



An
Bord
Pleanála

Inspector's Report

ABP-307847-20

Development	A 10 year planning permission is sought for 266 residential units, two office buildings, a childcare facility, a local services centre with two commercial/ retail units and offices, a nursing home and a public park.
Location	Circular Road and Kennyswell Road, Robertshill, Co Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	19/887
Applicant(s)	Daly's Hill Limited
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	First Party v. Application of DCS; and Third Party v. Decision
Appellant(s)	Daly's Hill Limited; and C. Foley, P. Woodcock & Others
Observer(s)	None
Date of Site Inspection	19 th November 2020
Inspector	Phillippa Joyce

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1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Robertshill, approximately 1km to the west of the centre of Kilkenny City. The site is a strategically located landbank, proximate to regional roads connected to the national road network around the city, and between 1km and 2kms to the city's closest intercity and national serving bus stops and train station.
- 1.2. The site is greenfield in nature, indicated in the planning documentation as being a disused sand and gravel pit (in this context it is occasionally described as 'brownfield' in the application documentation), and more recently for grazing animals. The ground levels fall gradually in a westerly direction across the site towards the Breaghagh River. Reflective of the site's history of extractive industry, the majority of the site is notably lower in level than the rising banks which feature along parts of the site's northern, eastern and southern boundaries. Spoil heaps of sand and gravel are in situ in central and southern areas, and some smallscale dumping is evident towards the east and south.
- 1.3. The site, rectangular in configuration, is bound to the north by the R695 (comprising Kennyswell Road and Rothe Terrace); to the east by Fatima Place; to the south by Robertshill; and to the west by the Breaghagh River, adjacent to which is Circular Road. The Breaghagh River, flows in a northerly direction under White Bridge on the R695, intersecting with the River Nore c.1.2km to the northeast in Kilkenny City, south of St Francis Bridge.
- 1.4. The site is located adjacent to an established residential area that has developed over several decades. Adjacent to the west and north of the site are detached rural dwellings; to the northeast is Rothe Terrace, a row of early 20th century cottages; to the east is Fatima Place, mid-20th century historic streets of two storey dwellings; and to the south are Robertshill, a two and three storey residential estate, and Reade Court, a cluster of four storey apartment blocks dating from more recent years.
- 1.5. The main access into the site is via an existing gate, at a mid-point along the stonewall northern boundary off Kennyswell Road. The remaining site boundaries are a mix of earthen banks, hedges and stonewalls. Adjacent to the northern and eastern site boundaries are laneways that serve the rear of properties fronting onto

Rothe Terrace and Fatima Place respectively. Trees line the western boundary along the banks of the Breagh River.

- 1.6. At the time of site inspection, the public road works associated with the Western Environs Local Infrastructure Housing Activation Fund (LIHAF) were underway. The Western Environs LIHAF project involves the construction of public road infrastructure between the N76 Callan Road (southwest of the site) and the R695 Kilmanagh Road to activate lands to the west of the city. The project includes the upgrade of Circular Road, adjacent to the west of the site, and of Kilmanagh Road (the continuation westwards of the R695 from Kennyswell Road) to the northwest of the site. The LIHAF works include for the construction of a new roundabout at the intersection of the upgraded roads, which is located adjacent to the northwest corner of the site.
- 1.7. The site is stated as measuring 12.84 hectares, and the redline boundary includes parcels of land in the west and north of the site which are owned by Kilkenny County Council. The application documentation includes a letter of consent in respect of same. There is an area of land to the southwest of the site outlined in blue, indicating control by the applicant.

2.0 Proposed Development

- 2.1. The proposed development is a mixed use scheme, the key components of which include 266 residential units (comprising 133 houses and 133 apartments); two office buildings, one including a ground floor childcare facility; a local services centre comprising two ground floor commercial/ retail units with four office units above; a nursing home; a public park; basement and surface car parking, bicycle parking; and all other site servicing and development works.
- 2.2. The scheme comprises distinct areas, characterised in layout by land use, density, scale and height of development. The western extent of the site forms a public park encompassing the length of the Breagh River, and the remainder the site contains the residential and commercial components of the scheme.
- 2.3. With regard to layout, the residential accommodation is arranged in distinct blocks laid out from the north to the south of the site, increasing in density and scale through a change in typology from houses to apartments, in an east to west direction

across the site; and the office component is accommodated in two buildings in the northwest of the scheme (referred to in Dwg No.s 18271-PLA-061-068 as Block A, comprising a single-use office block and Block B comprising a multi-use block with ground floor childcare facility and offices above) and in the central area (a local services centre with two ground floor commercial/ retail units and four offices units above), while the nursing home is a distinct block located to the southwest of the site, adjacent to the public park.

- 2.4. The following tables present the principal characteristics, features and floor areas of the components of the proposed scheme in summary:

Table 1: Key Statistics

Site Areas	Total Site Area = 12.84 Open Space zoned area = 3.96 ha Mixed Use zoned area = 8.88 ha (incl. Residential Developable area = 7.36 ha)
Floor Areas	Total Floor Area = 40,057 sqm Residential = 27,489 sqm Commercial = 12,568 sqm
Residential Units (see section below for residential mix details)	Total Residences = 266 units 133 houses and 133 apartments Houses: 63 semi-detached, 58 terrace, and 12 end of terrace units; 2 and 3 storeys Apartments: 113 apartments and 20 duplexes; 2, 3 and 4 storeys
Residential Density (net)	36.15 units per hectare
Part V Provision	27 residential units (5 houses and 22 apartments)
Office Buildings	Block A: 2,032 sqm; 3 storeys (over underground parking) Block B: 1,516 sqm; first and second floor levels; 3 storeys (over underground parking)
Childcare Facility	733 sqm; single storey at ground floor level of Block B; accommodating 80 children

Local Services Centre	327 sqm, 2 commercial/ retail units at ground floor level (net floor areas 100 sqm and 82 sqm); 722 sqm offices at first and second floor levels; 3 storeys
Nursing Home Facility	7,233 sqm; 3 storeys; 126 bedrooms
Public Open Space	3.96 ha of regional park; 1.1 ha of public open space within the scheme
Car Parking	Total No. of Spaces = 747 spaces Residential Use = 501 spaces (2 spaces per house and 1.5 spaces per apartment and 0.25 visitor parking) Nursing Home = 53 spaces Creche Facility = 16 spaces Office Blocks A and B = 157 spaces Local Services Centre = 20 spaces
Bicycle Parking	Total No. of Spaces = unspecified

2.5. The proposed residential mix, in summary, is as follows:

Table 2: Summary of Residential Unit Mix

	1 bed	2 bed	3 bed	4 bed	Total
Apartments/ Duplexes	46	77	10	-	133
Houses	-	10	106	17	133
Total	46	87	116	17	266
As % of total	17.3%	32.7%	43.6%	6.4%	100%

2.6. The main vehicular access to the scheme is planned from the roundabout presently under construction as part of the Western Environs LIHAF project. The proposed development indicates an additional spur from this roundabout providing for a new access road, with a new bridge over the Breaghagh River, into the site. A second vehicular access is proposed from Kennyswell Road, indicated as serving 36 residences in the northern part of the scheme (demountable bollards are proposed on the relevant internal road to prevent access further into the site). Pedestrian

accesses are provided for in the northeast and southeast corners of the site to the existing laneway that runs along the rear of properties on Fatima Place.

2.7. With regard to site services, connection is proposed to an existing foul sewer running along the Breagh River to the west of the site; similarly for water supply a connection is proposed to the existing ring main adjacent to the north of the site; and a new surface water system is proposed, with an attenuation tank located in the west of the site, and a new outfall pipe with runoff discharging to the Breagh River.

2.8. The planning application included a range of architectural and engineering drawings and was accompanied by the following reports and documentation:

- Environmental Impact Assessment Report (EIAR);
- Screening Report for Appropriate Assessment (SRAA);
- Natura Impact Statement (NIS);
- Planning Compliance Report;
- Phasing Plan;
- Architectural Design Statement;
- Schedule of Accommodation and Residential Standards;
- Preliminary Part V Agreement;
- Engineering Planning Report;
- Traffic and Transport Assessment (TTA);
- Stage 1: Road Safety Audit (RSA);
- Site Specific Flood Risk Assessment (SSFRA);
- Construction Environmental Management Plan (CEMP); and
- Public Lighting Report.

2.9. The appropriate period sought to implement the permission is for 10 years. A phasing plan accompanies the application and indicates six phases of development. Phase 1 comprises 36 residential units (32 houses and 4 apartments) in the north of the site proposed to be accessed from the Kennyswell Road entrance. The remaining Phases 2-6 are to be served by the proposed access road connecting to

Western Environs LIHAF project roundabout. These remaining phases implement the delivery of a mix of residential, commercial and open space uses, developing from the periphery towards the centre of the site.

- 2.10. The proposed development was subject of a Further Information (FI) request from the Planning Authority during the processing of the application. As outlined in more detail in the subsequent section, the response to the FI resulted in changes to the layout of the scheme. These were mainly relating to the Kennyswell Road vehicular entrance, internal road layout and hierarchy, car and bicycle parking spaces allocation. The FI response also provided additional details on the servicing of the scheme including surface water infrastructure, public open space, and waste management, and the impacts arising from implementing the scheme, such as on biodiversity and the Breagagh River. The FI response did not alter the number of residences or the quantum of commercial floor space within the scheme.
- 2.11. The FI response included a number of new/ revised architectural and engineering drawings, and new/ updated reports and documentation as follows:
- EIAR Supplementary Report;
 - SRAA;
 - NIS;
 - TTA;
 - Flood Risk Memorandum; and
 - Invasive Alien Plant Species: Site Assessment Report & Management Plan.
- 2.12. The FI response revised the provision of car and bicycle parking within the scheme as indicated on Dwg No.s 18271-RFI-008 and 18721-RFI-005 respectively. (I highlight to the Board at this point that these layout drawings also include new references to the components within the scheme as Blocks A-L (no I), whereby the office blocks initially referred to as Blocks A and B are now jointly referred to as Block L).
- 2.13. The revisions from that in the key statistics outlined in the table above, are as follows:

Table 3: Revised FI Key Statistics

Car Parking	Total No. of Spaces = 760 spaces Residential Use = 485 spaces Nursing Home = 36 spaces Creche Facility = 21 spaces Offices = 157 spaces Local Services Centre = 37 spaces Amenity = 24 spaces
Bicycle Parking	Total No. of Spaces = 371 bicycle spaces

3.0 Planning Authority Decision

3.1. Summary of Decision

On 15th July 2020, the Planning Authority issued a Notification of Decision to Grant Permission subject to 23 conditions. I direct the Board's attention to the fact that this appeal includes a first party appeal against Condition 2, containing the financial contribution. The first party appeal also refers to Condition 6, and the Planning Authority's response refers to Condition 7(c).

