not a material contravention of the residential zoning.
- In relation to the southern portion of the site zoned “Amenity, Green Links, Biodiversity, Conservation/Open Space/Recreation” it is noted that no residential development is proposed in this part of the site.

- In relation to the proposed density of the development the following is noted.
- Regard has been had to Sections 3.3.1 and 11.4.1 of the City Development Plan, which appear to be contradictory policies/Section 3.3.1 outlines the justification for specifically designating locations within the development area of the city for low density housing (of only 10 units per ha) given the demand for large houses on large sites which is being satisfied by people building in the countryside close to the city.
- However, Section 11.4.1 of the Development Plan states that maximum residential densities will not be prescribed on individual developments but will be arrived at through a design led approach that considers individuality, sense of place and interaction/integration with the specific physical context in each case.
- The proposed development is an appropriate balance between Sections 3.3.1 and 11.4.1 of the Development Plan, and also with regard to national planning policy (in the main adopted since the 2014 Development Plan).
- Section 5.11 of the Sustainable Residential Development in Urban Areas Guidelines, 2009 states that “Outer Suburban/Greenfield” sites at the edge of large towns should achieve net residential densities in of 35-50 units per ha/Section 5.10 of the 2009 Guidelines states that former institutional lands should also be developed at net densities of 35-50 units per ha.
- A new public park and connection to the existing Nore Valley Walk is proposed.
- The Design Standards for New Apartments Guidelines, 2018 state that mixed residential developments at “Less Accessible Urban Locations” can achieve net densities up to 45 units per ha.
- The proposed development comprises a mix of housing types.

5.2.2. The applicants have submitted a Legal Opinion prepared by Eamon Galligan, Senior Counsel, which concludes the following:

- Separate provision is made under the Act for objectives relating to land use zoning and the density of structures. The “Existing Low Density Residential” objective which applies to the subject lands is in fact a rolled-up objective which contains two separate objectives.

- The reference to the phrase “the zoning of land” in Section 9(6)(b) of the 2016 Act must be interpreted consistently with the same use of the phrase in Section 10(2)(a) of the Planning & Development Act, 2000 (as amended), which defines the zoning of land “for the use solely or primarily of particular areas for particular purposes”, be it residential, commercial, industrial, etc., or for a mixture of these.
- The density of the proposed development is not relevant to the question as to how the lands are “zoned” for the purposes of the 2000 Act. It follows that the proposed residential development cannot be regarded as being in material contravention of the residential zoning of the lands.

Item 2 – Movement and Transportation including parking

- A new public bus service has commenced along the Dublin Road north of the application site.
- This bus route (KK2) operates from Purcellsinch to St. Lukes Hospital via Kilkenny City Centre with services every 30mins on weekdays. There is a bus stop on the Dublin Road c.250m north of the application site/provides an additional connection.
- Cycling and footpath improvements along Sion Road are proposed.
- With the exception of St Canice’s Hospital, all the major employment hubs in Kilkenny are located to the east of the N10.
- no significant safety issues were identified in relation to crossing the N10 roundabout.
- KK2 bus service will reduce the envisaged pedestrian volumes crossing the N10.
- Revised scheme is based on the DMURS principles

Item 3: Design and Layout

- The proposed design has been assessed) with respect to the 12 criteria set out in the Urban Design Manual.
- The change in mix and density of the development has created a stronger urban edge of 3-4 storey apartment blocks.

- A high quality and mix of public open spaces are provided.

Item 4: Childcare Guidelines

- A Childcare Assessment has been submitted with the application/concludes that the private/community childcare demand arising from the proposed development is likely to be very low (c.3 spaces)/in the event that such capacity was not available when the proposed development is occupied, an on-site community creche is proposed which will be managed by the estate management company.

Specific Information

- 5.2.3. A response to each item of specific information is set out in the report.

6.0 Relevant Planning Policy

6.1. National Policy

Project Ireland 2040 - National Planning Framework

Chapter 4 of the Framework addresses the topic of ‘making stronger urban places’ and sets out a range of objectives which it is considered will assist in achieving same.

Key Objectives include:

- National Policy Objective 4: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.
- National Planning Objective 13: In urban areas, planning and related standards, including, in particular, height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.
- National Policy Objective 27: Ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking

and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.

- National Policy Objective 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- National Policy Objective 71: City/county development plan core strategies to be further developed to ensure a co-ordinated and balanced approach to future population and housing requirements across urban and rural area

Section 28 Guidance

6.1.1. Having considered the nature of the proposal, the receiving environment, the documentation on file, including submission from the planning authority, I am of the opinion, that the directly relevant Section 28 Ministerial Guidelines are:

- 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (including the associated 'Urban Design Manual') (2009)
- 'Design Manual for Urban Roads and Streets' (DMURS) (2019)
- 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' (2018)
- Urban Development and Building Height, Guidelines for Planning Authorities (2018)
- Childcare Facilities – Guidelines for Planning Authorities (2001)
- 'The Planning System and Flood Risk Management' (including the associated 'Technical Appendices') (2009)
- Architectural Heritage Protection- Guidelines for Planning Authorities (2011)
- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (2009)

Other relevant national guidelines include:

- Framework and Principles for the Protection of the Archaeological Heritage Department of Arts, Heritage, Gaeltacht and the Islands 1999.

6.2. **Regional Policy – Regional Spatial Strategy for the Southern Region 2020**

The RSES primarily aims to support the delivery of the programme for change set out in Project Ireland 2040, the National Planning Framework (NPF) and the National Development Plan 2018-27 (NDP).

Kilkenny is designated as a Key Town within the Settlement Typology – these are defined as ‘Large population scale urban centre functioning as self-sustaining regional drivers’ and ‘Strategically located urban centres with accessibility and significant influence in a sub-regional context’.

In relation to Key Towns, it envisaged that local authorities should plan for population growth of more than 30% by 2040.

RPO 12 relates specifically to Kilkenny City and objectives include *inter alia*

- To strengthen the role of Kilkenny City as a self-sustaining regional economic driver with significant zone of influence and Key Town on Dublin – Carlow-Kilkenny Waterford M9 Road/Rail Axis, links to the Eastern Corridor.
- To seek investment in sustainable transport measures through a Local Transport Plan including development of Town Bus Services in support of the Compact ‘10-minute city’ concept.

Section 3.9 of the RSES states that ‘urban communities need sufficient densities to sustain important local services, public transport networks and realise 5-10 minute city and town concepts’.

RPO 35 supports the need for compact growth and states that *inter alia* Local Authorities, through Development Plan and Local Area Plan policies, shall identify rejuvenation priorities within our region’s settlements which demonstrate achievement of National Strategic Outcome: Compact Growth and that Development Plans shall set out a transitional minimum requirement to deliver at least 30% of all new homes that are targeted in settlements other than the cities and suburbs, within their existing built-up footprints in accordance with NPF National Policy Objective 3c. This will be evidence based on availability and deliverability of lands within the existing built up footprints.

6.3. Local Policy

Kilkenny City and Environs Development Plan 2014

Chapter 3 deals with the Core Strategy for the County. Section 3.3.1 which refers to land requirement set out that “in order to reflect that demand for housing on larger sites at lower than normal densities it is proposed to continue with the low-density zonings at selected locations in the environs of the City. An additional area for low density is identified at the Sion Road (1.95ha) and an additional area along the old Dublin road (0.69ha).

The lands contain two land use zonings ‘existing low residential density’ to the north and a portion of lands zoned ‘amenity/green links/ biodiversity’ to the south along the banks of the River Nore.

Figure 7.2 of the City development plan identifies a portion of lands to the south as ‘key green infrastructure’.

Section 11.4.1 pertains to ‘Density’ and sets out inter alia:

As in the preceding Development Plan it is not intended to prescribe maximum residential density standards. The emphasis will be on providing quality-housing environments based on innovation and a design led approach. A high standard of architectural design and layout will be required. The Planning Authority will seek to ensure that new developments have individuality and a sense of place, which is generated by the interaction between the physical characteristics and features of the site and its surroundings and the layout, landscaping and design of the new housing.

6.4. Statement of Consistency

- 6.4.1. The applicant has submitted a Statement of Consistency (included in Section 11 of the Planning Reports and Statements of Consistency) as per Section 8(1)(iv) of the Act of 2016, which indicates how the proposal is consistent with the policies and objectives of section 28 Guidelines and the City Development Plan. The following points are noted:

National Planning Framework

- The subject site is a residential zoned site located within the Kilkenny city environs. Development on this site is consistent with NPO 3a that aims to provide 40% of the houses in Ireland within footprint of existing settlements.

- NPO 35 and 33 emphasises locating residential developments in sustainable and viable locations/4 out of the 5 business parks of Kilkenny located within a 2km radius of the site.
- The development seeks to deliver a wide variety of residential units at this site that is located less than 2km from Kilkenny city centre/well connected to local services, public transport and employment in the immediate vicinity/infrastructure improvements proposed.
- Served by new bus route.
- Open space provided/Kilkenny Castle and Park is easily accessible to the site via the River Nore pedestrian and cycle path

Rebuilding Ireland – Action Plan for Housing and Homelessness

- The proposed development is consistent with Pillar 3 to build more houses

Regional Spatial Strategy for the Southern Region 2020

- Deliver a new sustainable residential community within a unique residential setting with clear sense of place and excellent quality of life and environmental qualities including proximity to new and existing public open spaces.

Urban Development & Building Heights Guidelines for Planning Authorities (2018)

- It is considered that the subject site is an appropriate site for a development of 2 to 4 storeys as proposed.
- The development will not be visible from any sensitive view locations from the vicinity of the River Nore/responds to its overall natural and built environment and it makes a positive contribution to the urban context.
- The materials and finishes of the proposed blocks are designed to a high architectural standard/will respect the adjoining protected structures.

Sustainable Residential Development in Urban Areas Guidelines, 2009

- The application site will be served by high quality walking and cycling links.
- Road improvement works along Sion road to the north of the site to improve pedestrian and cycle connectivity of site to Dublin road.

- 4 out of 5 of Kilkenny's industrial centres and business parks are within a 2 km radius of the site
- Mix of units provided/ total open space provided within the scheme will add up to c.45.3% of the application site area.
- The development is well located in relation to existing/planned social infrastructure in the locality particularly with respect to neighbouring retail and business parks that provide for a range of community facilities.
- The layout of development has been designed to utilise the natural features of the site and retain the demesne landscape features,
- A wide range of unit sizes is proposed for the scheme it ranges from 1-bedroom apartments to 5-bedroom houses. This mix of residential unit types results in significantly improving the mix of the general area. Currently the locality is dominated by independent detached bungalows. The development will provide smaller units that will help households to downsize and as starter homes.
- Sufficient school and childcare services/sufficient to community centres, healthcare facilities and neighbourhood centre uses.
- In relation to density the subject lands are considered 'adjacent to Public Transport Corridors' under the Guidelines as the site entrance is located at c.250m from junction of Sion road and R712 along which the proposed Green bus route scheme will run.

Urban Design Manual

- Consistent with the 12 criteria set out therein.

Quality Housing for Sustainable Communities (2007)

- Complies with standards set out therein.

Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities'

- Compliant with the stated housing mix in the Guidelines.
- Housing Quality Assessment demonstrates the proposal meets or exceeds the relevant standards in respect to apartment size.

- 100% of the apartments and duplexes as dual aspect
- Open space requirements have been met.
- The communal open space provided is significant and much greater than the c. 578sqm of communal open space minimum requirement
- In line with other standards in the Guidelines.
- Proposed density is appropriate given National Policy objective to increase residential density in existing urban infill location.

Design Manual for Urban Roads and Streets (2013)

- Proposed scheme prioritises pedestrians and cyclists through the development using shared surfaces and designated footpaths/cycle paths and limiting the number of vehicles in the scheme.
- The site is also within proximity to existing green links and main arterial roads that include cycle lanes providing access to Kilkenny city within 10 minutes.
- The proposal also includes upgrade to footpath along Sion Road as far as the junction with the Dublin Road and provision of cycle lanes.

Childcare Facilities Guidelines for Planning Authorities (2001)

- As per response to Item No. 4 above.

Smarter Travel – A Sustainable Transport Future, A New Transport Policy for Ireland 2009 – 2020

- Good access to public transport with proposed bus green route passing through an accessible distance of the site.

The Planning System and Flood Risk Management (2009)

- The flood zone mapping indicates that the proposed development site is not located within any of the flood zones.

Kilkenny City and Environs Development Plan 2014-2020

Core and Settlement Strategy

- Lands along Sion Road has been identified as infill opportunity for residential development within its core strategy.