For ease of reference, these conditions are provided in full below. Additionally, the following is an overview of the conditions attached:

Condition 1: includes an appropriate period for the permission of 10 years.

Condition 2: *'The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in Kilkenny County Council's administrative area that is provided or intended to be provided by or on behalf of the Local Authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Acts 2000-2019.*

The amount of the financial contribution shall be paid upon commencement of development, with the amount of the contribution being the rate of contribution in existence on commencement of development. In accordance with the current scheme the amount of the contribution is calculated at €927,439.00 (nine hundred

and twenty seven thousand, four hundred and thirty nine euros), however this amount may be recalculated in accordance with any newly adopted Development Contribution Scheme that may supercede the current scheme prior to commencement of development. Any applicable amount is subject to revision with reference to the Wholesale Price Index and to penalty interest in accordance with the terms of Kilkenny County Council's Development Contribution Scheme.

Reason: *It is a requirement of the Planning and Development Acts 2000-2019 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.'*

Condition 3: lodgement of a security bond until listed infrastructure and services are taken in charge.

Condition 4: requirement to enter into a Part V agreement.

Condition 5: delivery of the development is to be phased; only Phase 1 shall be served by the vehicular entrance onto Kennyswell Road. Phases 2-6 shall only be commenced when the new bridge and access road from the new Circular Road roundabout is constructed. No construction traffic for Phases 2-6 shall use the vehicular entrance on Kennyswell Road.

Condition 6: *'Prior to commencement of development, the applicant shall agree with the Planning Authority, full details of the open space/ Breagagh Park area, to include inter alia for its layout, hard and soft landscaping, lighting specifications, methodology and timeframe for delivery in tandem with the proposed development.*

Reason: *In the interests of orderly and sustainable development and the visual amenities of this area.'*

Conditions 7, 12, 14, 16 and 17: agreement for a waste management plan, management company for communal areas; specifications relating to site services, foul and surface water drainage systems, maintenance of shared areas, taking in charge and public lighting.

Condition 7(c): *'Prior to the opening of Phase 2-6 of this development, the applicant shall submit details for the written agreement of the Planning Authority, of a Management company which shall be responsible for the ongoing and indefinite maintenance of the communal waste storage areas. Membership of the company*

shall be compulsory for each relevant owner within the development.

Reason: *To provide for the recovery/ disposal of waste and the protection of the environment.'*

Condition 8: agreement for the design of the bridge and access road; the bridge and road to be constructed prior to Phases 2-6 commencing.

Conditions 9, 10 and 13: construction protection measures relating to materials, spills, noise, odours, nuisance and hours of operation.

Condition 11: connection agreements to be obtained from Irish Water for water supply and wastewater and standards therein to be adhered to.

Conditions 15 and 19: specification of boundary details, and a fence to be erected along the Breaghagh River as part of site clearance works; landscaping to be as indicated in the Landscape Design Statement with specifications regarding planting, species, treatment of invasive species, and play areas.

Conditions 18 and 20: agreement for the naming, numbering and associated signage for residential component; and signage for the commercial units and the nursing home.

Condition 21: mitigation measures in EIAR and NIS shall be implemented.

Condition 22: requirement for Stage 2 and subsequent Stage 3 Road Safety Audits; prior to commencement of development design and specification details required for Kennyswell Road entrance, internal roads, junctions, crossing points, pedestrian accesses onto adjacent boundary laneways, cyclist merge details and cycle track route.

Condition 23: archaeological monitoring of groundworks.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The Planner's report is the basis for the Planning Authority decision. The key items in the initial Planner's report are summarised as follows:

- Kilkenny County Council owns a portion of the site over which, by way of a CPO negotiation, access to the site from the Western Environs roundabout will be facilitated;

- Correspondence from the Council’s Housing Section confirming a provisional Part V agreement is noted;
- Planning history at the site referred to includes previous applications for an access road and bridge crossing, and residential developments on adjacent lands;
- Preplanning consultations referred to, importance placed on increased commercial uses, accessibility and permeability highlighted;
- Proposed development complies with the ‘Mixed Use’ and ‘Amenity/ Green Links/ Biodiversity/ Conservation’ zonings and the Z1 Zoning Objective applicable to the site;
- Density of 36 units per hectare is acceptable as the site is ‘an edge of town and brownfield site’;
- Breagh Park will have beneficial community, amenity and biodiversity gains and its delivery is a welcome part of the wider Breagh River Regional Park in the city;
- Building heights and designs of commercial elements are acceptable;
- Apartments are stated as complying with the Apartment Guidelines in terms of sizes and open space;
- An Environmental Impact Assessment, Appropriate Assessment (referred to as Natura Impact Assessment) and the planning Assessment are undertaken. Insufficient information is identified expressly for several items with additional items added directly in the resultant FI request. In summary, the FI items include:
 - *Traffic and Transportation* – data used in the TTA, vehicular entrance arrangements, design of the bridge and access road, internal road layout and hierarchy, underground car park, car and bicycle parking space provision, pedestrian footpaths, permeability and cycle track issues to be clarified, provided and/ or revised;
 - *Biodiversity* – updated information required for the AA screening, NIS and EIAR regarding the in combination impact of recent adjacent

- developments, managing Japanese knotweed, and reference to a pedestrian bridge crossing to be clarified, provided and/ or revised;
- *Flood Risk Assessment* – scope of flood risk assessment study area required to be widened;
 - *Surface Water Drainage* – phasing of related infrastructure to be revised;
 - *Public Open Space* – details of play areas, additional active sports facilities, pedestrian and cycle pathways, public lighting are required;
 - *Landscaping and Boundary Treatment* – planting plans with protection measures of hedgerows and trees are required,
 - *Servicing of the Scheme* – identification of bin storage provision; servicing, delivery and set down areas for the commercial uses; public lighting details are required;
 - *Residential Amenity* – potential overlooking of residential properties in Robertshill from the nursing home to be examined;
 - *Core Strategy* – more robust and complete statement of compliance is required;
 - Recommends FI be requested.
- The FI request was issued on the 30th January 2020 relating to 43 items. A FI response was received by the Planning Authority on the 22nd May 2020. The subsequent planner's report assessing the FI response notes the following key items:
 - *Traffic and Transportation* – updated Chapters in the EIAR Supplementary Report, updated TTA, revisions made to the Kennyswell Road entrance, internal road layout, junction priority, uncontrolled pedestrian crossing points, cycle paths, car parking, bicycle parking are noted and acceptable;
 - Biodiversity – updated Chapters in the EIAR Supplementary Report, updated AA Screening Report and NIS are noted and acceptable;
 - *Flood Risk Assessment* – FRA memorandum submitted outlines why the initial study area is adequate, which is accepted;

- *Surface Water Drainage* – phasing of surface water drainage infrastructure revised to be completed within Phase 1, which is acceptable;
- *Public Open Space and Landscaping* – detailed landscape plan provided with information on Breagagh Park, other play areas, specifications, planting details and is acceptable;
- *Servicing of the Scheme* – bin storage details, changes to set down areas for commercial component, public lighting details are noted and acceptable;
- *Residential Amenity* – cross section between the nursing home and Robertshill reviewed and proposals to address overlooking are acceptable;
- *Core Strategy* – updated Chapter in EIAR Supplementary Report containing justification with reference to recent developments and NPF is noted and acceptable;
- Reasoned Conclusion indicates that regard has been had to all initial documentation and documentation received as FI, and that subject to the mitigation measures included in the EIAR, as updated in the EIAR Supplementary Report, that there is no real likelihood of significant effects on the environment arising from the proposed development;
- Similarly, subject to the mitigation measures in the NIS, the conclusion indicates that there will be no negative impacts from the proposed development on its own or in combination with other sources on any Natura 2000 site; and
- Recommends permission be granted subject to conditions.

3.2.2. Other Technical Reports

Roads Section: initial report recommended FI on revising the proposed location of the R695 Kennyswell Road access (due to future potential realignment improvements, speeds on the road, and restricted sightlines due to the boundary wall), the design of the new access road and bridge, the phasing of the scheme, assumptions and data used in the TTA, internal road layout, hierarchy and priority, car and bicycle spaces, pedestrian and cycle routes and paths, and the underground car park. Subsequent report notes satisfactory resolution of some of the above

items, and has no objection subject to conditions. Several of these require final agreement prior to commencement of development including the design of the new access road and bridge, the Kennyswell Road entrance, certain junctions and crossing points, cycle tracks and provision of safety audits, construction and traffic management plans.

Environment Section: initial report recommended FI on surface water infrastructure, bin storage, and scope of the flood impact assessment. Subsequent report has no objection subject to conditions.

Parks Section: initial report recommended FI on landscaping, species planting, specification for play areas, maintenance and management plan. There is no subsequent report. The planner's subsequent report refers to a verbal request from the Section for conditions relating to Breaghagh Park and Japanese knotweed.

Chief Fire Officer: no objection subject to conditions.

3.3. Prescribed Bodies

Irish Water: no objection subject to standard conditions for connection agreements, subject to available capacity and compliance with codes and practices.

Development Applications Unit (National Monuments Service), Dept. of Culture, Heritage and the Gaeltacht: no objection, recommends conditions for archaeological monitoring of groundworks.

Environmental Health Department, HSE: no objection subject to conditions relating to the creche facility including staff facilities, hygiene, safety, food preparation and storage.

The planning application was referred to the following bodies, but no reports are on file:

Kilkenny County Childcare Committee: no report.

Early Years Registration TUSLA: no report.

3.4. Third Party Observations

3.4.1. Four submissions were received by the Planning Authority from:

- Residents of Robertshill;

- Christine Byrne;
- Roger Goodwillie; and
- Rothe Terrace Construction Concern Group.

3.4.2. The key issues raised are summarised as follows:

- Clarify intention regarding the boundary wall with the Roberts Hill estate and any plans to remove the existing raised area along the boundary;
- Clarify if there will be access between Roberts Hill estate and the proposed development, and pedestrian access to the green area;
- Clarify prevention measures for flooding, noise and dust nuisance, and clarify construction times;
- Premature until LIHAF road scheme is completed;
- Serious concerns in relation to road safety and the proposed entrance onto Kennyswell Road;
- Concern about the overreliance on apartments/ duplexes in the scheme, in excess of 50%, which is not appropriate in this location;
- EIAR and AA Screening reports do not include a botanical survey of the site;
- Japanese knotweed has gone undetected on the site;
- High level of HGVs on Kennyswell Road and the future development of 3,500 houses on lands to the west of the proposed development have not been addressed in the planning application;
- The extent of HGV traffic is a safety and noise nuisance to residents;
- The newly proposed entrance and pedestrian footpath onto Kennyswell Road are potentially dangerous;
- Notes the Part V agreement in place with 27 units for social housing tenants and raises concerns raised about Council's resources to manage the properties and address any anti-social behaviour;
- Clarity on the maintenance of the proposed estate grounds and the public open space areas;

- Poor and absent design effort for certain elements of the scheme including residential types, the retail units and the nursing home, which should be revisited;
- Requests that the existing boundary and slope between Rothe Terrace and the proposed development is not removed, but planted to provide security, privacy and biodiversity, and that a fence be provided on the developer's side;
- No sectional drawings through Rothe Terrace to the proposed development, requested to be provided;
- Concerns raised about the impact on Rothe Terrace from public lighting, car noise and lights, and requests a limit to the number of residences using the Kennyswell Road entrance and the internal road close to the Terrace;
- Clarity on the pedestrian access points to the east, including the one near Rothe Terrace, concerns about anti-social behaviour arising from them; and
- Highlights that flooding is known in the area in Robertshill estate and the site can be very wet near the Breagagh River.

4.0 Planning History

4.1. Appeal Site

PA Ref. VSR 20-1, PL10.306486 – An Bord Pleanála confirmed the Planning Authority decision to place the site onto the Vacant Sites Register on the 2nd July 2020.

PA Ref. 08/41 – Permission granted on the 30th July 2008 for, as described in the public notices, a proposed vehicular/ pedestrian/ cycle bridge and road across the Breagagh River from the Circular Road forming part of the Western Environs/ Inner Relief Road Scheme and will facilitate the future provision of footpaths and cycleways within the Breagagh Valley Regional Park. This permission was not implemented.

4.2. Lands to the North (Crocker's Hill)

PL10.305062 – Approval granted by An Bord Pleanála on the 17th January 2020 for a Kilkenny County Council proposed scheme comprising 86 residential units. This permission had not been implemented at the time of site inspection.

4.3. **Lands to the West (Drakeland Lower)**

PA Ref. 20/887 – Permission applied to alter ABP-303427-19 through a redesign of the site layout, replacement of houses for apartments and an increase from 59 to 75 residential units.

At the time of assessing the current appeal, this is a live permission under consideration by the Planning Authority.

PA Ref. 17/866, PL10.303427 – Permission applied for 54 residential units; increased to 56 through FI. On 15th May 2019, An Bord Pleanála granted permission and through Condition 2 replaced 15 dwellings with three duplex apartment blocks (each containing 6 units) for reasons of design, increased residential density and greater proportion of 2 bedroomed units.

This permission has not been implemented and is presently the subject of an amending application, referenced above.

PA Ref. 17/801 – Permission applied for 54 residential units. Planning Authority granted permission on the 28th August 2018 for a total of 48 no. units as 6 no. houses omitted by Condition 2. This permission had not been implemented at the time of site inspection.

5.0 **Planning Policy**

5.1. **National Policy**

5.1.1. Project Ireland 2040 - National Planning Framework

A number of overarching national policy objectives are identified as being applicable to the proposed development, including:

- National Policy Objective 3c: Deliver at least 30% of all new homes that are targeted in settlements other than the five cities and their suburbs, within their existing built-up footprints.

- 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 Policy Objective 11: In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.
- 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.

5.1.2. Section 28 Ministerial Guidelines

The following list of Section 28 Ministerial Guidelines are considered to be of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009, and the accompanying Urban Design Manual: A Best Practice Guide, 2009;
- Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities, December 2020;
- Urban Development and Building Height, Guidelines for Planning Authorities, December 2018;
- Design Manual for Urban Roads and Streets, December 2013 (DMURS);
- Childcare Facilities – Guidelines for Planning Authorities, 2001 and Circular PL3/2016 – Childcare facilities operating under the Early Childhood Care and Education (ECCE) Scheme

- The Planning System and Flood Risk Management (including the associated Technical Appendices), 2009;
- Carrying out Environmental Impact Assessment, Guidelines for Planning Authorities, August 2018; and
- Appropriate Assessment of Plans and Projects, Guidelines for Planning Authorities, February 2010.

5.2. Regional Policy

5.2.1. Regional Spatial and Economic Strategy (RSES) for the Southern Region, 2020-2032

Kilkenny City, the fourth largest urban settlement in the RSES and with a 2016 Census population of 26,512 persons, is identified as one of six significantly scaled and higher functioning Key Towns in the region. Accordingly, a number of regional policy objectives are applicable to the proposed development, including:

- RPO 11 states Local Authorities are supported in targeting growth of more than 30% for each Key Town subject to capacity analysis and sustainable criteria.
- RPO 12 seeks to strengthen the role of Kilkenny City as a self-sustaining regional economic driver, and to seek investment to support the development of the compact '10 minute-city concept'.
- Appendix 1 of the RSES presents transitional population projections and indicates an increase for County Kilkenny from 99,000 persons in 2016 to between 112,000-114,500 persons to 2031 (an uplift of 13,000-15,500 persons in the intervening period).

5.3. Local Policy

5.3.1. Kilkenny City and Environs Development Plan 2014-2020

The applicable development plan is the Kilkenny City and Environs Development Plan 2014-2020.

From information available on the County Council's website, it is stated that the statutory review process for the preparation of a new city and county development plan commenced in April 2018 and was suspended in November 2018, pending the

completion of the RSES. The review process commenced again in May 2020 and, as outlined in the following subsection, the draft Kilkenny City and County Development Plan 2021-2027 is on display at the time of assessment.

In this context, the applicable development plan for the proposed development is considered to remain the 2014 Development Plan. The Plan was varied by Variation 6 incorporating a varied zoning map which identified landbanks in the west of the city for future growth. The general policy context and the key objectives relating to the proposed development are highlighted in bullet points below, otherwise specific policies and objectives are referenced within the Section 7.0 assessment of this report where appropriate.

- Chapter 3 contains the Core Strategy, the Development Strategy outlining future growth for the city to be targeted towards the Western Environs (Z14 as per Variation 6) and Loughmacask (Z11) areas of the city, and includes policy on the 'Compact City' concept;
- Majority of the site is zoned as 'Mixed Use', the objective of which is 'To consolidate and facilitate the development of inner suburban sites for mixed use development which will allow for commercial and residential uses'. Permitted uses include dwellings, nursing home, childcare facility, office based industry and local convenience shop;
- Western portion of the site is zoned as 'Amenity/ Green links/ Biodiversity conservation/ Open Space/ Recreation', the objective of which is 'To allow for green links and biodiversity conservation and to preserve, provide and improve recreational open space'. Permitted uses include open space;
- Site specific objective on the appeal site includes the designation of the mixed use zoned lands as 'Z1: Robertshill Mixed Use Zoning', stipulating:
 1. *No vehicular connection to be permitted between the Central Access Scheme and Kennyswell Road through the site.*
 2. *Public open space to be provided along the Breagagh River, to form part of the Breagagh Regional Park.*
 3. *Any residential component of the site to be readily accessible from the parklands.*

4. *An overall Framework Plan of the entire site shall be submitted at planning application stage.*

5. *Any development on the site must have due regard to the amenities of existing residences.*

- Chapter 3 requires that for developments in transitional zones abutting established residential areas that regard be had to uses, scale, density and appearance of development and landscaping proposals to safeguard the amenities of the existing areas;
- Chapter 4 contains policy on offices provision and ancillary supports such as local service centres (4.3.3);
- Chapter 5 provides policy on residential development and associated uses such as childcare facilities (5.6.1) and nursing homes (5.10);
- Chapter 6 outlines the hierarchy of public open space and policy on regional river corridors including for the Breaghagh River (6.1.2) and recreational facilities for new residential areas (6.5.4);
- Chapter 7 contains the policy context for natural and built heritage, including green infrastructure (7.2.2), inland rivers (7.2.6), and St Mary's architectural conservation area (7.4.7.7);
- Chapter 8 provides policy on water services and environment including on flooding (8.2.4) and surface water infrastructure (8.2.5);
- Chapter 10 outlines transportation policy including on cycling and walking (10.1.2), road proposals (10.4.2), and parking (10.4.8);
 - At this point in the interests of clarity, I highlight that from a review of the documentation available in the planning application and appeal, the terminology used in respect of the road infrastructure relevant to this appeal is subject to change by the different parties from that used in the Development Plan.
 - Section 10.4.2 contains specific road policy relevant to the appeal case which is referred to as the Central Access Scheme (CAS), the Western Environs Road scheme and the Western Bypass.

- These road infrastructure routes are indicated in Figure 10.2 Street Hierarchy (pg 168/169) and on the current Zoning Map of the Development Plan.
- The CAS has three phases, Phase 2 of which is indicated to the north of the appeal site running parallel with Kennyswell Road. In the available documentation, references are made by the applicant and Planning Authority to the Breaghagh Valley Park Scheme (BVPS) and it is my understanding that this corresponds to Kilkenny CAS Phase 2.
- It is my understanding that the Western Environs Road scheme corresponds with the Western Environs LIHAF project currently under construction. References to Western Environs Phase 1 are understood to include upgrades to Circular Road, Kilmanagh Road, and the provision of a new roundabout from which the proposal is to be accessed.
- The Western Bypass is interspersed with references to the Northern Ring Road by parties.
- Chapter 11 includes the qualitative and quantitative requirements for developments including urban design (11.4), housing and apartments standards (11.4 and 11.5), public and private open space (11.7), building height (11.8.7), servicing and phasing (11.4.3 and 11.9);
 - Section 11.4.1 states that maximum residential density standards for proposed developments are not prescribed.
 - New developments shall defer to quantitative standards for houses and apartments included in national guidance ‘Quality Housing for Sustainable Communities’ and ‘Sustainable Urban Housing: Design Standards for New Apartments’ respectively.