- Subject site is also located within walkable distance from existing and proposed employment areas.
- The site is an appropriate location for high density residential development, considering its location within the existing built footprint of the city.
- Well serviced in terms of community facilities and other infrastructure networks.

Zoning/Density

- Net density of 38 units per ha, when the existing/proposed public park /open spaces are excluded.
- The proposed density is therefore higher than the 10 units per ha maximum stated in the Development Plan.
- Should the Board consider that the subject development therefore represents a Material Contravention of the Development Plan (in relation to density alone) we submit that the Board can still grant permission under Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act 2016, which states:
- The zoning objective for the site prescribes a maximum density of 10 units per ha “on average”.
- However, Section 11.4.1 states that it is not the intention of the Development Plan to prescribe maximum residential density standards:

Other

- Complies with Objectives that relate to residential development, open space standards, parking standards, bin storage and overlooking,

7.0 Third Party Submissions

- 7.1.1. 36 no submissions have been received from observers as detailed in Appendix 1 of this report. The issues raised are summarised below:

Principle/Zoning/Density

- Kilkenny has no need for high density living/Will double the amount of housing on Sion Road/Lack of supporting infrastructure.

- Application is a material contravention of the ‘low density zoning objective’. Legal Opinion related to same is submitted – which is summarised as follows:
 - Details the contents of the Board’s Opinion and related Inspector’s Report (which are on file)
 - Reference is made Subsection 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, in particular (b) which states that the Board shall not grant permission under paragraph (a) where the proposed development or part of it, contravenes materially the development plan or local area plan related to the area concerned, in relation to the zoning of land.
 - Reference is made to relevant provisions of the Planning and Development Act 2000 (as amended) including *inter alia* Subsection 10(2) which states that ‘without prejudice to the generality of sub-section (1), a Development Plan shall include objectives for (a) **the zoning of land for the use solely or primarily of particular area for particular purposes (whether residential, commercial, industrial, agricultural, recreational, as open space or otherwise, or a mixture of those uses),** where **and to such extent** as the proper planning and sustainable development of the area, in the opinion of the planning authority, requires the use to be indicate; (emphasis added)
 - It is argued that *inter alia* the zoning of land ‘existing low density residential’ where low density housing is defined as not more than 10 units per hectare i.e. indicating *the extent* is equally a zoning for the purposes of subsection 10(2) of the Act.
 - Reference is made to relevant case law including Tennyson V Dun Laoghaire Corporation [1991], Heather Hill Management Company CNG and McGoldrick V An Bord Pleanála/Burkewway Homes Ltd (2019)
 - It is concluded that the proposed development in this case, by virtue of its clear breach of the ‘Existing Low Density Residential’ zoning of the subject land in the Kilkenny City and Environs Development Plan 2014, contravenes materially the development plan relating to the area concerned in relation to the zoning of the land.

- Accordingly the proposed strategic housing in this case is a development to which, by virtue of subsection 9(6)(b) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, An Bord Pleanála is bound not to grant permission.
- Low density developments have been granted in the area/Granting permission would set a precedent for other low-density sites/Would further undermine Development Plan objectives/Applicant is attempting to circumvent the low density zoning for the area.
- Has been total disregard for the Sion Road neighbourhood/no consultation/Concerned that housing may be leased to 'Respond'/may not maintain infrastructure/Clustering of social housing not recommended.
- Density and Height should be substantially reduced/ Kilkenny has a demand for low density housing/ The need for high quality, low density housing is to stem population leakage from the City and reduce pressure for urban generated housing in the countryside
- Appropriate development of the site would be welcomed/Location of development is not appropriate for the density proposed.
- Would undermine the public consultation process as represented by the SPC's (Strategic Policy Committees)
- Applicants reference to Section 10(2)(a) of the 2000 Act omits the full wording – full wording allows the planning authority to indicate the extent of the use in question.
- Content of a development plan is meant to be readily intelligible and capable of being understood by a reasonably intelligent person with no expertise in law or planning
- Proposal does not fit the criteria outlined in Section 37(2)(b) Site is not considered a strategic site by the planning authority /only phase 1 lands were included in the housing needs assessment/In terms of conflicting objectives, it is not considered that Section 11.4.1 of the Development Plan is relevant where the number of units permissible is pre-specified./Current RSES for the South was adopted in

Jan 2020/any changes to zoning can be done in the impending Development Plan review/through public consultation.

- No other low density sites have been developed with high density housing – no other relevant permissions/Applicant has underplayed the amount of development on the site/Net density is the only relevant density.
- Site is not a former ecclesiastical/institutional use/Low-density reaffirmed in Adopted Variation 3 in July 2017/Developments should take place within the ring road first.
- Not against high density development/will meet housing need/bus route only feasible with high density housing.
- Planning History in the area is for low-density residential
- The most accurate gross site density figure of 36 unit/ha/ - would exceed the permitted density figure by a factor of 3.8/Having regard to the recently permitted developments, there is potential for a maximum of 32 units.
- Extent of lands available for development in this low-density zoned area is limited/Development Plan clearly defined the individual zoning categories. – the term low density is clearly defined/are not open to reinterpretation.
- Heather Hill judgement is relevant/A member of the public reading the various provisions of the Development Plan would understand that the objective of the development strategy is to allocate future population growth between the various residential zonings in the City and Environs. The number of units proposed here far exceed the total number of units (103 unit) for the entire low density zoning contained in the development plan area/Cannot grant permission having regard to Section 9(6)(b) of the Planning and Development (Housing) and Residential Tenancies Act, 2016/Does not comply with the provisions of 37(2)(b) of the PDA 2000
- Guidelines on Sustainable Residential Development (2009) allow for a limited number of low-density areas to facilitate a choice of housing types in the town/city/Current pattern of development is for low-density development
- Proposal is not in accordance with the NPF, RSES for the Southern Region, Development Plan or Section 28 Guidelines

- Proposal would be heavily car dependant/RSES endorses the principle of the '10 minute city'/Investment in the city is determined by the city development plan.
- All residential zoned land in Kilkenny is concentrated in four neighbourhoods that are within 2km of the core retail area of the city/Does not meet the criteria for location of apartments as set out in Design Standards for New Apartments - site falls in to the category of 'peripheral and/or less accessible urban location/Walking distances cited are not commonly used standards/only a convenience store and a pharmacy are within 'easy walking distance'
- Strategy and zoning to meeting housing demands is set out in the Development Plan/Density is greater than the 30 unit/ha as stated in Torca's counsel's opinion.
- Does not comply with core strategy/Does not demonstrate that existing infrastructural deficiencies have been addressed to facilitate the development
- No evidence based need for high density housing in addition to that planned in the Development Plan
- High Density housing not sustainable on grounds of public health
- Approach of maintaining development within the ring road is in line with the NPF and compact growth as well as other national guidelines
- There are adequate residentially zoned lands within the ring road on the western side of the side for higher density housing

Traffic

- Traffic is already very heavy/Road is dangerous/Crossing the ring road is dangerous/Road safety issues/Crossing roundabout is dangerous/200 more vehicles per day as a result of this development
- Junction of Sion Road and the Old Dublin Road is difficult for motorists/Sion Road is used by Truckers to park on/New Bus Service is only on a trial basis/Area has poor connectivity to the city.
- Traffic surveys omitted the entrance to the industrial units/survey carried out during a mid-term break/Flaws in the traffic study/substantial queuing existing for traffic coming from Sion Road attempting to join the Dublin Road.
- Traffic Volumes have been underestimated in the TIA

- Inaccuracies in the Transport Assessment /8 no. houses have individual entrances/visibility splays not show for all/visibility dependant on boundary treatment permitted under P19-106 being delivered on the opposite side of the road.
- Modal split is inaccurate/assessment carried out under UK standards
- When all developments are considered increases are in excess of 5%/additional modelling is warranted/Forecasting was not carried out according to TII guidance.
- Junction of the Sion Road/R172 was modelled on a two lane approach - this is not the case/ observations note that queuing at this junction is excess of what is stated in the assessment.
- Has not included any assessment of the N10 Old Dublin Road Roundabout/Existing congestion on the R172/Risks to pedestrians crossing roundabout/The scope of the Route Access Appraisal is limited.
- Traffic Count took place short of the junction of the Sion Road and Dublin Road and did not take into account movements from the tile and bathroom showroom.
- If an accurate analysis of the Sion Road/R172 junction had been carried out it would have been demonstrated that the junction would be over capacity.
- Cars reversing out onto Sion Road
- Kilkenny Council Planners have stated that this site does not meet their requirement in terms of connectivity and infrastructure/Is at best a 30 minute walk into the City/No safe place to cross the ring road.
- Increase in vehicular traffic/particularly at peak times/Uptake for the bus service has been poor/Cycle infrastructure is deficient/dangerous
- Nore Valley Walk not suitable at night/in winter/for pedestrians wishing to access the north side of the city.
- Previous application at Middleknock was refused because of the proposed height and density and traffic hazard (07/982)/Torca were previously refused by Galway Co. Co. due the intensification of traffic on small access road (Ref 19172).
- Accidents at the bend in the road by Sion Meadows/Insufficient car parking/Existing walkway is not suitable for cyclists at any time.

Road narrows considerably/not possible to widen the road/high percentage of traffic is comprised of large tractors and trailers.

- Should only go ahead of it is accompanied by a proper car traffic plan that permits ease of egress for all from the Sion Road
- Low density housing would reduce impacts on roads.
- Should only be one entrance to the development/Proposed entrance is too close to the acute bend on the road/previous accident at this point/Extension of the cycle path to the junction of the Sion Road (L2631) and Carlow Road (R712) is dangerous/will cause congestion.
- Will be an additional 443 residents and 236 extra cars as a result of this and other permitted developments
- Increased development at the IDA industrial estate will contribute to traffic
- Applicant does not appear to have agreement with council or landowners to improve sightlines
- Nearest bus stop is in fact 500m not 250 m.
- Traffic generated by the quarry and haulage company was not accounted for.
- Cycle lane does not connect with other cycle lanes/Cycle lane will reduce the road width
- Impact of this development, and the proposed Sludge Treatment Process Plant, is beyond the capacity of the existing infrastructure.
- No room to make adjustment to the road without widening the road.
- Safety issues at junction with the R712/Pedestrians on road.
- Road safety concerns/bend in the road/restricts driver visibility/most recent speed survey indicates the 85th percentile speed is 72 kph/number of accidents recently.
- Other committed development will generate 420 vehicle trips per day/Permitted access for approved development P19/706 is within 20m of the proposed Sion Hermitage Entrance/will generate conflict.
- Limited amount of services on the eastern side of ring road

- Insufficient parking/potential visitor parking on the public road/parking within the development is insufficient.
- Mobility Management Plan has fee measures to address connectivity issues.
- Road Safety Audit is a Stage 1 Audit – did not consider cycle track provision/sightline issues for vehicles turning right/reversing onto public road.
- Heavy Trucks using the Ring Road as a result of the industrial/commercial developments in the vicinity

Ecology/Appropriate Assessment

- Impact on wildlife.
- Would have been best practice to conduct an Ecological Impact Assessment (EclA) and consult with relevant bodies including IFI and NPWS.
- Impact of disturbance of the Nore Trail hasn't been assessed/impacts from the operational stage/construction/impact of the settlement ponds on the SAC
- Extent of tree removal/large Lime Tree should be retained/Apples trees are not included in the Arboricultural Report
- Impact on the SAC/Failure of pump station would result in pollution/Impact on Nore Valley Walk/SAC and River Nore.
- Development will contravene policies of the Development Plan that relate to landscape/visual impact/impact on views/Nore Valley Walk.
- Major work would need to be done to ensure the Nore Valley Walk is a permanent route into town.
- Will cause major damage and destruction to trees on trial.
- No details in relation to the pump station.
- No detail is provided in relation to the settling ponds/essential to assess impacts on SAC.
- Emergency overflow of wastewater would have devastating effects on the surrounding environment/Insufficient detail to make an assessment of the potential impacts on the ecology within the site/on European Sites.

- Impacts on Bats/Protected species
- No mitigation measures to minimise environmental impact
- Trees have already been cleared from the site.
- Presence of foxes, badgers, pheasant, grey squirrel, rabbit and bats is routinely observed.
- Little detail on infrastructural works needed for links via the Nore Valley Walk
- Provision of compacted gravel/wood chip is proposed in the landscaping plan/works within the floodplain/not addressed in the NIS
- No mitigation in relation to impacts on Kingfisher are put forward save for lighting/no information is put forward in relation to light spill from buildings towards SAC.
- Removal of woodland to the east would impact on wildlife/previous permission retained the woodland (p14-586)
- Previous AA carried on in relation to zoning was based on low density residential.
- No FFL measurements for the Pump Station.
- No evidence of consultation with public bodies in developing and maintaining the Nore Valley Trail/not clear how this proposed enhancement is to be achieved in an SAC/upgrade works would involve substantial safety and ecological implications/proposed materials are not appropriate.
- Significant excavation is needed to install a foul sewerage storage tank.
- Removal of trees will result in loss of habitat and damage to ecology
- In direct conflict with the objectives of the development plan
- Impact on birds including Kingfisher
- Impact on otter
- Increased used of trails by mountain bikes
- No detail in relation to the extent of the tree protection works within the SAC
- No detail of woodland maintenance/landscaping proposals.

- Insufficient detail in the NIS to allow AA to be undertaken.
- Impacts of storm water attenuation on the SAC
- There is a 54% shortfall in open space provision/playground provision will have ecological impacts

Conservation/Design

- Out of character
- Shared spaces/Apartments not appropriate for post Covid
- Proposed materials for the path are not appropriate
- No images of how the trail will look after the works
- Visual impacts of the pumping station and gabions
- Higher buildings will be unsuitable for many
- Would be incongruous in terms of design and would seriously injure the visual amenities of the area.
- Height of all the apartment blocks is excess/does not comply with Development Plan/ Building Height Guidelines.
- Design Standards for New Apartments seeks to develop apartment in areas with established infrastructure and services/this is not such an area.
- Proportion of apartments is excessive (40%)/inappropriate mix
- Walled Garden should be retained.
- Features on the site which are worthy of retention
- Out of place on this site.
- Obliterate the footprint of Sion House and gardens completely and shows no respect for the heritage of the site.
- Built heritage of the site has not been adequately addressed in this application.
- Evidence indicates that a substantial portion of the fabric of the building is at least 250 years old.

- Small walled section within the walled garden was not surveyed in the Arboricultural Report/warrants further research.
- Importance of walled gardens is increasingly recognised.
- Sion House provides an opportunity to replicate the faithful restoration of the House
- Walled garden should be preserved and restored as part of a new development.
- Preservation would be in line with Development Plan objectives.
- No suitable outdoor space for the childcare facility/proposed toddler play area is not within sightlines of the childcare facility
- Proposal does not fit in with the surroundings of the site
- Public areas are overprovided with car parking/rely too much on artificial surfaces.
- Insufficient detail in the drawings.
- Does not satisfy sense of place/design criteria as set out in the Development Plan.

Visual/Residential Amenity

- Photomontages are misleading/camouflaged by trees/some of these trees are proposed to be removed.
- Visual impact from the Nore Valley Trial.
- Screening provided by trees will take years to mature
- No photomontages from the Nore Valley Trial
- Negative impact on adjoining residential properties
- Impact on residential amenity including overlooking
- Noise pollution
- Impacts on daylight/sunlight and overshadowing.
- Impact of the construction phase on residential amenity/working hours on sat
- Will impact on privacy/overlook garden.

- Photomontages taken in full leaf – impact would be greater in winter.
- Loss of light
- Too close to boundary wall
- Overlooking /Loss of privacy
- Two bedroom windows look out onto the site
- Unit 8 is too close to the boundary wall/overlooks front garden/is offensive
- Boundary wall must be replaced by the existing 3.1m stone wall
- Impacts on the visual and residential amenities of the area.
- Impact on protected view from Ossory Bridge
- Traffic noise from N10
- Increased use of walkway will lead to privacy issues
- Overlooking of houses permitted under P19/706

Employment/Social Infrastructure

- No schools within walking distance.
- Freshco/Mace cannot be described as supermarkets.
- Lack of school capacity
- No assessment of the proximity of the site to local services and amenities.
- No schools, district centres health centres within an easy walking distance.
- There are no employment areas in close proximity to the site.
- No childcare facility close to the site.

Flooding

- Flooding on Linear Park walkway/Safety issues

Site Services

- Storage tank allocation
- Pressure on waste water treatment/water supply/Purcellsinch waste water treatment is already at capacity/requires upgrading

- On site drainage may not be suitable for this site/if the site requires drainage to the River Nore will have an environmental impact/will contribute to downstream flooding.

Other

- Omissions, errors and inconsistencies in the application documents.
- Development should be required to use a different name from this development and permitted developments.
- Vulnerable residents in the two HSE homes on Sion Road/
- Inconsistencies in drawings in relation to the foul pump/sewage storage unit and location
- Large tank may be required for fire storage capacity/impact of same has not been addressed.
- Concerned about the demolition impact and associated vibrations/impact on structure
- Plans are misleading/does not show all of 'The Hermitage' residential dwelling opposite the site.
- Security issues in relation to the boundary/access would be required
- Would compromise social capital
- Apparent conflict of interest in the design team
- Nothing to indicate the proposed park will be taken in charge
- Location of the proposed park is inappropriate
- Increase in anti-social behaviour
- Littering
- Health issues
- No fire flow capacity has been demonstrated.
- Land to the west included which is not in the ownership of the applicant/owners strongly object

- Measures should be put in place to prevent access to quarry area with steep drop/safety concerns in relation to unrestricted access to River Nore/no safety measures have been put forward.
- Legal ownership of site is unclear.
- Landscaping plan is good
- Attachments: Land registry map; Sequential Analysis of Kilkenny City Environs
- Attachments: Map showing potential cycle route

8.0 Planning Authority Submission

- 8.1. Kilkenny County Council has made a submission in accordance with the requirements of section 8(5)(a) of the Act of 2016. It summarises observer comments as per section 8(5)(a)(i). The planning and technical analysis in accordance with the requirements of section 8(5)(a)(ii) and 8(5)(b)(i) may be summarised as follows.

Core Strategy

- Core strategy envisages demand being satisfied within the designated new neighbourhoods of Loughmacask and Western Environs/Substantial investment in infrastructure is currently underway and is planned in the opening up of these areas for investment.
- Having regard to the population targets previously set under the Regional Planning Guidelines (and the current City Development Plan (2,077 persons over 6 yrs – an average of 135 houses per year) and the emerging targets under the RSES (30% increase on 2016 population; an average of 134 units per year), and considering the spatial allocation of new greenfield development, centred on the two emerging neighbouring, it is consider the development would undermine the delivery of the core strategy during the next development plan period and beyond due to its location and scale.

Transport

- Serious questions in relation to the methodology uses in the completion of the traffic impact assessment and the road safety audit.

- Errors in drawings/if permitted development P19/706 is not constructed then this may compromise the safety of the main junction into the site/may result in collisions.
- Connectivity to the city centre and to other essential services is inadequate.
- The need to negotiate junction between the R712 and the junction with the N10 represents a serious barrier to pedestrians and cyclists/Access to the River Nore linear park is not credible/any potential upgrades required have not been identified or costed.
- Lack of detail in relation to the proposed Mobility Management Plan Co-ordinator/Mobility Management Plan will be difficult to implement and monitor/no specific details or actions that can be costed and programmed for implementation.

Heritage

- Proposed layout demolishes the existing enclosed garden which was a significant element in the original designed landscape at Sion House dating from the 18th Century.
- Section 7.3.5 seeks protection and management of the historic garden. The proposal is in contravention of that objective.

Design

- Proposed development fails to strike an appropriate balance between Sections 3.3.1 and 11.4.1 of the Development Plan.
- Excessive in scale and density for its location.
- No reference is made as to how the walled garden informed the design approach.
- Council is of the view that to grant permission would materially contravene the development plan/undermine the core starter/conflict with the Kilkenny City smarter travel plan and sustainable transport objectives/contrive development management objective 7.3.5/results in a development that would be isolated from appropriate services and would be car dependant/lack the appropriate cycling and pedestrian connections.

Section 5 of the Chief Executive's Report recommends refusal for one reason as follows:

Having regard to the provisions of the Kilkenny City & Environs Development Plan 2014-2020, the nature and scale of the proposed development, its location on land on the periphery of the existing built up area on land zoned for low density housing, it is considered that the proposed development would be a material contravention of the existing low density zoning objective of the Development Plan, would result in a residential development that would be out of character with the general scale and pattern of residential development in the area and would be poorly connected to essential services such as schools and other community facilities and shopping in terms of pedestrian and cycling facilities and would therefore be contrary to the proper planning and sustainable development of the area.

In addition, it is the view of the Council that the Board is restricted from granting permission with regard to the 'zoning of the land' in Section 9(6)(b) of the 2016 Act.

In the event of a grant, recommended conditions are set out in Section 6 of the Chief Executive's Report.

Interdepartmental Reports

Roads Design Office

- Stage 1 RSA is limited/does not follow TII Guidelines
- MMP is generic
- Shortfall in car parking raises concerns in relation to inappropriate parking
- Trip generation from crèche
- Wrong growth factors have been used in the assessment
- No consideration of other developments in the assessment
- Capacity of Sion Road junction/R172 has not been accurately assessed – existing arrangement is a single lane with a flare for 1 vehicle.
- Visibility spays are not a true reflection of the existing layout
- Impact of cycle lane on junction capacity/safety issues with same
- Methodology used may impact capacity results

- Old Dublin Road Roundabout – Permitted the scale of development as proposed, in the absence of modifications to the existing roundabout infrastructure is a pedestrian and traffic safety concern
- Accesses from the 8 no. houses/collisions more likely to occur/practicality of parking spaces to these houses.
- No visitor parking provision.
- Issues in relation to detailed design of junctions internally/car parking within junctions
- Buffer zone should be provided where perpendicular parking is proposed.
- Access for emergency services appears to be restricted for buildings 5 and 5a.
- Mini-pillars reducing effective footpath width/lighting columns/insufficient lighting
- Foul sewer chambers within the carriageway raise traffic safety concerns.
- Proposed cycle route on Sion Road is not in line with the national cycle manual
- Assessment of the stopping sight distances for vehicles turning right off the Sion Road has not been provided/access to the site is compromised by the existing layout of the wall to the opposite side of the main entrance.

Conservation Officer

- Site is within the grounds of a designed landscape
- Designed landscape (which includes the walled garden) was original part of Sion House and is included in the National Inventory of Architectural Heritage Garden Survey (Site ID 1745)
- Removal of the walled garden would remove the last remnants of Sion House from the area.
- Proposals should be revised so the walled gardens may be retained and form part of the development.

Environment

- No objection to the proposed development subject to conditions being attached.

Parks

- Majority of existing woodland and mature trees are to be protected
- Development concentrated to the east of the site/impact on the walled garden
- Reduction of density/consideration of a new internal layout in the interest of preserving the walled garden.
- Majority of trees to be removed are of poor ecological value.
- Trees to the east of the site are early mature conifer trees/not of the same ecological value as the broadleaf woodlands to the west.
- Well located playgrounds
- Link via Nore Valley Welcomed/Challenges with crossing ring road
- Conditions recommended

Elected Members

8.1.1. A summary of the views of elected members as expressed at the Kilkenny Municipal District Meeting held on Wednesday 12th June 2020 is included in Section 3 of the Chief Executive's Report and is reproduced below:

- Scale and density of the proposed development is totally out of character with the locality
- Local residents in the locality of the proposed development are extremely concerned about the scale of the development proposed and their views must be respected.
- The lands for the proposed development are current zoned low density residential. The density of the proposed development is well in excess of the current zoning, so if it were to proceed it would contravene the City Development Plan.
- The City Development Plan is adopted by the elected members after an extensive consultation process and must be respected. If this projected is approved by ABP it would undermined the role of Local Government and its members.
- The traffic is already constrained in the area and the roads infrastructure does not have the capacity to cater for the scale of development proposed.

- There are no schools, shops and insufficient community facilities in the locality to support the scale of development proposed.
- The proposed development is too far away from the City Centre and it would not be safe for cyclists and pedestrians to cross the already busy ring-road to access the area.
- Access from the proposed development to the City Centre along the river would also not be safe for children. Furthermore the Special Area of Conservation of the Nore limits the potential of public lighting, and this in turn limits the potential to have a lighted walkway at night.
- The Council's own strategic policy is to prioritise the development of the Western Environs as supported through the Local Infrastructure Housing Activation Fund (LIHAF).
- The Members unanimously agreed that the Chief Executive of Kilkenny County Council should recommend refusal of this proposed development to ABP.

9.0 Prescribed Bodies

Irish Water

- Irish Water has issued the applicant a Statement of Design Acceptance in line with Confirmation of Feasibility for 108 residential units. Irish Water notes the increase in units of 12 to a new total of 120. Irish Water has assessed and the connection to the network can be accommodated in line with the new total number of units.
- A standard condition is recommended.