5.3.2. Draft Kilkenny City and County Development Plan 2021-2027

- The draft Kilkenny City and County Development Plan 2021-2027 was placed on display in December 2020. Kilkenny City is identified as a Significant Key Town, at the top of the County’s Settlement Strategy.
- In line with the NPF and RSES, the Core Strategy guides that the city’s population can grow from the 2016 Census baseline of 26,512 persons to

30,153 persons by the end of the Plan period in 2027. Similarly, in consistency with NPO 3c and RPO 11, 30% of the housing allocated to the city is required to be provided within the existing built-up footprint.

- With respect to the proposed development, the appeal site is located within the city’s defined built-up footprint, continues to be zoned as ‘Mixed Use’ and ‘Amenity/ Green links/ Biodiversity conservation/ Open Space/ Recreation’, and continues to be have the site specific designation as ‘Z1: Robertshill Mixed Use Zoning’ with the same five development caveats.
- The draft Plan has changed references from the current Plan’s ‘Western Environs’ to ‘Breagagh Valley’ when referring to the landbank west of the appeal site identified for future development.
- The draft Plan includes Road Objective R5, which I understand to correspond with references by parties to Kilkenny CAS Phase 2 and BVPS.

5.3.3. Kilkenny County Development Contribution Scheme 2016-2017

- The applicable scheme is the Kilkenny County Council Development Contribution Scheme 2016-2017, as extended. The terms of the Scheme include the basis for determination of contributions, categories of development, rates of charge, exemptions and payment of the contribution.
- The basis for the determination of a contribution towards the cost of providing public infrastructure comprises 46% for Roads and 54% for Recreation, Community and Amenity.
- The following contributions are payable in respect of the applicable categories in the proposed development at the indicated rate of charge per unit.

Table 4: Categories and Rates for the Proposed Development

Section	Description of Development	Unit	Rate of Charge
2	Urban Residential development	M ²	€25.00
3	Domestic garage/ fuel store/ garden shed > 25 m ²	M ²	€15.00
4	Non Residential development including Open Storage Yards	M ²	€25.00

- The Scheme identifies ‘social housing units which are provided in accordance with an agreement under Section 96 of the Planning and Development Acts, 2000-2015 to Kilkenny County Council/ Voluntary Housing body which is recognized as such by the Planning Authority’ as being a category of development that will be exempted from a requirement to pay a development contribution.
- The contributions are payable immediately upon commencement of development and based on the contribution rate at that time.
- In instances where a large development is being carried out in phases, the terms of the Scheme allow the contribution to be paid in instalments, in agreement with the Planning Authority, before the commencement of each phase.

5.3.4. **Natural Heritage Designations**

- The appeal site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA.
- Such designations in closest proximity to the appeal site, include the following:
 - River Nore SPA (004233) is 931m to the east;
 - River Barrow and River Nore SAC (002162) is 940m to the east; and
 - Lough Macask pNHA (001914) is 1.17km to the northwest.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. First Party Appeal

The first party appeal is made against the financial contribution condition contained in the decision of the Planning Authority to grant permission. The grounds of appeal are summarised as follows:

- The appeal is made with reference to Section 139 of the Planning and Development Act, 2000, as amended, against Condition 2 of the permission

which requires payment of €927,439.00 by the developer to the Planning Authority;

- The argument submitted is that the contribution has been applied to 27 units intended to be provided as social housing in compliance with Part V obligations, and that the contribution amounts to double charging in respect of public open space as Condition 6 requires the delivery of the Breaghagh Park area, including for its layout, hard and soft landscaping and lighting specifications; and
- Board is requested, in the first instance, to reduce the amount stated in Condition 2 by €98,709.50 (the contribution calculated as arising from the 27 social housing units), and to remove Condition 2 in its entirety to offset the cost (estimated as being in the region of €900.000) of delivering Breaghagh Park.

6.1.2. Third Party Appeal

The third party appeal is made by named members of Rothe Terrace Construction Concern Group against the decision of the Planning Authority to grant permission. The grounds of appeal relate to traffic, boundary treatment and design, and are summarised as follows:

- Traffic situation is misrepresented creating serious road safety risks for existing and new residents in the area;
- Strong objection to the use of Kennyswell Road for construction traffic for Phase 1 due to negative impacts associated with dirt, noise, pollution and adding to existing HGV traffic;
- Developer should instead construct the main access road and bridge and use this access from the outset;
- High levels of current HGV traffic on Circular Road/ Kennyswell Road, stated as being related to agribusiness operations, are not reflected in the data in the TTA;
- DMURS requirements in relation to HGV traffic, including 'stopping sight distance', have not been considered in the road safety audit and TIA;

- TTA traffic survey (12 hours over one day) for the proposed development, and the traffic survey (2 hours over 2 days) relied upon in the local authority Croker's Hill development adjacent to the north, are both inadequate and incorrect as they understate the percentage of HGVs using Kennyswell Road;
- Dangerous affects from HGVs on locality include from mounting footpaths, log jams at Kennyswell Road/ Dominic Street junction, and crashes;
- Permanent solution would be to continue to redirect the HGV traffic (as is stated as presently happening due to the Circular Road upgrade works) from Kennyswell Road towards the ring road and Central Access Scheme bridge;
- Traffic growth rate assumptions in the TTA are stated as being too low and do not include the potential 3,500 houses planned to the west of the appeal site;
- Submits that these western future developments could generate 2,000 AM trips and 2,500 PM trips and that 50% could use Kennyswell Road, quadrupling the carrying capacity of the road;
- Critical of reliance on future road projects to alleviate possible traffic congestion in the area arising from the proposed development and other planned development;
- Approval for the northern extension of the ring road was quashed in 2014 and it could be two decades until Phases 2 and 3 are in place during which time traffic from developments in the west will access the city centre via linkages such as Kennyswell Road;
- Piecemeal analysis of traffic flows with erroneous assumptions, minimal sample sizes and modelling errors are totally unsatisfactory;
- Area based transport assessment for the western side of the city is required thereby averting traffic chaos;
- Welcomes intention to provide additional planting of native species along the boundary with Rothe Terrace and requests a fence between Phase 1 and the boundary line to protect same;
- Highlights that the existing slope along this boundary, while being in the developer's control, supports the laneway at back of the terrace which is a

legal right of way and any changes to the boundary and/ or slope must not have any impact on the laneway;

- Critical of the design of certain house types (A, B, E, F, H and L), the retail units and the nursing home (corresponding approximately with the central and southern parts of the scheme) which are described as lacking rhythm, texture, detail and integrity;
- Poor designed buildings risk failing to attract and keep responsible residents resulting in a downward spiral; and
- Not seeking a reduction in the number of units but requests a redesign of certain parts of the scheme (referred to above) to avoid monolithic appearance and to use higher quality external materials.

6.2. Planning Authority Response

6.2.1. The Planning Authority, in correspondence dated the 7th September 2020 (enclosed the Development Contribution Scheme: Calculation Sheet) responded to the first party appeal stating the following:

- Planning Authority contends the Scheme has been applied appropriately;
- Discussions have taken place but there is no legally binding agreement between the developer and the Housing Section;
- As circumstances may change, a different solution may be proposed that does not involve the units currently identified and there could be a shortfall in contributions;
- In such cases, the contribution is applied across a development and when a Part V agreement is signed an appropriate reduction is made to the final amount payable in accordance with the provisions of the Scheme;
- No objection to wording being included in the existing Condition 2 to provide for such a procedure;
- Board is requested to apply the Development Contribution Scheme as per Condition 2 of the Planning Authority decision;

- The proposed development generates a requirement of 1.78 ha public open space to be equipped with a grass sports pitch, multi-use court area and two tone zones/ outdoor gyms;
- Planning Authority has identified five public open space areas within the scheme and states these measure 0.57 ha (not 1.1 ha as submitted by the applicant), that there is a shortfall of 1.21 ha in public open space provision and that there is no active recreational equipment as required;
- Planning Authority considers the under provision in terms of quantity and quality of public open space in the proposed development can be addressed through the provision of open space in the regional park;
- Insufficient details have been provided about the recreational facilities intended and Condition 6 ensures that acceptable facilities will be provided in tandem with the development;
- Reference is made to previous agreements allowing for reductions in contributions where infrastructure has been provided in excess of the requirements of a development;
- Board is requested to retain Condition No. 6 of the Planning Authority decision; and
- Board is requested to expand Condition No. 7(c) to include for a management company to be set up for all communal areas within the scheme that would not be taken in charge.

6.2.2. The Planning Authority, in the same dated correspondence (enclosed three maps, Phases 1 and 2 of the HGV Management Plan for the city, and, from the Development Plan, Figure 10.2: Street Hierarchy), responded to the third party appeal stating the following:

- Much of the material relating to the traffic issues is out of date and superseded by events;
- Planning Authority considers it has taken measures to ameliorate the impacts associated with HGV traffic using Kennyswell Road;

- Phases 1 and 2 of the HGV Management Plan have been implemented, with HGV traffic now only permitted to travel one-way into the city using Kennyswell Road, along which a 30kph speed limit has also been introduced;
- Objectives are included in the current Development Plan to develop an alternative connection to the west of the appeal site for HGVs to use instead of Kennyswell Road (I note that the alternative connection indicated on the Street Hierarchy map comprises the Western Environs Road, Central Access Scheme: Phase 2 and Central Access Scheme: Phase 3);
- Planning Authority anticipates this alternative connection will be delivered within the lifetime of the next Development Plan 2021-2027;
- In relation to the delivery of the Northern ring road, documentation is being prepared for a revised application to the Board, but it is unlikely to be delivered within the next Development Plan 2021-2027; and
- Board is requested to uphold the decision of the Planning Authority to grant permission subject to the suggested amendments.