An Taisce

- Kilkenny is a small provincial city and the proposed development is phased over three years suggesting that it should not come under strategic development policy.
- The central issue with this development revolves around where the urban boundary of Kilkenny is located and whether this should be determined by

Developers or by an orderly planning process agreed in County Development Plans in consultation with the public.

- Proposal constitutes a suburban type development in the countryside at a density exceeding that recommended in the 'Kilkenny City & Environs Development Plan 2014-2020' for this area.
- Developments of this density should take place within the Ring Road where there is a large area of public land.
- Language used is disconcerting and inaccurate e.g. they use terms like 'street frontage' and 'streetscape' when this is actually a small rural road.
- It is also claimed that the site is connected to Kilkenny centre by a 'cycle path' along the river bank when that path is actually a walking trail called the Kilkenny to Bennettsbridge Nore Valley Walk (and Lacken Walk nearer the city)/images presented clearly show that it is much too narrow to accommodate both pedestrians and cyclists.
- The Transport Assessment document by Hegsons Design Consultancy Ltd. assumes that approximately 10.8 % of all person trips associated with the proposed development would be made by public transport, walking or cycling/low aspiration for a new housing estate/a car dependent development with 154 car parking spaces.
- We welcome the proposal to allow Kilkenny County Council take in charge the SAC/SPA portion of the site public access to the River.
- Further development of housing estates on the Sion Road should await any decision by Kilkenny County Council to extend the urban boundary, provide infrastructural services, and hold public consultations on design of the area/development of 120 residential units is simply at too large a scale for this location, constitutes a car dependent estate and would add to urban sprawl on the Sion Road.

Transport Infrastructure Ireland

- Authority will rely on the planning authority to abide by official policy in relation to development on/affecting national roads as outlined in DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012).

Inland Fisheries Ireland

- Nore River is an important Spring Salmon & sea trout fishery and supports several species listed in Annex II of the Directive including Salmon, River Lamprey, Brook Lamprey, Sea Lamprey, Freshwater Pearl Mussel and Otter
- Much of the main channel of the Nore River main channel and many tributaries are candidate Special Area for Conservation (SAC) under the European Habitats Directive.
- Waters in fisheries terms likely to be impacted act primarily as contributories to downstream habitat for juvenile salmonids, lampreys and other species as well as macrophytes, algae and macro-invertebrates which as drift form a significant part of the food supply to the downstream fisheries of the Nore River system.
- They also have the potential to convey deleterious matter from those works such as concrete, silt, fuel, lubricating and hydraulic oils from construction plant and equipment downstream unless proper safeguards are in place.
- Pre-cast concrete should be used whenever possible, to eliminate the risk to all forms of aquatic life/When cast-in-place concrete is required, measures should be put in place to ensure this does not enter drainage network.
- Discharge of silt-laden waters to fisheries streams as a result of construction works is a potential impact with impacts on salmonid spawning beds, and juvenile salmonids, which are particularly sensitive to siltation of gill structures/plant and macro-invertebrate communities can be blanketed over/lead to loss or degradation of valuable habitat. It is important to incorporate best practices into construction methods and strategies to minimise discharges of silt/suspended solids to waters.
- Systems should be put in place to ensure that there shall be no discharge of suspended solids or any other deleterious matter to watercourses during the construction/operational phase and during any landscaping work including covering of sand stockpiles/silt traps/buffer zones.
- A comprehensive plan should be drawn up at the planning stage with specific measures to address the high potential for silt pollution of the watercourse on-site during demolition/construction and landscaping works.

- Appropriate storage of oil and fuel is required with sufficient capacity in place/attention should be taken during refuelling and maintenance operations on plant and equipment/ All plant and equipment should carry oil/fuel spill kits/Where site works involve the discharges of drainage water to receiving rivers and streams, temporary oil interceptor facilities should be installed and maintained/Waste oils, empty oil containers and other hazardous wastes should be disposed of in accordance with the requirements of the Waste Management Act, 1996.
- The submission sets out recommend mitigation measures which are in line with the above comments.

9.1.1. The following bodies were also consulted and no response was received:

- Minister for Culture, Heritage and the Gaeltacht
- Heritage Council
- Coras Iompair Eireann
- Kilkenny County Childcare Committee

10.0 Appropriate Assessment

10.1. Appropriate Assessment (AA)

- 10.1.1. This section of the report considers the likely significant effects of the proposal on European sites with each of the potential significant effects assessed in respect of each of the Natura 2000 sites considered to be at risk and the significance of same. The assessment is based on the submitted Natura Impact Statement (NIS), prepared by Whitehill Environmental (dated March 2020).
- 10.1.2. The site lies partially within the River Barrow and Nore SAC (002162), and lies directly adjacent to the River Nore SPA (004233), as shown on Drawing No. 1908-P-007 'SAC and SPA Plan' which was submitted with the application.
- 10.1.3. I have had regard to the submissions of Third Parties in relation to the potential impacts on the River Barrow and Nore SAC and River Nore SPA, and I have also had regard to the submission of Inland Fisheries Ireland which relates to the protection of fisheries and plant and macro-invertebrate communities.

The Project and Its Characteristics

10.1.4. See the detailed description of the proposed development in section 2.0 above.

The European Sites Likely to be Affected (Stage I Screening)

- 10.1.5. The application is accompanied by two screening reports, which come to two different conclusions. This is most unsatisfactory, but does not result in the application being fundamentally flawed, in my view. Appendix II of the Submitted NIS, prepared by Whitehill Environmental and dated March 2020, contains a Biodiversity & Appropriate Assessment Screening Report (May 2019), prepared by Roger Goodwillie & Associates. This Biodiversity & Appropriate Assessment Screening Report appears to rule out impacts at Stage 1 and states that further stages of Appropriate Assessment are not required. For reasons as outlined below, I do not concur the conclusions of same.
- 10.1.6. I have given far more weight in my assessment to the significantly more comprehensive screening report as outlined in Section 3 of the NIS, prepared by Whitehill Environmental (March 2020).
- 10.1.7. Section 3.2 of the NIS gives a detailed description of the existing site. In terms of habitats, the fields are classified as dry meadows and grassy verges (GS2). The fields are bordered by tree lines (WL2). In terms of fauna, there was no evidence of badgers on site and very little of rabbits (only in the SE corner). The fox and hedgehog would be expected and there are occasional pine martens in the river valley. Otters are more frequent though their territory on the river is large. No suitable breeding places occur on the site. Bats were found to be present in and around the woodland to the north of the site.
- 10.1.8. Section 3.3 identifies 3 Natura sites within a 15km zone of the site as listed below:
- River Barrow and Nore SAC (002162) – Site is partially within the SAC
 - River Nore SPA (004233) - Site is partially within the SPA¹
 - Thomastown Quarry SAC (002252) – 13.2km south.

¹ The NIS states the site is partially within the SPA but is, in fact, directly adjacent to the River Nore SPA (004233), as shown on Drawing No. 1908-P-007 'SAC and SPA Plan' which was submitted with the application.

- 10.1.9. In determining the Natura 2000 sites where there is potential for likely significant effects arising from this development, I have had regard to the scale and nature of the project, the proximity of the site to any Natura 2000 sites, and I have had regard to any hydrological or hydrogeological links to any Natura 2000 sites. I have been aided in this regard by the EPA Appropriate Assessment Mapping Tool², as well as by the information on file, including observations on the application made by prescribed bodies and Third Parties, as well observations made on my site visit.
- 10.1.10. I concur with the conclusions of the Screening Report, in that the only two Natura 2000 sites where there is potential for likely significant effects are the River Barrow and Nore SAC (002162) and the River Nore SPA (004233), given that the SAC is partially within the site, and the SPA is directly adjacent to the site.
- 10.1.11. Significant impacts on the Thomastown Quarry SAC are considered unlikely, due to the distance of this SAC from the application site (13.2km), and the lack of hydrological connectivity between this SAC and the application site.
- 10.1.12. The qualifying interests of the River Barrow and Nore SAC (002162) and the River Nore SPA (004233) are listed below:

Table 1: European Sites/Qualifying Interests/Location

European site (site code) and Qualifying Interests	Location (closest straight line distance from the development site)
River Barrow and Nore SAC (002162) <u>Habitats</u> 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1170 Reefs 1310 Salicornia and other annuals colonising mud and sand	Site is partially within SAC

² www.epa.ie

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

10.1.13. Section 3.4 of the Screening Report identifies the nature of the potential impacts on the two Natura 2000 sites above. These are as follows:

- Deterioration of surface water quality in designated areas arising from pollution from surface water run-off during site preparation and construction;
- Deterioration in ground or surface water quality in designated areas arising from pollution during the operation of the proposed development;
- Habitat loss and fragmentation in terrestrial areas of the SAC arising from poor construction practices and waste management;
- Risk to Annex I or Annex II species associated with the site;
- Cumulative impacts with other proposed/existing developments.

10.1.14. I note that Third Parties have raised the issue of any upgrading works to the Nore Valley Trail (which runs through the south of the site which is within the SAC and adjacent to the SPA), and state that the impact of same hasn't been assessed. However, while the applicants have stated that this trail will be utilised by pedestrians and cyclists (see comments on same in the relevant sections below), the development description or the application documents do not propose any upgrade works to these trails, and it is indicated in drawing number TP1789-TPP 'Tree

Protection Plan' that there will be no construction access to the woodland area. I believe that this gives sufficient reassurance in this regard.

10.1.15. However, a significant omission in the impacts identified is Section 3.4 of the NIS is the potential for increased anthropogenic pressures at operational stage arising from both the proximity of the proposed development to the Natura 2000 sites, and arising from the increased utilisation of the Nore Valley trail as facilitated by the linkages proposed from Sion Road (which already exist in an informal manner but are not publically accessible). Potential adverse impacts on both Natura 2000 sites from increased anthropogenic activity include, but are not limited to, disturbance of species of Qualifying Interest, trampling within the Qualifying Interest habitats (particularly along undesignated paths), littering, spreading of non-native invasive plant species into the woodland, through the fly-tipping of garden waste, and from inappropriate garden planting.

AA Screening Conclusion

10.1.16. Given that the application site lies partially within the SAC and lies directly adjacent to the SPA, I conclude that the impacts as described above would be likely and significant.

10.1.17. As such likely significant effects on the River Barrow and Nore SAC (002162) and the River Nore SPA (004233), cannot be ruled out, having regard to the sites' conservation objectives, and a Stage 2 Appropriate Assessment is required.

Stage 2 – Appropriate Assessment

10.1.18. The Qualifying Interests/Special Conservation Interests of the River Barrow and Nore SAC (002162) and the River Nore SPA (004233) are outlined in Table 1 above.

10.1.19. The NIS states that the habitats within the River Barrow and Nore SAC, close to the application site, include the Nore River, and its riparian grassland, woodland and treeline habitats.

10.1.20. Site Specific Conservation Objectives (SSCOs) for the River Barrow and River Nore SAC are set out and generally aim to define the favourable conservation condition for the particular habitats or species at that site. Favourable conservation status (or condition, at a site level) relates to its natural range and whether it is stable or increasing, and the specific structure and functions which are necessary for its long-

term maintenance exist and are likely to continue to exist for the foreseeable future. The favourable conservation status (or condition, at a site level) of a species is related to whether population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

10.1.21. In relation to the River Nore SPA, the NIS notes that the site is a Special Protection Area (SPA) under the E.U. Birds Directive of special conservation interest for the one species of bird, the Kingfisher. A survey in 2010 recorded 22 pairs of Kingfisher (based on 16 probable and 6 possible territories) within the SPA. It is noted that the River Nore SPA is of high ornithological importance as it supports a nationally important population of Kingfisher, a species that is listed on Annex I of the E.U. Birds Directive. The NPWS have not yet produced SSCOs for this SPA.

10.1.22. The NIS determines that the designated habitats within the application site include the River Nore itself and its aquatic and riparian edge habitats, along with the mixed woodland habitats of the woodland on its northern banks. This woodland is dominated by species such as ash and willow and it occurs on a steep incline from the level of field towards the river. The floor of the woodland is well drained and firm underfoot and it was not considered to be in the alluvial woodland category. There are many paths and ruts in the woodland, many are caused by trail / mountain bikes.

10.1.23. The NIS identifies 'Non-Relevant Qualifying Interests of the SAC/SPA'. It is stated that, given the extent of the River Barrow and River Nore SAC, there are certain features within this SAC that will not be potentially impacted upon from this proposed development, either due to the distance involved or because they are features that are not sensitive to changes in water quality. These features can be screened out for further assessment in the AA process and the reason for their exclusion are listed in Table 2 of the NIS.

10.1.24. I have no reason to dispute the majority of the assertions as outlined in Table 2 of the NIS. I do note, however, there appears to be information missing in Table 2, when considering the Petrifying springs with tufa formation (*Cratoneurion*), and there is no justification provided for its exclusion. The Conservation Objectives, document, as

accessed on the NPWS Website, in relation to this habitat, states that extent of this habitat in this site is currently unknown. An area ("Tens of square metres") has been described at one location. It has been described in woodlands at Dysart, between Thomastown and Inistioge (located c10km south-east of the site) but the document notes that further areas are likely to occur within the site. Petrifying springs rely on permanent irrigation, usually from upwelling groundwater sources or seepage. There is no evidence in the NIS, or from other sources, including Third Parties, that this habitat occurs within or close to the site. However, given the potential for groundwater impacts, in the absence of mitigation, resulting from this development, this is an unfortunate omission within the NIS.

10.1.25. Table 3 of the NIS describes the qualifying interests of the River Barrow and Nore SAC and the River Nore SPA that do have potential to be impacted upon from the proposed development. For the River Barrow and Nore SAC, a total of 7 no qualifying interests were identified in Table 3 of the NIS. These include:

- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
- Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachium* vegetation
- Brook lamprey (*Lampetra planeri*)
- River lamprey (*Lampetra fluviatilis*)
- Salmon (*Salmo salar*)
- Otter (*Lutra lutra*)
- White-clawed Crayfish (*Austropotamobius pallipes*)

10.1.26. Potential impacts and the significance of same are outlined in detail in Section 4.3 of the NIS and impacts cited include potential for deterioration in water Quality in the SAC/SPA, and habitat/loss fragmentation at construction stage. Deterioration in water quality during the operational phase is also identified as a potential impact. Other impacts cited include an increase in human activity on the site during construction and operation which could negatively impact upon the behaviour of the otter and kingfisher, whilst inappropriate lighting could also impact upon these species.

- 10.1.27. In relation to the sole qualifying interest of the River Nore SPA, Kingfisher *Alcedo atthis*, the NIS notes that kingfisher would be expected to regularly occur in the area as there are abundant overhanging trees providing suitable perches for birds to hunt from.
- 10.1.28. As noted in Section 10.15, increased anthropogenic pressures operational stage have the potential to lead to significant effects on habitats and species of qualifying interest, although the NIS does not explicitly cite this as a possible impact at Stage 1, but refers to such impacts at various stages within the NIS at Stage 2. From the information contained in the NIS, species of Qualifying Interest that are likely to be present on the site include Otter (*Lutra lutra*) and Kingfisher (*Alcedo atthis*). Potential impacts identified in the NIS include disturbance to otter habitat, and to the otter, due to waste disposal and increases in human activity. Impacts to Kingfisher identified include impacts from an increase in human activity on the site. Terrestrial habitats of Qualifying Interest, likely to be within the zone of influence of the application site, include 'Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels' (although the NIS notes that it was not observed during a walkover of the site). This habitat is sensitive to changes in the hydrological regime of its associated river but is also sensitive grazing, pollution and invasive species.
- 10.1.29. The impact of deterioration of surface water quality as result of failure/overflow of the foul storage tank is also a potential impact on both the SAC and SPA, in my view, having regard to their conservation objectives, and this issue has been raised by Third Party submissions.
- 10.1.30. Mitigation Measures are set out in detail in Section 5 of the report. These refer, for the most part, to best practice construction measures which seek to ensure *inter alia* the protection of water quality, during both the construction and operational stages, as well as to the physical fencing off of the woodland area during the construction stage. During the operational stage additional measures include low intensity/directional lighting. I am generally satisfied that the mitigation measures set out therein would adequately deal with impacts as relates to water quality, and as relates to direct physical disturbance of habitats during construction stage. Lighting measures would mitigate impacts on qualifying species, as relates to impacts of lighting at operational stage.

- 10.1.31. While the NIS does not refer to a potential failure and overflow of the foul water storage tank, the Engineering Services Report notes that this feature has a 24hr storage capacity and the pumps, duty and standby, will be float activated and the system will be fitted with an emergency call out system connected to the maintenance company. This gives sufficient reassurance, in my view, that potential impacts from same are sufficiently mitigated against.
- 10.1.32. In relation to the mitigation measures as set out in the IFI submission, I note that these are generally best practice construction measures. Mitigation measures as set out in the NIS also include adherence to IFI Guidelines and further consultation with IFI as appropriate. As such I consider that this submission, and any concerns set out therein, have been addressed adequately.
- 10.1.33. However, it is my view that the NIS does not address the issue of increased anthropogenic pressures adequately, and while reference is made to the potential impact of same on otter and kingfisher, there is no mitigation measures proposed to minimise or overcome these impacts, save for the use of low-intensity lighting and directional lighting away from the woodland. While the habitat 'Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels' is referred to as being within the zone of influence of the site, no assessment is made in relation to anthropogenic impacts on same, resulting from the development, or mitigation measures set out in relation to same.
- 10.1.34. The proposal results in a development that is of a relatively high density, with a resultant significant increase in human activity on the site, located within extremely close proximity to the SAC and SPA. The development also opens up the existing pathways from Sion Road to the Nore Valley Trail for public use. The construction phase and the operational phase have significant potential for increased disturbance to otters and kingfisher, as acknowledged in the NIS. Such disturbance can result from increased human activity within and around the site, including within and adjacent to the SPA and along the Nore Valley Trail. Trampling within the Qualifying Interest habitats (particularly along undesignated paths), which in this case is limited to 'Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels', is a potential impact. Other potential impacts, as cited in Section 10.15 above include increased potential for fly-tipping, and the introduction of invasive species, as a result of inappropriate planting of garden areas or as a result of fly-tipping of

garden waste. The NIS notes that the habitat 'Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels' is sensitive to such invasive species.

10.1.35. Ex-situ impacts on otter have not been considered in detail and these relate to disturbance at both construction and operational phases. There is little detail on the potential for otter outwith the boundaries of the SAC, within the remainder of the application site. I have noted the lack of detail in relation to the baseline ecology of the site in Section 12.5 below, and I consider that an Ecological Impact Assessment (EcIA) should have submitted with the application.

10.1.36. It is unfortunate also that the NIS has an omission as relates to Petrifying springs with tufa formation (*Cratoneurion*), as cited above, While it is acknowledged that this omission most likely sought to rule out impacts, the impact on this habitat is unknown, given that the location of such habitat relative to the site is unknown, and as such I do not have sufficient reassurance in this regard. While I am satisfied that the mitigation the measures as relates to surface water and ground water quality provide sufficient protection in relation to same, changes to the hydrogeology of the site, in terms of groundwater flow and recharge, can have significant impact on such habitats.

10.1.37. As such, having regard to the lack of information in the NIS in relation to potential increased anthropogenic pressures, with potential impacts on Qualifying Species, otter and kingfisher; to potential impacts on Qualifying Habitat 'Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels'; to the omission of key information within the NIS, as relates to the Qualifying Habitat 'Petrifying springs with tufa formation (*Cratoneurion*)', I am not satisfied that the proposed development would not adversely affect the integrity of the River Barrow and Nore SAC (002162) and the River Nore SPA (004233), in view of the sites' conservation objectives. In such circumstances, it is my view that the Board is precluded from granting permission.

In-Combination Impacts

10.1.38. The NIS refers previous permissions and notes that when necessary these have been accompanied by an NIS. It is further noted that the statutory development plan, the Kilkenny Town and Environs Development Plan 2014-2020, accompanied

by a Natura Impact Report which determined that the plan, as adopted, would not have any adverse effect on the integrity of any Natura 2000 site.

10.1.39. Cumulative impacts arising from the combined operation of agricultural activities with proposed application were deemed negligible.

10.1.40. Wastewater from the site will be directed to the Kilkenny Waste Water Treatment Plant at Purcellsinch. This plant is fully Licensed by the EPA (Reg No. D0018-01) This plant has been screened for Appropriate Assessment and the operation of this plant in combination with the operation of the proposed development and its subsequent discharge into this WWTP will not give rise to cumulative impacts upon the SAC / SPA. The Annual Environment Report for this plant for 2017 determined that the plant was compliant with its Emission Limit Values in 2017. This indicates that the plant is performing as it is meant to. The annual mean and maximum hydraulic loading in the plant is less than the peak treatment plant capacity. This means that there is further capacity in this plant for the proposed development and there is a remaining hydraulic capacity of 42,893m³ / day.

10.1.41. With the implementation of the mitigation measures outlined in this report, I concur is unlikely that the proposed application will lead to any cumulative impacts upon the River Barrow and Nore SAC and the River Nore SPA, when considered in combination with other developments.

AA determination – Conclusion

10.1.42. Having regard to the deficiencies in the information provided in the submitted Natura Impact Statement, in particular having regard to the lack of information in the NIS in relation to potential increased anthropogenic pressures, with potential impacts on Qualifying Species, otter and kingfisher; to potential impacts on Qualifying Habitat 'Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels'; to the omission of key information within the NIS, as relates to the Qualifying Habitat 'Petrifying springs with tufa formation (*Cratoneurion*)', I am not satisfied that the proposed development would not adversely affect the integrity of the River Barrow and Nore SAC (002162) and the River Nore SPA (004233), in view of the sites' conservation objectives. In such circumstances, it is my view that the Board is precluded from granting permission.

11.0 EIA Screening

- 11.1.1. I refer the Board to the EIA Screening Determination on file, dated 15th April 2020, which determines that an environmental impact assessment report for the proposed development is not necessary in this case.

12.0 Assessment

- 12.1. The planning issues arising from the proposed development can be addressed under the following headings-

- Principle of Development/Density
- Traffic and Transport
- Conservation and Heritage/Archaeology
- Ecology
- Trees
- Neighbouring Residential Amenity
- Quality of Residential Accommodation including Open Space Provision
- Building Height, Design and Layout
- Flood Risk
- Site Services
- Planning Authority's Recommended Reason for Refusal
- Other Issues

12.2. Principle of Development/Density

Principle

- 12.2.1. The lands contain two land use zonings 'existing low residential density' to the north and a portion of lands zoned 'amenity/green links/ biodiversity' to the south along the banks of the River Nore. The Zoning of the majority of the lands is "Existing Low-density Residential" "To protect, provide and improve residential amenities at low

density. Low density housing is defined as not more than 10 units per ha (4 per acre) on average and must have regard to the character of the area.”

12.2.2. In terms of compliance with the zoning of the site, I have had regard to all of the submissions received, including that from the applicant and the submitted legal opinion from the applicant, and those from third parties, including the submitted legal opinion from third parties. These submissions are summarised in the relevant sections above. Third parties contend that the proposal represents a material contravention of the zoning objective and therefore the Board cannot grant permission. The applicant contends that the zoning of the land relates the use only, and the density limitation is a separate objective of the plan.

12.2.3. Section 9(6)(a) of the Planning and Development (Housing) and Residential Tenancies Act 2016 states that Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 even where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned.

Paragraph (b) of same states ‘The Board shall not grant permission under paragraph (a) where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the land’

Paragraph (c) states ‘Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development’

12.2.4. Section 10(1) of the Section 10(2) of the Planning and Development Act 2000 (as amended) states that ‘10.—(1) A development plan shall set out an overall strategy for the proper planning and sustainable development of the area of the development plan and shall consist of a written statement and a plan or plans indicating the development objectives for the area in question. Section 10(2) of the Planning and Development Act 2000 (as amended) which states that ‘without prejudice to the

generality of sub-section (1), a Development Plan shall include objectives for (a) the zoning of land for the use solely or primarily of particular area for particular purposes (whether residential, commercial, industrial, agricultural, recreational, as open space or otherwise, or a mixture of those uses), where and to such extent as the proper planning and sustainable development of the area, in the opinion of the planning authority, requires the uses to be indicated.

- 12.2.5. In my view, the Planning and Development Act 2000 (as amended) is clear that the zoning of land relates to the use of that land only. The term 'to such extent', to my mind, refers to a geographical area, rather than a reference to the density of development allowed. This is supported, in my view, by the fact that separate provision is made under the Act for objectives relating to the density of structures (First Schedule Part II 'Control of Areas and Structures which refers to 'Regulating and controlling the layout of areas and structures, including density, spacing, grouping and orientation of structures in relation to roads, open spaces and other structures').
- 12.2.6. It is my view therefore that proposed residential development is not a material contravention of the residential zoning of the lands.
- 12.2.7. It is however, in my opinion, a material contravention of the density that is applicable to this site, which is a maximum of 10 unit/ha, given the proposed density is 38 unit/ha.