6.3. Applicant Response

6.3.1. The applicant made a response to the third party appeal, which can be summarised as follows:

- Access onto Kennyswell Road was required by the Planning Authority through preplanning consultations and the FI request;
- Access provides for greater connectivity, including pedestrian and cycling, within the scheme, is designed to reflect the current road speeds and with sightlines in excess of DMURS standards;
- Proposal will generate 15 trips in the AM peak and 17 trips in the PM peak;
- Refutes appellant's claims of an incorrectly low use of 10% HGV occurrence in TTA as survey carried out using CCTV footage and therefore is an accurate reflection; 10% HGV average occurrence but detailed survey reflects use of periods of HGV occurrence of 20%; traffic generation figures accord with Transport Infrastructure Ireland (TII) Guidelines;

- Similarly, the Stage 1: RSA was undertaken at a time when HGV traffic was representative of daily occurrence and therefore does include levels of HGV contrary to appellant's claims;
- Different phraseology used but RSA did consider stopping sight distance with current restrictions identified and measures to address these proposed including speed cushions and over-achievement of sightlines (36m required for 30kph road, but provision being made for 40kph road with 45m on left and 42m on right);
- Scheme to be developed in six phases over requested 10 years and a range of significant planned road improvements for the wider city area will reroute HGV traffic away from Kennyswell Road;
- The models indicate that the proximate Dominic Street/ Kennyswell Road crossroads will operate within capacity with some queues and delays at 2022, 2027 and 2037; the site access will operate within capacity with no queues and minimal delay over those years; and the R695 will operate above capacity in 2027 and 2037 until the CAS is completed;
- The traffic generation models do not include a modal split which would allow for inevitable pedestrian and cycling trips and, therefore, the models reflect a worst-case scenario;
- Proposal will contribute marginally towards local traffic congestion but when likely modal choice for walking and future road improvements are considered, on balance the traffic impact is acceptable;
- Known granted developments have been included for in the modelling but the future planned western development has not as it is not permitted and will be subject to associated TTAs;
- Proposed development is not premature pending the delivery of the wider roads infrastructure, such as the northern extension of the ring road, as it does not rely on same save for access to the LIHAF roundabout which is under construction;
- Delivery of the BVPS and the Kilkenny CAS will reduce the traffic congestion at the Dominic Street/ Kennyswell Road crossroads;

- Appellant essentially objecting to all residential units, houses and apartment blocks that over three storeys in height;
- A continuation of the design featuring in Phase 1 would result in a scheme of mono-type two storey semi-detached and terrace houses, with little variety in typology and mix, at a density failing to meet minimum standards;
- Refutes appellant's negative claims about the scheme's design approach, and criticisms of selection of external materials, quality of public spaces, and contribution to Kilkenny's built environment.

6.4. Further Referrals

On lodgement of the appeal, the Board referred the case to An Taisce, Inland Fisheries Ireland (IFI), the Heritage Council, and the Development Applications Unit (inclusive of the National Parks and Wildlife Service (NPWS)), Department of Culture, Heritage and the Gaeltacht. No responses were received on the case from these bodies at the time of assessment.

7.0 Planning Assessment

7.1. Introduction

- 7.1.1. Due to the nature of the proposed development, prevailing legislation and in the interest of clarity, the assessment of this case comprises three components. This Section 7.0 is the Planning Assessment of the case, Section 8.0 is the Appropriate Assessment, and Section 9.0 is the Environmental Impact Assessment. Where there are instances of overlap between the assessments, for example, with matters raised falling within both the planning assessment and the environmental impact assessment, the matters are not repeated but are indicated in the appropriate sections of the report.
- 7.1.2. In respect of the planning assessment, I consider the main issues in determining this case are those raised in the grounds of the appeals and the Planning Authority's responses, and are addressed under the following headings:
- Development Contribution;
 - Traffic, Transportation and Access;

- Design and Layout; and
- Taking in Charge.

7.2. Development Contribution

7.2.1. The first party appeal requests that firstly, the contribution amount arising from the social housing units, stated as €98,709.50, be removed from the total financial contribution of €927,439.00 included in Condition 2, and that secondly, Condition 2 be removed in its entirety because it constitutes a form of double-charging in respect of the provision of Breagagh Park which is a requirement of Condition 6. I intend to address each item in turn.

Social Housing Exemption from Development Contributions

7.2.2. I note that the planning application was accompanied by correspondence from the Planning Authority's Housing Section confirming a preliminary Part V agreement in respect of 27 units of the proposed 266 units, and a site plan identifying the units located throughout the development. The preliminary agreement did not change during the assessment of the application, the details of which remain the same as referred to by the applicant in the appeal.

7.2.3. However, I note that Condition 4 of the permission requires that, prior to commencement of development, the applicant enters into a Part V agreement with the Planning Authority. Additionally, the Planning Authority's response to the appeal indicates that while discussions have taken place there is no legally binding agreement, and that the proposed units may therefore be subject to change. The response clarifies that when a Part V agreement is signed an appropriate reduction is made to the final amount payable in accordance with the provisions of the Scheme.

7.2.4. I have reviewed the terms of the Scheme and consider that while social housing units are exempt from financial contributions this is on the basis that an agreement is finalised. Additionally, as the method of calculating contributions is based on floorspace and not on the number of units, it would not be appropriate to omit the associated floorspace of the 27 units from calculation. Therefore, while I consider the preliminary agreement to be a sound basis for a final agreement, I accept the Planning Authority's position that it is not definitive, and that there remains scope for

negotiation on which units will be subject to Part V and therefore the final total floorspace for same.

- 7.2.5. The first party’s request on this matter is understandable as the wording of Condition 2 refers to the payment being required upon commencement of development (without reference to any potential to phase payments so it could be interpreted as meaning payment in full) and specifies the total contribution amount as being payable. However, the terms of the Scheme clearly state that social housing is a category that is exempt from payment of contributions once an agreement is reached, and the Planning Authority’s appeal response confirms this.
- 7.2.6. In the interests of clarity, having regard to the current wording of Condition 2, and to the assessment of the remainder of the development contribution in the following subsection, I consider it necessary to continue to include the 27 units in the development contribution calculation, and state that on final agreement the social housing units subject of the final Part V agreement shall be exempt from the final calculation.

Double Charging of Development Contributions for Breagagh Park

- 7.2.7. In the first party appeal, the applicant also requests that Condition 2 is removed in its entirety as, when taken in conjunction with the requirement of Condition 6 for the delivery of Breagagh Park, the total financial contribution amounts to a form of double-charging.
- 7.2.8. The total financial contribution included in Condition 2 of €927,439.00 is calculated in the planner’s report and laid out in more specific detail in the Development Contribution calculation sheet accompanying the Planning Authority’s appeal response. In summary, the total financial contribution as calculated is in the table below.

Table 5: Summary of Planning Authority calculated Development Contribution

Class	Description of Development	Total Floorspace	Contribution
2	Residential units	24,544.72sqm	€613,618.00
3	Refuse storage	18.5 sqm	€277.50
4	Commercial uses	12,541.74 sqm	€313,543.50

- 7.2.9. Of the total amount, I calculate that €426,621.94 (46%) is the contribution payable towards Roads infrastructure and the remaining €500,817.06 (54%) is the contribution payable towards Recreation, Community and Amenity infrastructure.
- 7.2.10. In accordance with Section 11.7.3 of the Development Plan, I calculate that the proposed development generates a public open space requirement, in quantitative terms, of 1.7875 ha. While in accordance with Table 11.6, I note that the development being in excess of 200 units is of a scale that has a qualitative requirement for a full size grass sports pitch, a court multi-use games area and two Tone Zones/ Outdoor gyms.
- 7.2.11. In the appeal, the applicant submits that some 5.1 ha of public open space is being provided, comprising 3.96 ha for Breagagh Park and 1.1 ha for spaces within the scheme. The applicant calculates the cost of delivering the Park to be in the region of €900,000, based on land costs and the design as initially submitted with the application.
- 7.2.12. In the appeal response, the Planning Authority identifies on-site provision of five public open spaces totalling 0.57 ha, none of which meet the necessary qualitative requirements. As such, the Planning Authority's position is that the under provision in terms of quantity and quality within the proposed development can be addressed through the provision of Breagagh Park.
- 7.2.13. Notwithstanding the different positions of the applicant and Planning Authority in respect of the areas of public open space within the proposed development, from a review of the application and appeal documentation, I agree with the applicant that there is an overprovision of public open space in quantitative terms. However, I consider that it is an associated consequence arising from the site specific Z1 objective which requires the provision of public open space along the Breagagh River. The qualitative standards associated with developments in excess of 200 units are not being provided within the development per se and, in this regard, I agree with the Planning Authority's position in the appeal response that this shortcoming can be addressed in the provision of Breagagh Park.
- 7.2.14. I have reviewed the landscaping plans as initially submitted, and the landscaping plans submitted in the FI response indicating a greater provision of facilities with more detailed specifications. I note Condition 6 requires further agreement on the

design, construction, and delivery of Breagagh Park, which in the appeal response the Planning Authority considers necessary as certain items were not sufficiently clear or detailed.

- 7.2.15. In relation to Condition 6, I consider that the provision of the public park is reasonable, and it is appropriate for the applicant to design, landscape and deliver it in a phased and agreed manner with the Planning Authority. The provision of the park complies with the land use zoning, site specific Z1 objective and policy in Section 6.1.2.1 of the Development Plan whereby the Council seeks to establish a wider public park/ corridor along the Breagagh River subject to resources and finances. The park on completion will be a significant recreational resource for the use of residents of the proposed development but also wider communities. Additionally, I consider that the provision of the park is mutually beneficial to the future residents and commercial operations of the proposed development.
- 7.2.16. While the Planning Authority's appeal response does refer to instances of reductions in development contributions when a development has overprovided infrastructure, I consider this is somewhat vague. As outlined above, while I consider Condition 6 to be reasonable and necessary, I am mindful that the requirements involved including the design, construction, landscaping and planting, delivery and maintenance until taken in charge by the Planning Authority, represent a significant undertaking for the applicant. The Planning Authority did not dispute the estimated costs in the appeal response, and I do not have any reason to not accept the estimated costing put forward by the applicant.
- 7.2.17. As such, I concur that the development contribution included in Condition 2 and the requirement of Condition 6 to deliver Breagagh Park constitute double-charging for public infrastructure associated with Recreation, Community and Amenity. The Scheme allocates 54% of contributions towards this category and I consider the full 54% can be offset towards the delivery of Breagagh Park. In my opinion, it is not reasonable or appropriate that Condition 2 be removed in its entirety as is requested, and in any event having regard to the terms of the Scheme the maximum possible offset is 54%.
- 7.2.18. As calculated by the Planning Authority, the total development contribution payable for the proposal is €927,439.00. I recommend that €500,817.06 (54%) be offset,

with the remaining €426,621.94 (46%) being the amount included in an amended development contribution condition. I note that this amount continues to include the 46% Roads contribution associated with the 27 units as identified in the preliminary Part V agreement which is unavoidable until final agreement on the units is determined.