Density

- 12.2.8. As noted above the density that is applicable to the site is limited to 10 units/ha. The stated net density of the proposed development is 38 units/ha. The applicants have submitted a Material Contravention Statement which relates to the issue of density alone. This is considered further in the relevant section below.
- 12.2.9. Section 5 of the Kilkenny County Council's Chief Executive's Report recommends refusal stating that it is considered that the proposed development would *inter alia* be a material contravention of the existing low density zoning objective of the Development Plan.
- 12.2.10. I consider that the subject site falls within the definition of an 'Outer Suburban/Greenfield Site' as defined in Section 5.11 of the Sustainable Residential Development in Urban Areas Guidelines, 2009 which defines such sites as 'open

lands on the periphery of cities or larger towns whose development will require the provision of new infrastructure, roads, sewers and ancillary social and commercial facilities, schools, shops, employment and community facilities. The greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally.

- 12.2.11. The applicant has stated that the site could be defined as being within a 'Public Transport Corridor' as it is located within 500m of the KK2 Bus Stop. Minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridor. While I acknowledge that entrance to the site is within the requisite distance from a bus stop, the Guidelines also refer to the capacity of such transport services should be taken into account in considering appropriate densities. In this instance the bus service in question is the KK2 which runs every 30 mins. The bus service does not have the benefit of a dedicated bus lane. I do not consider that the frequency of the bus service, and proximity of the proposed residential units to the bus stop, would be sufficient to define the site as a 'Public Transport Corridor'.
- 12.2.12. The applicant has also stated that the site can be defined also as 'Institutional Lands' as defined in Para 5.10 of the Guidelines. A density range of 35-50 units per ha is also applicable to these lands, but with the added proviso to retain the open character of the lands. I note that the definition of the site as such has been contended by Third Parties, who state that they have never been in institutional use.
- 12.2.13. Notwithstanding, the principle of a density figure of 38 units/ha is considered to be appropriate for the site, subject to the appropriate provision of the necessary supporting infrastructure, having regard to the definition of such a site in the guidelines. As noted, the provision of new infrastructure, roads, sewers and ancillary social and commercial facilities, schools, shops, employment and community facilities is generally necessary to facilitate development on these sites.
- 12.2.14. Infrastructure investment by the Planning Authority appears to be concentrated in the west of the city, as per the submission of the Planning Authority, and no significant

infrastructural improvements in the immediate area have been highlighted by any party.

- 12.2.15. A Route Access Appraisal has been submitted which reviews the route along the Sion Road, the R712 Dublin Road and the N10 Roundabout Crossing. A Stage 1 Road Safety Audit has also been submitted. This concludes that the current facilities are adequate to accommodate the current and proposed pedestrian and cycle movements. I do not concur with the conclusions of this report. In my view, the existing pedestrian infrastructure is poor, with a narrow footpath that runs from the secondary entrance to the main entrance, which forms connection with the existing footpath on Sion Road, and onwards to the Dublin Road. There is no footpath currently on the opposite side of the road. To the south of the existing secondary entrance, along Sion Road, there is no footpath on either side of the road, save for small sections to the front of exiting dwelling houses. The pedestrian crossing of the N10, which it is necessary to traverse in order to access the city, is not considered to be a safe crossing, and a large number of submissions have raised this as an issue. This is an uncontrolled crossing and pedestrians are required to traverse multiple heavily trafficked lanes. While I note that any proposals to improve this situation is not necessarily within the power of the applicant, and is the mandate of TII, the current situation is not satisfactory and does not support an increase in pedestrian volumes crossing this junction.
- 12.2.16. There is no existing cycle infrastructure on the Sion Road (there is a truncated cycle path on the Old Sion Road, which is cut off by the N10 and is not in use). On the west and east side of the Dublin Road there is off road cycle paths which terminate at the junction of the Sion Road/Dublin Road. There is no cycle paths between the junction of the Sion Road/Dublin Road and the N10 roundabout.
- 12.2.17. As such, safe and sustainable transport options to access the city are limited to the single bus service, the frequency of which is not sufficient in my view to be a viable option for the majority of future occupants of this development.
- 12.2.18. It is proposed to carry out improvements to the road, footpath and cycle infrastructure. A footpath is proposed to the front of the housing units onto Sion Road. A shared pedestrian/cycle path is proposed on the western site of Sion Road, with an on-road cycle lane proposed on the eastern site. The proposed shared cycle

path is not in accordance with the National Cycle Manual which favour segregated pedestrian and cycle routes, and states that shared facilities should be avoided in urban areas as far as possible. In addition, the sudden transition from a shared path to an on-road cycle path, in advance of the junction with the Dublin Road, raises serious safety concerns in my view. In addition, cyclists entering the development would be required to undertake a right-hand turning manoeuvre, on a bend in the road, raising further safety concerns. The benefit of the cycle paths to the future residents is questionable, in my view, and would not encourage a model shift towards cycling. These issues are not highlighted by the Stage 1 Road Safety Audit and no assessment is made in relation to same.

12.2.19. I do not consider the cited pedestrian link to Kilkenny via the Nore Valley Walk is a viable link, given the multiple issues as highlighted by the Third Party Submissions on same. Such a link, in order to be a viable option, would require sufficient lighting in order to be a safe option as a route into Kilkenny City. No details of such lighting has been provided. The existing route that runs through the site is a partly flat, partly undulating trail that appears to be suitable for recreational walkers, but not as a viable pedestrian route, in the absence of significant interventions to this trail. Such interventions have not been detailed in sufficient depth, and would also have implications from an ecological perspective.

12.2.20. In terms of access to employment and services, the applicants have stated that there are numerous employment locations on the eastern side of the N10 roundabout, and the area is well served in terms of shops and services. While I acknowledge there are employment areas located in relatively close proximity, this is insufficient in my view to justify the view that residents will not have to travel into the city on a regular basis to access the services and facilities located therein. Given the lack of a high frequency bus services, and the server limitation in the existing and proposed pedestrian and cycle infrastructure, I consider the proposal will be car dependant. This is highlighted by the proposed level of car parking provided (154 spaces in total). It is further highlighted by the submitted Mobility Management Plan which indicate that even with the implementation of the objectives of the MMP, which will be hindered by the deficiencies highlighted above, the targeted Modal Split is 70% car based, with 1.5% taking the bus and 13.5% either walking or cycle.

12.2.21. The proposal therefore, having regard to the deficiencies highlighted above, is contrary to the goals within the Sustainable Residential Development Guidelines which are *inter alia* to prioritise walking, cycling and public transport, and minimise the need to use cars and to provide a good range of community and support facilities where and when they are needed and that are easily accessible. The proposed development does not achieve these goals, in my view.

Core Strategy/Development Strategy of the Kilkenny City and Environs Development Plan 2014-2020

12.2.22. The submission from Kilkenny County Council states that Core strategy envisages housing demand being satisfied within the designated new neighbourhoods of Loughmacask and Western Environs. It is further noted that substantial investment in infrastructure is currently underway and is planned in the opening up of these areas for investment. The Planning Authority consider the development would undermine the delivery of the core strategy during the next development plan period and beyond due to its location and scale.

12.2.23. Variation No, 3 of the Kilkenny City and Environs Development Plan 2014-2020 was adopted on 17th July 2017. The purposed of Variation 3 is to maximise and align the supply of housing land to the current investment opportunities being designated by the Government. The spatial distribution of Phase 1 zoned land will be mainly between the two neighbourhoods of the Western Environs and Loughmacask, which account for 48.4ha and the remainder (24.5ha) is spread across other locations. This distribution underpins a balanced, compact form for the City and Environs.

12.2.24. A further 5.6ha targeted at low density development within the development boundary. These are located at New Orchard and at Dublin road at Leggettsrath (the site falls within the latter location).

12.2.25. As such it is clear that the development strategy adopted within Kilkenny seeks higher density development in the areas above, for which supporting infrastructure is planned for. This site does not fall within such an area, and it is located on a site on the periphery of Kilkenny City, beyond the ring road, which is poorly served by existing bus, cycle and pedestrian infrastructure, notwithstanding the proposals to improve these (see relevant sections in this report).

12.2.26. As such, I consider the proposal would be contrary to the development strategy, as set out in Variation No, 3 of the Kilkenny City and Environs Development Plan 2014-2020, which seeks to direct higher density development to neighbourhoods of Loughmacask and Western Environs, in tandem with existing and planned infrastructure and service improvements.

Material Contravention

12.2.27. In relation to the issue of material contravention, and the relevant provisions of Section 37(2)(b) of the Planning and Development Act, 2000 (as amended), this is considered below.

12.2.28. The applicant's Material Contravention statement makes reference to Sections 3.3.1 and 11.4.1 of the City Development Plan and it is contended that these are contradictory policies.

12.2.29. Third parties contend that the application does not meet the criteria as detailed in Section 37(2)(b).

12.2.30. In relation to the matter of strategic or national importance, the current application has been lodged under the Strategic Housing legislation and the proposal is considered to be strategic in nature. However, notwithstanding the strategic nature of the application, it is my view that granting this development would not represent proper planning and sustainable development, for those reasons as outlined in detail above.

12.2.31. In relation to the matter of conflicting objectives in the development plan, I concur that Sections 3.3.1 and 11.4.1 of the City Development Plan may be conflicting, in that Section 3.3.1 refers to the low density zoning (which restricts densities to 10 unit/ha) yet Section 11.4.1 of the Development Plan states that maximum residential densities will not be prescribed on individual developments. However I do not think this conflict represents sufficient justification to grant permission in this instance, given the concerns has highlighted above.

12.2.32. In relation to the matter of S28 Guidance, I refer the Board to the detailed discussion of same above, and I do not consider the development as proposed here is supported by same guidance.

12.2.33. In relation to the permissions granted and pattern of development in the area, I note that no large scale SHD applications have been granted permission on sites similar to this one, on the outskirts of Kilkenny. As such I do not consider that this criteria has been met in this instance.

12.2.34. Having regard to the above, I do not consider that the provisions of Section 37(2)(b) have been met in this instance.

Conclusion

12.2.35. While the principle of residential development is accepted on this site, given the residential zoning, I consider the location of the site to be inappropriate for larger scale housing development. The site is on a location on the periphery of Kilkenny City, is poorly served by existing road, cycle and pedestrian infrastructure, notwithstanding the proposals to improve these. It is also poorly served by public transport and there is a limited provision of easily accessible services in the immediate area.

12.2.36. The development strategy for Kilkenny City is cognisant of the need to provide housing at higher densities, and Variation No. 3 of the Kilkenny City and Environs Development Plan 2014-2020 has designated areas within the City Core (within the ring road) as suitable for such higher densities.

12.2.37. I do not consider that the subject proposal is suitable for this site and the proposal would not result in a compact form of development that is sought at national, regional and local levels.

12.3. Traffic and Transport

12.3.1. A Transport Assessment, a Route Access Appraisal and a Stage 1 Safety Audit has been submitted with the application and I have had regard to same. I note the copy of the Transport Assessment on file is missing a page (Page 15 which relates to phasing and car parking). The Transport Assessment on the application website, and as submitted electronically to the Board, is a complete version. As such I am satisfied that all parties have had access to the relevant information, and this has not been raised by any parties.

12.3.2. The submission from the Planning Authority raises questions in relation to the methodology of the TIA and of the Road Safety Audit. Errors in the drawings are

highlighted and it is contended the proposal would raise road safety issues. In addition it is stated that the need for pedestrians and cyclists to cross the N10 roundabout represents a serious barrier and that the route via the River Nore is not credible. The recommended reason for refusal cites *inter alia* poor pedestrian and cycle facilities.

- 12.3.3. I note submission from An Taisce who contend that the development would be car dependant. A significant portion of the submissions from Third Parties raises issues related to the impact on the surrounding road network including flaws in the submitted Traffic Impact Assessment, cycle and pedestrian safety, creation of a traffic hazard and insufficient car parking

Road Safety

- 12.3.4. The Stage 1 Road Safety Audit does not identify any areas of major safety concern, save for a few minor modifications to the proposal. However, I share the view of the Planning Authority and of Third Parties in that the proposal raises some road safety concerns. The Transport Assessment states that the proposed access off Sion Road will accommodate all vehicular movements to and from the proposed development which is incorrect, given the access arrangements from the 8 no. dwellings fronting onto Sion Road. I have concerns in relation to the proposed number of entrances onto Sion Road, resulting from the arrangements of these units. There is currently only a limited number of residential entrances onto Sion Road and the introduction of 8 additional entrances, in addition to the main vehicular entrance to the development, raises safety concerns, having regard the existing speed limit of 50km/h applicable to this road, and the location of these entrances close to the bend on the Sion Road. The Planning Authority also note that the applicant's sightlines are dependent on the planning approval on the opposite being implemented.
- 12.3.5. In addition, in relation to the swept path drawings, I am not convinced that, if two cars were parked outside one of these dwelling houses, it would be possible to exit the driveway in a forward manner, with the result of cars reversing onto the road, which is unacceptable from the a traffic safety viewpoint.
- 12.3.6. I have set out my concerns in relation to pedestrian and cycle safety in Section 11.2 above. In conclusion, and having regard to the creation of a significant number of additional accesses/egresses along the Sion Road, by virtue of the 8 no. housing

units to the north of the site, the location of these access points relative to a dangerous bend on the Sion Road, to the north-west of the site, the need for reversing movements for vehicles exiting a number these egresses, and having regard to the safety concerns raised by the proposals for pedestrians and cyclists, the proposed development would endanger public safety by reason of traffic hazard and should be refused on this bases,

Car Parking

- 12.3.7. A total of 154 surface level car parking spaces are to be provided for the dwellings – 138 spaces within the site and additional 2 spaces for the 8 No. dwellings (16 No. spaces in total) fronting onto the L-2631 Sion Road. A total of 207 spaces are required under the Kilkenny Development Plan 2014-2020. However, I consider the car parking provision is, on balance, acceptable.

Cycle Parking

- 12.3.8. A total of 104 cycle parking spaces are proposed in line with Development Plan Standards.

Impact on the surrounding road network

- 12.3.9. The Transport Assessment assumes a total of 74 outbound vehicle trips and 28 inbound vehicle trips in the AM Peak Hour and 31 outbound vehicle trips and 61 inbound vehicle trips in the PM Peak Hour, by 2023.
- 12.3.10. Based on the percentage increase in traffic at the R712 Dublin Road / L- 2631 Sion Road junction, the proposed development only generates less than a 5% increase (max. 4.14% increase in AM Peak 2023) in traffic at the junction during any phase when the proposed development is operational.
- 12.3.11. The conclusions in relation to same have been questioned by the Planning Authority and Third Parties who state that the TIA assumes two lanes on Sion Road (a left and right turn lane) whereas this is not the case. It is contended that this would have an impact on the result of the capacity analysis. I agree that this is the case. However I am of the view, that should the Board be minded to refuse the application, having regard to the issues raised elsewhere in this report, the applicant should be advised that a revised TIA is required with any subsequent application, dealing with the concerns of the Planning Authority, and that of Third Parties.

12.4. Conservation and Heritage/Archaeology

- 12.4.1. An Archaeological Impact Assessment has been submitted and I have regard to same. This notes that the former demesne for Sion House, which forms the bulk of the proposed development area, is included in the National Inventory of Architectural Heritage Survey of Gardens and Designed Landscapes (ref. KK-67-S-523552). This notes that the entirety of the development occurs within the boundaries of the former Sion House demesne, which since c. 1926 was the Palace for the catholic bishops of Ossory. The report further notes that the main house was demolished c1970 and the current buildings built in its place. Today the walled garden, the parkland and some of the tree-plantations are survivals from the demesne's designed landscape.
- 12.4.2. It is unfortunate the application does not include a Heritage Impact Assessment given that the wholesale demolition of the walled garden is proposed. However I also note that this is not a Protected Structure and is not included on the National Inventory of Architectural Heritage Database.
- 12.4.3. A number of submissions from Third Parties raise the issue of the loss of the walled garden. The submission from An Taisce, while raising other issues of concern, does not raise the issue of the walled garden.
- 12.4.4. The submission from Kilkenny County Council notes that the proposed layout demolishes the existing enclosed garden which was a significant element in the original designed landscape at Sion House dating from the 18th Century. Reference is made to Section 7.3.5 of the Development Plan which seeks protection and management of the historic garden. The proposal is in contravention of that objective.
- 12.4.5. I concur with the submission of Kilkenny County Council in that the retention of the walled garden should have been included in the development proposals, or failing that, an assessment of the loss of same included. Should the Board be minded to refuse the proposal, on the grounds as detailed above, I would recommend that the applicant should also be advised that the application is deficient having regard to impacts on architectural heritage, and any subsequent application would require an Heritage Impact Assessment.

Archaeology

12.4.6. The Archaeological Impact Assessment notes that there are no Recorded Monuments within the proposed development area. The closest Recorded Monument, a mill RMP KK019-050---, is located outside the development area, 200m to the south, on the opposite, south bank, of the river Nore. Test trenching did not reveal any features of Archaeological Interest. Conditions in relation to archaeology are recommended. I concur that conditions are appropriate.

12.5. **Ecology**

- 12.5.1. The potential for impacts on Natura 2000 sites is dealt with under the heading of Appropriate Assessment.
- 12.5.2. Appendix II of the Submitted NIS contains a Biodiversity & Appropriate Assessment Screening Report (May 2019), prepared by Roger Goodwillie & Associates (who I note did not prepare the NIS – See comment on this Appropriate Assessment Screening Report in Section 10 above). It does not contain an assessment of the impacts on the overall ecology of the area. It does however, as does the NIS, give an overview of the flora and fauna on the site. In terms of fauna is noted that there was no evidence of badgers on site and very little of rabbits (only in SE corner). Of terrestrial species the fox and hedgehog would be expected and there are occasional pine martens in the river valley though no definite records closer than 2km. Otters are more frequent though their territory size on the river is large. No suitable breeding places occur on this site.
- 12.5.3. In terms of bats, partial bat surveys were carried out in June 2015 and May/June 2019, with various bat species detected in and around the site.
- 12.5.4. In relation to birds, conditions in the woodland at the upper end of the site favour the blackcap but there were other birds seen – blackbird, song thrush, robin, blue tit, chaffinch, wren and magpie. It is stated that most of the trees offer poor nesting conditions because the trees are tall and thin so the wood may be more important as song posts and feeding grounds for canopy species.
- 12.5.5. I note the submission from a Third Party who state that an Ecological Impact Appraisal (EclA) should have been submitted. Given the sensitivity of the site, partly within an SAC and directly adjacent to an SPA, the potential of the site to support habitat of Qualifying Species associated with the SAC, as well a range of other

habitat types and having regard to the existence of bats on the site, I concur that an Ecological Impact Appraisal (EclA) should have been submitted with the application.

- 12.5.6. Should the Board be minded to refuse the proposal, on the grounds as detailed above, I would recommend that the applicant should also be advised that the application is deficient having regard to impacts on general ecology and any subsequent application would require an Ecological Impact Appraisal (EclA).

12.6. Trees

- 12.6.1. A Tree Survey, Arboricultural Impact Assessment & Tree Protection Plan has been submitted with the application. This states that a total of c. 68 individual trees were recorded in the survey, together with two large woodland areas and four linear tree groups. The surveys state that the large mature deciduous trees along the western and southern side of the sites' central field area, and two woodlands were of particular note and value.
- 12.6.2. In relation to the trees being removed, it is noted that three category 'U' (dead/unstable) trees, 29 individually tagged trees are required for removal to facilitate construction of the proposed development. These include seven category 'B' trees, with the remaining c. 22 trees all of low (category 'C') quality. In addition, four linear groups of lower quality trees are proposed for removal, and a small remnant group in the walled garden. 36 individually tagged trees are proposed to be retained, including all the high quality, large mature trees. In addition, the majority of the north-eastern woodland and all of the large southern riverside woodland are proposed to be retained.
- 12.6.3. I am generally satisfied that all trees of value on the site, and most notably the majority of the woodland to the west, and all of woodland to the south, are to be retained. Recommendations are given for protective measures to ensure the successful conservation of these trees. I note the comment of a Third Party, who state that the orchard to the east of the site was not surveyed. This appears to be the case, and this element is proposed to be developed upon. Notwithstanding, I am satisfied that the overall impact on trees on the site is acceptable.

12.7. Neighbouring Residential Amenity

- 12.7.1. There are a number of dwellings which directly adjoin the western boundary of the site, and there is a single dwelling which adjoins the eastern boundary. To the north there is a dwelling on the opposite side of Sion Road.
- 12.7.2. I note the submissions from Third Parties, including residents of these dwellings, that cite impacts on residential amenity including overlooking/loss of privacy, impacts on daylight/sunlight and overshadowing, noise impacts and impacts on visual amenity.

Overlooking/Loss of Privacy

- 12.7.3. In terms of overlooking/loss of privacy, I do not consider that the dwellings to the west of the site will be impacted by same, although additional pedestrian movement will be facilitated along the western portion of the site.
- 12.7.4. The dwelling to the east of the site has a window to side elevation on the first floor that may well serve a habitable room. This is c2m from the boundary of proposed Unit 30. I consider that this is unduly close and would lead to loss of privacy for future occupiers utilising the garden of Unit 30, who would also suffer from loss of privacy from the existing dwelling house. Any proposed screening would result in a loss of outlook and significant loss of daylight and sunlight to this window. Should the Board be minded to approve I consider that this unit should be omitted and additional landscaping/planting be provided in this area.
- 12.7.5. The dwelling house to the north does not have any windows that directly oppose the site and benefits from substantial boundary treatment and I do not consider that any material overlooking of same will be result.

Loss of Daylight/Sunlight/Overshadowing

- 12.7.6. In terms of loss of Daylight/Sunlight/Overshadowing, the only dwelling with the potential to be impacted materially is the dwelling on the eastern boundary of the site. In relation to this dwelling, it is likely that window on the side elevation will suffer a loss of daylight and sunlight, given the proximity of same to proposed Unit 30, and the orientation of the window relative to this dwelling. No assessment of same has been submitted with the application. However, should this dwelling be omitted, as per the discussion above, this would also resolve any loss of daylight and sunlight issues.

12.8. Quality of Residential Accommodation including Open Space Provision

Accessibility

- 12.8.1. I have concerns in relation to the accessibility of the apartment and duplex units. Section 4.1 of the Apartment Guidelines state that apartment schemes should be designed so that they are easy for people to use and to reflect the fact that all people experience changes in their abilities as they progress through the different stages of life and to avoid the creation of a built environment that excludes certain groups from participating in normal everyday activities.
- 12.8.2. The applicants have stated that they have complied with Part M of the Building Regulations. I note that none of the apartments/duplex units above ground floor level is accessible, and no lifts are provided. No accessibility statement is provided and no justification is provided for this lack of accessibility within the application documents. The Board may consider, however, that this is a matter for Building Regulations. The units provide high standards in other respects, as noted below.

Open Space/Landscaping

- 12.8.3. The primary open space within the site is public open space which is to the west and south of the site. This incorporates the woodlands to the west of the site. It is proposed to provide pedestrian/cycle connectivity in a north-south direction through this western area, via a 3m wide combined path. A secondary public open space is located centrally in the development which contains a playground area and outdoor gym. Play areas are provided. I consider the proposed landscaping scheme is acceptable, and would provide a welcome amenity to future residents and to the wider area.

12.8.4. Overall Mix

- 12.8.5. The scheme provides a variety of mix of units from 1, and 2 bedroom apartments, 2-3 bedroom duplexes and 3-5 bedroom houses. Notwithstanding the concerns in relation to accessibility, the proposed mix provides for a variety of household types and is acceptable.

Floor Area

- 12.8.6. The apartment/ duplexes all exceed the minimum floor areas required, with the majority of units exceeding the minimum floor area standard by a minimum of 10%.

Dual Aspect

- 12.8.7. The proposed layout ensures that the scheme has 100% of the apartments and duplexes as dual aspect.

Private Amenity Space

- 12.8.8. The apartment/duplexes will have private amenity space in the form of balconies all of which exceed the minimum standards.

Communal Open Space

- 12.8.9. The provision of communal open space exceeds the minimum requirement of 578 sq. m., as set out in the Apartment Guidelines.

12.9. Building Height, Design and Layout

The proposed development comprises of the following:

- 120 no. units (36 no. 1-beds, 17 no. 2-beds and 67 no. 3+ beds) comprising 36 no. houses and 84 no. duplexes/apartments arranged within 7 no. blocks.
Buildings range in height from 2 to 4 storeys
- A Community / Childcare space, associated car & bicycle parking spaces, and site landscaping to include a new public park linking Sion Road to the existing Nore Valley river walk.
- Vehicular & pedestrian access will be provided from Sion Road
- A total of 154 No. car parking spaces and 104 No. bicycle spaces will be provided.