7.2.19. As such, on finalisation of the Part V agreement, the contribution will be subject to a further reduction accordingly. This is allowed for in the Scheme and confirmed by the Planning Authority. In the interests of clarity, should the final Part V agreement maintain the selection of 27 units included in the preliminary agreement, the total financial contribution would be further reduced from €426,621.94 to €381,215.57 (that being, €45,406.37 (46%) associated with Roads infrastructure).

7.2.20. From a consideration of the above items, in the instance of a grant of permission, I recommend that the Planning Authority's Condition 2 be amended with a reduced development contribution which is calculated towards the costs of publicly providing Roads infrastructure only, that being, charges arising from 46% of the total floorspace of the proposed development. Additionally, for clarity, I recommend there is an express option for payment in phases (thereby facilitating larger developments as is allowed for in the terms of the Scheme), and that exempts the final social housing units in the Part V agreement from attracting a development contribution associated with Roads infrastructure (which is in accordance with the terms of the Scheme).

7.3. Traffic, Transportation and Access

7.3.1. Having reviewed the third party appeal, and the responses from the applicant and Planning Authority, I consider that there are four key items to be addressed under this heading including: the creation of a new entrance onto Kennyswell Road from the proposed development; the accuracy of baseline survey data used in the TTA; the traffic projections in the TTA not including areas to the west of the appeal site that are intended for future development; and the use of the entrance onto Kennyswell Road for construction traffic. I intend to address these in turn.

New Entrance onto Kennyswell Road

7.3.2. In respect of the proposed entrance onto the Kennyswell Road, as initially submitted it was a 14m wide entrance in a T junction format, designed for the official

Kennyswell Road 30km/h speed limit with sightlines of 24m to the east and west. The entrance was subject of a FI request item requiring increased analysis and design changes (a Stage 1: RSA of the proposed development submitted by the applicant had also recommended changes in design).

- 7.3.3. The subsequent FI response maintained the entrance in the same location and format but is designed instead for a 40km/h speed limit reflecting recorded speeds on Kennyswell Road. The entrance indicated the achievement of improved sightlines of 42m to the east and 45m to west through lowering the existing boundary wall height to 0.6m for 23m and c.27m in each respective direction, and ensuring that the space behind the wall would be clear of obstructions and planting.
- 7.3.4. This arrangement was assessed and determined to be acceptable by the Planning Authority, save to comment that the sightline to the east 'may be impacted on' by a shared boundary fence, and to require specific details on outstanding items to be agreed through condition.
- 7.3.5. With regard to the appellant's objection to the proposed development including a new access point onto Kennyswell Road, I consider the scheme being served by at least two vehicular accesses to be an advantageous feature of its overall layout and arrangement. The provision of a vehicular entrance onto each of the available adjacent public roads ensures the development of a well-connected scheme which is inclusive and permeable and, supplemented by the pedestrian access points in the northeast and southeast corners of the site, offers increased opportunities for access and alternative modes of travel by bicycle and on-foot.
- 7.3.6. The Kennyswell Road entrance is indicated as serving Phase 1 of the scheme, 36 units in the north of the site (see Indicative Phasing Layout, Dwg No. 18271-PLA-0007) via an internal access road terminating in a cul de sac. As required under a caveat of the site specific Z1 objective and incorporated into the design, the internal road between J2 and J3 (see FI Dwg No. 181-337-071) features retractable bollards preventing vehicular traffic from transiting between the entrances.
- 7.3.7. In this regard, any reservation about traffic from the remainder of the mixed use scheme using the Kennyswell Road entrance, and the frequency and associated safety of such use is addressed through the inclusion of bollards and proposed phased implementation. I have reviewed the FI response plans and particulars, the

updated TTA and Chapter 14 of the EIAR Supplementary Report which indicate that, when the scheme is operational, Phase 1 which only has access to this entrance will generate 15 trips in the morning peak and 17 in the evening peak. The impact of which is described in the updated TTA and EIAR Supplementary Report as imperceptible, a position with which I concur.

7.3.8. With regard to the safety concerns raised in relation to the Kennyswell Road entrance, as outlined above the entrance as initially proposed was subject to analysis through the Stage 1: RSA. This suggested that alterations be made to the location of the entrance, which I note were incorporated into the FI request. In the FI response, the entrance arrangement was amended by reducing the height of the boundary wall to achieve notably improved sightlines. The Stage 1: RSA also includes for speed cushions to be installed on Kennyswell Road, to the east of the entrance thereby assisting in reducing the speed of traffic along the public road.

7.3.9. On balance, I consider the design of the proposed entrance achieves, indeed exceeds, DMURS requirements in respect of sightline distances for the speed limit on the public road. The applicant is committing to the provision of speed cushions on the public road to the east of the entrance, which will further assist as a traffic calming measure along the road. The Planning Authority has assessed the proposed entrance and expressed no objection to the entrance per se on public safety or traffic hazard grounds. In the event of a grant of permission, I recommend the attachment of conditions ensuring the entrance and internal road layout meet DMURS standards, and that speed cushions are installed on the eastern side of Kennyswell Road in agreement with the Planning Authority.

Accuracy of Baseline Survey Data in TTA

7.3.10. In respect of the accuracy of the baseline survey data which serves as the basis for traffic modelling in the TTA, the appellant is critical of the methodology used in the proposed development. The criticism centres on the baseline survey not being of a sufficient length of time and not reflecting the extent of heavy goods vehicles (HGV) traffic that the appellant considers to be on Kennyswell Road. The appellant states the survey results which indicate a 10% portion of 'OGV 1, 2, bus' type traffic is surprisingly low and submits it should be closer to 20% based on previous local authority survey analysis. (For ease of reference, the 'OGV (ordinary goods

vehicles) 1, 2, bus' referred to in the appellant's case are the categories of vehicles used in the applicant's traffic survey that correspond with the largest vehicles on public roads).

7.3.11. I note that the Planning Authority sought clarity on the time of the morning peak hour in the FI request, but otherwise did not query the baseline survey data during the assessment. In the response to the appeal, the applicant submits the baseline survey was undertaken by an independent company using CCTV, and generally indicates that the recorded average of 10% HGV traffic would be a typical level for many public roads and that there are instances in the survey where the HGV percentage was over 20%. In its response to the appeal, the Planning Authority states that much of the material used for the appeal is outdated, and refers to the practical measures that have been taken to lessen HGV traffic on Kennyswell Road (speed limit changed to 30km/h, a one-way direction into the city and the significant road improvements being undertaken).

7.3.12. I have reviewed the applicant's FI response, updated TTA and Chapter 14 of the EIAR Supplementary Report. Appendix A of the TTA provides a map indicating the three junctions surveyed and tabulates the traffic results, categorised by type of vehicle. The two relevant junctions surveyed which track traffic using Kennyswell Road are Site 01 and Site 03. Site 01 is the T junction with traffic entering Kennyswell Road from Kilmanagh Road/ Circular Road and travelling eastwards (Movements 1 and 4, with a combined 10.3% average proportion of OGVs+bus over the 12-hour survey period), and traffic travelling in the opposite direction westwards (Movements 5 and 6, with 9.9% OGVs+bus). Site 03 is the crossroads junction with traffic travelling eastwards along Kennyswell Road and dispersing at the Dominic Street/ De Loughrey Street (De Loughry Place) crossroads (Movements 4, 5, and 6, with 9.4% OGVs+bus), and traffic entering Kennyswell Road from the crossroads and travelling in the opposite direction westwards (Movements 3, 7, and 11, with 9.9% OGVs+bus). For these routes, all using Kennyswell Road, the results of the 12-hour survey period do indicate a relatively consistent average level of OGVs+bus of approximately 10%.

7.3.13. Within these average figures, more notable OGVs+bus traffic activity is evident travelling east along Kennyswell Road from Circular Road (Site 01, Movement 4, with 18.3% OGVs+bus) and then from Kennyswell Road travelling north onto

Dominic Street (Site 03, Movement 4, with 9.8% OGVs+bus). Similarly, notable OGVs+bus traffic activity is evident in the opposite direction travelling south from Dominic Street, then westwards along Kennyswell Road (Site 03, Movement 3, with 10.8% OGVs+bus), entering Circular Road and travelling south (Site 01, Movement 5, with 15.3% OGVs+bus).

7.3.14. I consider the most relevant route to the appellant's case is the route from Circular Road to Kennyswell Road (Site 01, Movement 4). This route is specifically referred to by the appellant, is stated by the Planning Authority as being the approved direction for one-way HGV traffic into the city along Kennyswell Road, and also displays the highest average proportion of all relevant routes with OGVs +bus activity at 18.3% for the survey. I have further examined the baseline data over the 12-hour survey period and extrapolated that eight of the hourly intervals recorded OGVs+bus traffic in excess of 20% and the remaining four hourly intervals recorded levels in excess of 10%. That being, all hours in the survey period are in excess of the c.10% average evident on the other relevant routes.

7.3.15. I consider that, in contrast to the position of the appellant, the baseline survey data does document levels of OGVs+bus activity on Kennyswell Road that is reflective of ranges higher, at times notably so, than the 10% occurrence which is stated by the appellant as being an incorrectly low estimate. In respect of criticism of the time and length of the baseline survey, I note that the survey was undertaken on Tuesday 30th April 2019 for a 12-hour period between 7am to 7pm, and consider that as this was on a weekday, outside of school and public holidays, during a time period that captures the morning and evening peak hours, with manual classified turning counts and using CCTV, that the survey can be considered to be proportional and representative. Lastly, on review, the survey has been undertaken in accordance with the relevant guidance available on the topic in the 'Traffic and Transport Assessment Guidelines', 2014, by TII. As such, I believe the baseline survey data can be considered to form a sound basis on which to generate the subsequent traffic modelling and projections used in the TTA to determine the impact of the proposed development.