- 12.9.1. The higher buildings within the scheme are 3 to 4 storeys and are located to the southern areas of the site. As detailed in the Architectural Design Statement this takes advantage of the site topography and the screening provided by the existing woodland. I do not consider the height of these blocks excessive. The housing is 2 storey in nature is considered an appropriate design response to the site's surrounding context.

- 12.9.2. The layout, while somewhat dominated by surface parking, does provide an area of communal open space to serve the apartment units which is well laid out and provides a variety of amenity.

- 12.9.3. The 8 no. units to the north, while somewhat suburban in character, provide an appropriate transition in scale to the apartment and duplex units within the site.

- 12.9.4. In terms of detailed design, the quality of finish and materials is considered to be high. There is variety in the house types proposed throughout the development. The scheme benefits from this variety and it presents a scheme of visual interest.
- 12.9.5. In terms of public realm, a significant area of public park is provided, which is a welcome amenity to the area. In addition, and while the limitations of same are considered above, the proposal provides a connection for walkers utilising the Nore Valley Trail, which is welcomed.

12.10. Flood Risk

- 12.10.1. Section 9.3 of the National Planning Framework (NPF) includes guidance for water resource management and flooding with emphasis on avoiding inappropriate development in areas at risk of flooding. National Policy Objective 57 requires resource management by “ensuring flood risk management informs place-making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities”.
- 12.10.2. A Site Specific Flood Risk Assessment has been submitted with the application. This notes that ground levels in the area of the site to be developed range from approximately 58.0m OD to 47.0m OD. The water level (at the time of the survey) in the river Nore to the south of the site is 38.71m OD. The potential sources of flooding were considered to be Fluvial (From the River Nore) and Pluvial - Stormwater drainage serving Sion Road and adjacent development sites in the vicinity of the proposed development.
- 12.10.3. No previous flood events are recorded on the site. The SFRA refers to the CFRAM fluvial Flood Extents Map (015KIY_EXFCD_F0_11) which shows that the proposed development site is not within any of the flood zones of the nearby river Nore. It is also noted that the site is also within the area protected as part of the Kilkenny Flood Relief Scheme, completed in 2005, and maintained by the Office of Public Works.
- 12.10.4. The SFRA concludes that the site is outside the areas of potential risk for fluvial flooding. Pluvial flooding and flooding arising from the increase in hard surfaces created by the proposed development could result in some overland flow down through the site towards the woodland at the southern end of the site. The proposed landscaping and surface water drainage system is designed to reduce the risk of

overland flow, and to reduce the rate of discharge of water to the ground. As the proposed surface water drainage system is designed in accordance with the relevant standards and regulations, the flood risks arising from the proposed drainage infrastructure are negligible and no further mitigation is required.

12.10.5. No concerns in relation to flood risk were raised by Kilkenny County Council.

Flooding issues pertaining to the Nore Valley Walking Trail were raised by Third Parties but the area in question is outside the subject site.

12.10.6. I do not consider that the proposal will increase flood risk on this site or on surrounding sites, subject to conditions.

12.11. Site Services

Foul

12.11.1. It is proposed to construct a gravity flow foul sewer network to serve the proposed development. The sewer network will flow to a foul sewer pump sump located at the lower part of the development site in the southern corner. The foul sewage is pumped to the public sewer on Sion Road with the final connection to the public sewer via a gravity sewer with a vented manhole.

12.11.2. The 8no detached houses fronting onto Sion Road will connect directly to the public foul sewer in Sion Road.

12.11.3. The sump will have a minimum 24 hour storage capacity for the 112no residential units discharging to the pump sump. The pumps, duty and standby, will be float activated and the system will be fitted with an emergency call out system connected to the maintenance company.

12.11.4. Irish Water have raised no objection to the proposal and have not highlighted any capacity issues.

Surface Water

12.11.5. Surface water run-off from the proposed development is to be disposed of on sit. . Run-off from each house site and from the estate roads, footpaths and open spaces is collected and delivered to a soakaway located within the green area at the southern end of the development site. Stormwater from the detached houses fronting onto Sion Road will be collected and disposed of within these sites by using

permeable paving at the fronts of the houses and using individual soakaways to the rear for rainwater collected from the roof.

- 12.11.6. The storm water collection system for the roads, footpaths and public open spaces of the proposed development comprises a system of road gullies connected to gravity flow drain systems connected to the soakaway. The flow from the surface water drains discharges to the underground surface water soakaway storage system before soaking into the subsoil.

Water Supply

- 12.11.7. It is proposed to install a watermain to serve the proposed development of residential units at Sion Road. The new watermain will be connected to the existing public watermain in Sion Road. The 8no detached houses fronting onto Sion Road will connect directly to the public watermain on Sion Road.
- 12.11.8. Subject to conditions I have no objection in relation to the proposed site services, subject to conditions.

12.12. Planning Authority's Recommended Reason for Refusal

- 12.12.1. The Planning Authority has recommended one reason for refusal as follows:

Having regard to the provisions of the Kilkenny City & Environs Development Plan 2014-2020, the nature and scale of the proposed development, its location on land on the periphery of the existing built up area on land zoned for low density housing, it is considered that the proposed development would be a material contravention of the existing low density zoning objective of the Development Plan, would result in a residential development that would be out of character with the general scale and pattern of residential development in the area and would be poorly connected to essential services such as schools and other community facilities and shopping in terms of pedestrian and cycling facilities and would therefore be contrary to the proper planning and sustainable development of the area.

In addition, it is the view of the Council that the Board is restricted from granting permission with regard to the 'zoning of the land' in Section 9(6)(b) of the 2016 Act.

- 12.12.2. I have considered the issue of the site's location, access to services, cycle and pedestrian infrastructure, and character of the area, in the relevant sections above. I have also considered the issue of material contravention in the relevant section

above. As such all of the issues raised within the reason for refusal have been addressed in this report.

12.13. Other Issues

- 12.13.1. The Childcare Assessment calculates the demand for childcare spaces to be 3 spaces, applying relevant CSO data applicable to the area. If this demand cannot be met by the existing services, the scheme has also included proposals for a small community childcare facility within Building 3 of the proposed development. Given the capacity in the area to cater for calculated demand within the scheme, I consider that the exclusion of the crèche is acceptable. However, the benefit of the proposed community childcare facility is unclear and it would not serve as a viable alternative to a crèche facility. The end use of same should be agreed with the Planning Authority, by way of condition, should the Board be minded to approve the proposal.

13.0 Conclusion and Recommendation

- 13.1.1. The National Planning Framework (NPF) is a Government plan for the future growth and development of our country out to the year 2040. The roadmap for implementing the National Planning Framework is addressed through a number of implementation matters including the Regional Spatial Strategy for the Southern Region 2020, and while this strategy envisages significant population growth for Kilkenny (growth of more than 30% by 2040), RPO 35 of the strategy also supports the need for compact growth. In addition, Variation No, 3 of the Kilkenny City and Environs Development Plan 2014-2020 seeks to direct higher density development into areas within which there is supporting infrastructure, both existing and proposed, namely Western Environs and Loughmacask, which is in line with the principles of achieving higher densities and compact growth.

Having regard to the scale of the proposal, and having regard to the location of the site on the periphery of Kilkenny City, on the eastern side of the N10 ring road, and having regard to the deficiencies in the pedestrian and cycle infrastructure and safety concerns in relation to same, and having regard to the lack of a frequent and accessible public transport service, the proposals would not be in line with the principles of compact growth, and would result in development that would be car dependant, contrary to the provisions of the National Planning Framework, the

provisions of the Regional Spatial Strategy for the Southern Region 2020, and would be contrary to the provisions of Section 28 Guidance as relates to the appropriate location of residential development. It would also contravene the provisions of the development strategy for Kilkenny City, as set out in Variation No, 3 of the Kilkenny City and Environs Development Plan 2014-2020, which seeks to direct higher density development to neighbourhoods of Loughmacask and Western Environs, in tandem with existing and planned infrastructure and service improvements.

Having regard to the creation of a significant number of additional accesses/egresses along the Sion Road, the location of these access points relative to a point in the road where the horizontal alignment is sub-standard, the need for reversing movements for vehicles exiting a number of these egresses, and having regard to the safety concerns raised by the proposals for pedestrians and cyclists, the proposed development would endanger public safety by reason of traffic hazard.

Having regard to the deficiencies in the information provided in the submitted Natura Impact Statement, in particular having regard to the lack of information in the NIS in relation to potential increased anthropogenic pressures, with potential impacts on Qualifying Species, otter and kingfisher; to potential impacts on Qualifying Habitat 'Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels'; to the omission of key information within the NIS, as relates to the Qualifying Habitat 'Petrifying springs with tufa formation (*Cratoneurion*)', I am not satisfied that the proposed development would not adversely affect the integrity of the River Barrow and Nore SAC (002162) and the River Nore SPA (004233), in view of the sites' conservation objectives. In such circumstances, it is my view that the Board is precluded from granting permission.

I therefore recommend that planning permission should be refused for the reasons set out below.

14.0 Recommended Order

Planning and Development Acts 2000 to 2019

Planning Authority: Kilkenny County Council

14.1.1. Application for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, in accordance with plans and particulars, lodged with An Bord Pleanála on the 27th Day of March by Torca Developments Limited care of McGill Planning Limited, 45 Herbert Ln, Grand Canal Dock, Dublin, D02 RR92.

Proposed Development:

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

Decision

Refuse permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

1. Having regard; to the scale of the proposal; the location of the site on the periphery of Kilkenny City, on the eastern side of the N10 ring road; the deficiencies in the pedestrian and cycle infrastructure and safety concerns in relation to same; the lack of a frequent and accessible public transport service, the proposals would not be in line with the principles of compact growth, and would result in development that would be car dependant, contrary to the provisions of the National Planning Framework, the provisions of the Regional Spatial Strategy for the Southern Region 2020, and would be contrary to the provisions of the Sustainable Residential Development in Urban Areas Guidelines, 2009, as relates to the appropriate location of residential development. It would also contravene the provisions of the development strategy for Kilkenny City, as set out in Variation No, 3 of the Kilkenny City and Environs Development Plan 2014-2020, which seeks to direct higher density development to neighbourhoods of Loughmacask and Western Environs, in tandem with existing and planned infrastructure and service improvements. Said strategy is considered to be reasonable.
2. Having regard to; the creation of a significant number of additional accesses/egresses along the Sion Road; the location of these access points relative to a point in the road where the horizontal alignment is sub-standard; the need for reversing movements for vehicles exiting a number of these egresses; the safety concerns raised by the proposals for pedestrians and cyclists, the proposed development would endanger public safety by reason of traffic hazard.
3. Having regard to the deficiencies in the information provided in the submitted Natura Impact Statement, in particular having regard to the lack of information in the NIS in relation to potential increased anthropogenic pressures, with

potential impacts on Qualifying Species, otter and kingfisher; to potential impacts on Qualifying Habitat 'Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels'; to the omission of key information within the NIS, as relates to the Qualifying Habitat 'Petrifying springs with tufa formation (Cratoneurion)', the Board is not satisfied that the proposed development would not adversely affect the integrity of the River Barrow and Nore SAC (002162) and the River Nore SPA (004233), in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission

Note:

The applicant should note that the Board considers that there is inadequate information submitted with the application in relation to the impact on architectural heritage, the general ecology of the site, and in relation to universal access to the apartment/duplex units, which should be addressed in any subsequent application. The deficiencies in the Traffic Assessment should also be addressed in any subsequent application.

Rónán O'Connor
Senior Planning Inspector

20th August 2020

Appendix 1 – List of Observers

1. Aedan Coffey
2. Andrew Gleon
3. Andrew J Wilsdon
4. Tara Doyle
5. Anne Bowen
6. Anne Nolan and Others
7. Brian Cantwell
8. Brian Fox
9. Denis and Fionnuala Heebry
10. Diarmuid Berry
11. Donal Deering and Maire Geary
12. Edward Nolan
13. Frances Kelly
14. Gerard Barrett
15. Jacinta Cantwell
16. Jessica Cantwell
17. Kevin and Mary Browne
18. Kevin Mahon
19. Linda and Brendan O'Leary
20. Liz Nolan and Others
21. Malcom Noonan and Maria Dollard
22. Michael and Joan Galwey
23. Noel and Bernie Key
24. Owen and Aisling Shine
25. Tara Doyle
26. Pat and Rosemary McPhillips
27. Pat Cantwell
28. Paul Hogan
29. Tara Doyle
30. Philip Brett
31. Phyllis O'Sullivan
32. Roger Ryan
33. Sean Brett and Agnes Reddy Brett
34. Seoirse and Karen Butler
35. Sion Road Community Group
36. Sion Road Residents