Traffic Projections in the TTA not including Future Development Lands

- 7.3.16. In respect of the traffic projections in the TTA, the appellant refers to potential trip generation of 2,000 AM trips and 2,500 PM trips associated with the future development of areas to the west of the appeal site, half of which are stated as possibly using Kennyswell Road, which have not been factored into the assessment of the proposed development. It is my understanding that the appellant is referring to the lands previously subject of local area plans for the Western Environs and Loughmacask. The zoning and planned development of these landbanks is incorporated into the Kilkenny City and Environs Plan 2014-2020 and also in the draft Kilkenny City and County Development Plan 2021-2027 (with the former Western Environs landbank being newly referred to therein as Breagagh Valley).
- 7.3.17. As initially submitted, the TTA and Chapter 14 of the EIAR incorporated the traffic generated from two permitted developments in Drakeland Lower (zoned as Phase 1 Residential in the Western Environs area) and the Planning Authority's development in Croker's Hill in the cumulative impacts with the proposed development. In the FI response, revised figures feature in the traffic flow calculations of the updated TTA due to the incorporation of trips generated from the proposed childcare facility, but also due to provision being newly made in these calculations to the completion of road infrastructure to the west of the appeal site.
- 7.3.18. The applicant submits that the potential development of these wider landbanks has not been included in the TTA for the proposed development as this is presently unknown and will be subject to individual planning applications and assessments. While I note that the appellant is critical of this methodology, I concur with this position and consider that the approach taken in the updated TTA which has included the permitted development and factored in the supporting road infrastructure that is likely to be operational in tandem with the proposed development is reasonable. As such, I consider that the TTA has been undertaken in an acceptable manner whereby cumulative impacts arising from known permitted development and from the proposal itself are assessed.
- 7.3.19. As is also outlined in the Planning Authority's response to the appeal, the road infrastructure which is expected to be completed and operational in the short terms includes in the first instance, the Western Environs LIHAF project (Circular Road and Kilmanagh Road upgrades and the roundabout, which will serve as the main access to the proposal), and then the BVPS and the CAS. I also note the inclusion of Road

Objective R5 in the draft Kilkenny City and County Development Plan 2021-2027 which indicates a line for Phase 2 of the CAS running parallel to the north of Kennyswell Road. Future development proposals in the western landbanks will require planning permission, will likely be accompanied by associated traffic and transportation documentation which will be assessed accordingly in line with the ongoing delivery of supportive road infrastructure, which offer alternatives to the use of Kennyswell Road. As such, I consider the appellant's concern regarding the saturation of Kennyswell Road from traffic associated with the development of the western landbanks to be unfounded.

Use of Kennyswell Road entrance for Construction Traffic

- 7.3.20. In respect of construction traffic, the appellant requests that the entrance onto Kennyswell Road is not permitted to be used and that alternatively, the main access road and bridge be constructed and used from the outset for all construction traffic. The applicant's outline CEMP, with reference to the Phasing Plan, indicates that initial construction works associated with Phase 1 would use the entrance onto Kennyswell Road and that construction works for the subsequent phases will use the main access road and bridge connecting to the new roundabout. The applicant has indicated in the application that the construction of the bridge is subject to a Section 50 licence approval from the Office of Public Works (OPW), and that it is not economically viable to construct the road and bridge first as Phase 1 is required to fund the remainder of the scheme.
- 7.3.21. I have reviewed available information and note that Section 50 of the Arterial Drainage Act, 1945 requires persons proposing to carry out construction/ alteration works on bridges and culverts to secure the permission of the OPW. Further to the requirement to obtain a Section 50 licence, I note that the Planning Authority require final agreement on the design of the road and bridge through condition. Having regard to these elements coupled with the requirement for the Western Environs LIHAF project to be completed, I do not consider that it would be appropriate to require all construction works for the scheme to be via the main access and bridge. The appeal site is a strategic landbank in the city, the commencement of development of which has several wider planning gains.

- 7.3.22. I have reviewed the outline CEMP as initially submitted (the outline CEMP is also an appendix in Chapter 2 of the EIAR) and relevant additional information in the updated TTA and Chapter 14 of the EIAR Supplementary Report. The CEMP outlines general intentions regarding items such as the construction programme, traffic management, waste management, public lighting and a range of associated measures to minimise and reduce the arising impacts. The TTA supplements the traffic management information for the construction phase of the development indicating that the volumes of construction vehicles are not considered to be excessive, will be spread out over the intended phases of development, the access points will allow vehicles to pull off the public roads and to go into the site thereby not causing significant disruption to traffic flow on the roads, that a final Traffic Management Plan (TMP) will include all haulage routes and will be agreed with the Planning Authority. Chapter 14 of the EIAR identifies that subject to mitigation measures, including the implementation of the TMP, there will be a short-term, imperceptible negative impact to the local network, a conclusion with which I concur.
- 7.3.23. While I note the concerns of the appellant in relation to the disruption, noise and nuisance associated with construction works using the Kennyswell Road entrance, I consider that there are further mitigation measures (in Chapters 6, 8, 10, 11, 16 and combined in 18 of the EIAR), in addition to those outlined above, included for in the proposed development which will ameliorate against these impacts. Principal among which is that all soils associated with the development of Phase 1 will be retained on site until the main access road is operational; that a main contractor will prepare a final CEMP for agreement with the Planning Authority, which will include baseline conditions, monitoring and breaches of noise, dust and vibration impacts; the main contractor will communicate with local residents; and that construction hours will be appropriately restricted.
- 7.3.24. I note that in the application and appeal documentation, the applicant seeks and refers to an appropriate period of 10 years to implement the permission. When the reason for seeking this increased length of time is outlined, it is stated as being due to economic reasons and market conditions. Conversely, it is stated that implementation may proceed quicker with, for instance, two phases being constructed in tandem (Section 6.4, Chapter 6, EIAR). Save for the fact for the applicant is required to apply for a Section 50 licence from the OPW for the

construction of the bridge and to agree final design details with the Planning Authority, I do not consider there to be any substantive reason that requires this length of time to implement the permission, such as evidence of soil contamination, removal of dangerous material from the lands, specialist construction method, complexity of the proposal, or reliance on other service providers (while I note reference is made to a limited capacity for water supply (Section 15.3.3, Chapter 15, EIAR), it is stated that Irish Water plan a new trunk main by Q4, 2021).

- 7.3.25. The site is presently on the Planning Authority's vacant site register, is a strategic landbank and is one of a limited number of sites zoned for mixed use purposes. I consider that, if the Board is minded to grant permission for the development that an appropriate period of seven years is reasonable. I consider the additional two years to be sufficient time to allow the applicant to obtain the required licence mindful that this process may involve further studies and/ or a season dependent construction period.
- 7.3.26. While references are made to the 10 year phasing of development in the TTA and Chapter 14 of the EIAR, these are in the context of more time being allowed for the supporting road infrastructure to become operational. That being, there is no aspect identified in the traffic assessment (for example, a required junction operating in excess of-capacity) which is reliant on a 10 year construction and phasing programme. The TTA has catered for an opening year of 2022, with examinations considered at 2027 (opening year + 5 years) and 2037 (+15 years) in accordance with the TII guidelines. The TTA indicates that the junctions modelled function within capacity over those time periods, save for the Dominic Street junction, which will be on the delivery of BVPS and CAS.
- 7.3.27. A reduced appropriate period from 10 years to seven years will protect existing and future residents from an unduly lengthened construction period with associated impacts. As referred to above, where the applicant has indicated that phases may be implemented in tandem, it is stated that the overall construction related impacts are unlikely to be different. The applicant states that all phases proceeding in tandem coincides with a worst-case scenario which is what has been included for and examined in the EIAR (Section 6.4, Chapter 6, EIAR).

7.3.28. In summary, I consider that the inclusion of an entrance on Kennyswell Road serving the proposed development is appropriate and can operate safely, the baseline traffic data and traffic modelling predictions for the proposed development are considered to be sound, and the use of the Kennyswell entrance for the construction of Phase 1 of the scheme will cause an impact, but subject to the length of the appropriate period of the permission and the implementation of mitigation measures, which are recommended to be addressed by condition, the amenities of existing residents and indeed future residents of the scheme will be protected.

7.4. Design and Layout

7.4.1. Having reviewed the third party appeal and the responses from the applicant and Planning Authority, I consider that there are several key items to be addressed under this heading. While I am mindful that some items raised by the appellant are specific, for example the criticism of the design of certain house types and the request for particular boundary treatment to the rear of Rothe Terrace. Other items have a broader scope, such as the request for the redesign of the certain parts of the proposal comprising the apartment blocks, the local services centre and the nursing home.

7.4.2. The key items under this heading, therefore, include strategic design approach, functionality and public realm, building height, design of the residential component, design of the commercial component, and boundaries. I intend to address these in turn.

Strategic Design Approach

7.4.3. In the interests of clarity, the following assessment is based on the amendments made to the scheme following the FI response. Dwg No. 18271-RFI-008 identifies the different components within the proposed development which are referred to as Blocks A-L and in this assessment I do likewise.

7.4.4. The strategic design approach to the proposed development has been determined by the underlying land use zonings of the site, the specific requirements of the Z1 objective, natural features such as the Breagagh River with its localised floodplain, access to the site, and existing residential development adjacent to the north, east and south. I consider the provision of the linear Breagagh Park running along the western side of the site and the resultant siting of higher, denser built forms along

the length of the park thereby addressing, overlooking and forming a strong urban edge between the public open space and the built environment to be positive design solutions. Similarly, I consider the approach to the design and siting of the remaining blocks involving a decrease in height and density in an easterly direction towards the existing adjacent residential areas to be a positive and appropriate design solution for the receiving context and the requirements of Z1.

- 7.4.5. The key active, commercial uses, namely offices, the childcare facility and local services centre have been sited at a central location in the scheme, all in close proximity to the main entrance and road into the scheme. This is a positive element in the overall design approach in terms of increasing and maximising opportunities for accessibility, permeability, and connectivity in and through the proposed development. The siting of the nursing home to the southwest of the site, while slightly removed from the other commercial uses, is adjacent to residential uses with an aspect towards the Breaghagh Park, is in accordance with Development Plan policy in Section 5.10 and is considered acceptable.
- 7.4.6. In addition to the strategic approach to design and layout of the scheme, I consider the selection of uses within the proposed development from those permissible in the underlying zoning objectives to be a positive feature. This range of uses within the scheme including residential, offices, retail, community and open space, will assist in the achievement of the compact 10 minute concept in the RSES and Development Plan, ensuring the creation of a sustainable community with proximate opportunities for housing, employment, and recreation.
- 7.4.7. The proposed development comprises c.40,000 sqm of floorspace, approximately two-thirds (c.27,500 sqm) of which is residential and one-third (c.12,500 sqm) is commercial use. At a strategic level, I note that the site is one of a small number of Mixed Use zoned land parcels in the city and I consider that the proportion of commercial to residential floorspace could be greater than currently being achieved.
- 7.4.8. However, I am mindful of the future development strategy for Western Environs landbank, including significantly sized zonings for community facilities and neighbourhood centre, which should supplement the range of commercial uses in the proposed development, in particular professional services, medical, and leisure uses that are perhaps lacking within the scheme. I note that the upper floors of the

local services centre are indicated as offices and while this use is positive, this floorspace lends itself to potential change of uses to other medical or professional services if and when such requirements arise. Finally, I note that Chapter 6 of the EIAR identifies existing facilities and social infrastructure in the receiving area, which can be taken into account.

- 7.4.9. In summary, I consider the strategic design approach taken to be reasonable and acceptable, incorporating the natural features of the site, consistent with key Development Plan objectives, and complying with overarching national and regional policy on increased density and development within built-up urban footprints (NPO 3c, NPO 11, NPO 33, and RPO 11), on the compact 10 minute city concept (RPO 12 and in Section 3.2 of the Development Plan), and allowing the creation of a new, sustainable community (NPO 4).

Functionality and Public Realm

- 7.4.10. To allow an assessment of the scheme, given the appellant's request to redesign parts thereof, a review of how well the scheme functions, both the constituent parts and as a whole is necessary. This is with a consideration of the accessibility, connectivity, quality, and servicing of the public elements of the proposed development. The principal public elements are in and around the commercial uses, the public open spaces, and communal shared areas. The servicing considerations entail a review of road, footpath and cycle layout, car parking, bicycle parking and bin storage, and servicing of commercial units.
- 7.4.11. I highlight to the Board that the Kennyswell Road entrance, internal road hierarchy and junction priority, design of the bridge and access road over the Breaghagh River, pedestrian, cycle and footpath design, tie-ins and arrangements were all subject of the FI request, subsequent FI response, and a number of technical details remain subject to agreement with the Planning Authority through conditions attached to the grant of permission. These relate to clarity on certain proposed items, technical design details, and construction matters. In the event of a grant of permission, I consider that these items should be designed in accordance with the requirements of DMURS, the National Cycle Manual, and any specifications of the Planning Authority and can be addressed by condition.

- 7.4.12. With respect to layout, the site is served by two main vehicular accesses, the Kennyswell Road entrance serving a small number of residences to the north of the site (bollards prevent vehicular, but not pedestrian, access from the south), and the main entrance from the Circular Road roundabout. The latter connects with the main road serving the majority of the scheme, running between the office buildings with the childcare facility (northern side of the road) and the local services centre (southern side). The main road continues in a southerly direction enclosing Block F, from which lower level roads serve the remainder of the adjacent blocks. Similarly, there are lower level roads which project from the main road in a northerly direction to predominantly serve Blocks D and L. I consider that the block layout of the scheme results in the limited use of cul-de-sacs thereby creating a compact urban form, with a high degree of accessibility and connectivity, which is in accordance with requirements in DMURS.
- 7.4.13. The layout also includes two pedestrian accesses in the northeast and southeast corners of the scheme linking into an existing laneway running along the eastern boundary of the site. I have reviewed the detailed site layout plans in tandem with the section drawings of and through the proposed development, and consider that the pedestrian routes and footpaths are of a scale and relationship with proposed property boundaries, landscaped areas and building edges that will, on balance, create safe and pleasant streetscapes, a number of which are interspersed with views of public open spaces.
- 7.4.14. In respect of cycle paths, dedicated 1.8m wide cycle paths are proposed on both sides of part of the access road and bridge, otherwise there are shared pedestrian and cycle tracks in and through the open spaces in the scheme, and shared with the internal road network. As referred to above, the Planning Authority requires agreement on the final design of the cycle tracks. The cycle tracks as proposed should be designed in accordance with the National Cycle Manual. This issue can be addressed by way of condition.
- 7.4.15. The proposed development is well served by public open space, principally through the provision of Breagagh Park along the western extent of the site and through a number of smaller pocket parks and amenity spaces that are located within the scheme. The provision of Breagagh Park is part of wider regional park development along the Breagagh River corridor included for in Development Plan policy.

- 7.4.16. The design, layout and landscaping of the Park and smaller amenity spaces were subject of the FI request, subsequent FI response and the final agreement for the delivery of Breagagh Park with the Planning Authority remains subject to condition. In the FI response, notable additional details were outlined in respect of the facilities (sports pitch, playgrounds), amenities (immersive garden, plaza area, landscaped courtyard areas for the apartments in Block G and for the nursing home in Block J, streetscape and parking planting), landscaping (species, quantities, planting, and maintenance) and construction methods. I positively note the intentions for the public open spaces as indicated in the landscape plans and referred to in Chapter 13 of the EIAR. These spaces will be of high quality and will positively contribute to the creation of a distinctive scheme for use of residents, employees and also wider communities. The delivery and maintenance of same should be subject to condition.
- 7.4.17. In respect of servicing for the proposal, car parking location and provision for each element within the scheme is indicated on Dwg No.18271-RFI-008. In total, 760 car parking spaces are provided, comprising 485 spaces for residential and visitors, 251 spaces for commercial and 24 spaces for amenity users, through a mix of underground and at-surface levels. Under the office buildings with a childcare facility in Block L, two floors of basement car parking are provided with a total of 143 spaces. The basement car park is accessed from the northern side of the northernmost office building in Block L via ramps which have been designed, in respect to levels and surface water run-off measures, to ensure against flood risk as outlined in the SSFRA.
- 7.4.18. For the remainder of the scheme, car parking spaces for houses are within curtilage of the property or in close proximity being located next to footpaths around the perimeter of the applicable block. Visitor car parking spaces and amenity spaces for users of Breagagh Park, the sports pitch, and the pocket park in the northeast corner are provided. The Development Plan standards require 714 spaces, which is achieved in the scheme, importantly each component is provided its minimum requirements with visitor and amenity spaces comprising the additional provision. Car parking provision is acceptable to the Planning Authority, and I consider the quantum, design, and arrangement to be acceptable.
- 7.4.19. As part of the FI response, details of bicycle parking are indicated on Dwg No. 18271-RFI-005. In total, 371 spaces are provided in communal stands of two

designs, larger 18-22 space stands, and the smaller 8 space stands. It is intended that bicycles will be parked within the curtilage of houses (front and/ or rear garden depending on house design type), and the stands are intended for communal use and as such are located to serve the blocks with commercial uses, apartments, and duplexes. I consider the stands to be in locations that are accessible, overlooked and can benefit from a satisfactory degree of natural surveillance. Development Plan standards require 351 spaces, which is exceeded, and the Planning Authority expressed no objection. The provision is positively noted, will encourage the use of bicycles as a mode of transport, and the designs and finishes indicated are acceptable.

7.4.20. Bin storage locations for the scheme are indicated on Dwg No. 18271-RFI-005 and in plans and elevation detail on Dwg No. 18271-RFI-006. Houses have space for 3 bins within the curtilage of the property, otherwise two options of communal system of waste management is indicated for apartments and duplexes (Blocks D, G and H), and the commercial uses (Blocks J, K and L). The communal bins are located in proximity to each user group among surface car parking, in spaces of incidental landscaped areas or within the curtilage of the commercial property. I consider the bin stores to be a design that will not cause excessive nuisance (simple design, covered, and secure), to be relatively well accessible and in locations that are overlooked and can benefit from a degree of satisfactory natural surveillance. The provision is positively noted and acceptable. Chapter 16 of the EIAR outlines the intentions for waste management including for the operation phase of the scheme, and I note that the Planning Authority requires the establishment of a management company for the maintenance of the communal waste storage areas. This can be addressed by condition.

7.4.21. In respect of servicing of the commercial component, in addition to staff and customer car parking, bicycle parking, and waste disposal provision, set down and loading areas, which serve the childcare facility and deliveries for the offices and local service centre respectively, have been incorporated into the design of the scheme. As referred to above, the scheme will be served by two vehicular accesses and while the majority of vehicular traffic from the south of the site will be prevented by bollards on an internal access road between Blocks B/ C and D road from using

the Kennyswell Road entrance, I note the bollards are demountable in the case of emergency, and it is important that a scheme of this scale has an alternative access.

7.4.22. Finally, in respect of the functionality of the proposed development, I consider that the application of the block layout with different uses and building typologies results in a scheme that has a high degree of legibility. I consider that the constituent parts of the proposed development are distinctive in use and design, whilst being complimentary to each other and, on a whole, the combined effect is for the scheme to function effectively and efficiently. In summary, contrary to the position of the appellant, I am satisfied that the omission of certain elements and/ or a redesign of the proposed development is not necessary.

Building Height

7.4.23. In the third party appeal, the appellant is critical of the design of certain buildings in the proposed development which are both residential and commercial in use. In the appeal response, I note that the applicant identifies that the residential unit types cited are the typologies that are in excess of three storeys in height, and the commercial components (local services centre and nursing home) are also three storeys in height.

7.4.24. In respect of building height, the direction from the planning guidelines on 'Urban Development and Building Heights, 2018' on the appropriate range of heights for developments in urban areas is applicable. As with the classification of the appeal site as an outer suburban site for density purposes, as examined in the following subsection, I consider the applicable policy in the guidelines to be that relating to building height in suburban/ edge locations and the provisions of Specific Planning Policy Requirement (SPPR) 4. As required by the guidelines, the proposed development includes the range of residential typologies and building heights referred to at such locations (i.e. two storey townhouses, three to four storey duplexes, and four storey apartments), offers a notable mix of 1 and 2 bedroom units (50% of scheme) responding to different household formations, while maintaining a solid provision of larger 3 and 4 bedroom houses for family use. In all, as is outlined in more detail in the following subsection, the proposed development features ten typologies of house designs and six apartment designs, thereby, in my opinion, avoiding mono-type building typologies as required in SPPR 4.

- 7.4.25. Furthermore, I consider the proposed development features an effective mix of two, three and four storey built forms throughout the scheme creating distinctive character areas, that will integrate well with existing and historical areas. For example, on the northern boundary of the scheme along Kennyswell Road, the city's built up edge, represented by the distinctive streetscape of Rothe Terrace in St. Mary's ACA, will be continued by the siting of a terrace of two storey dwellings in Block A. While, as also advised in the guidelines for settings that can successfully assimilate higher buildings, the higher three and four storey duplexes and apartments are arranged and sited along the parkland frontage of Breagagh River.
- 7.4.26. Similarly, I consider the siting of the three storey nursing home in the southwest of the site to be appropriate as the building addresses the parkland, benefits from the lower ground level than the adjacent Robertshill estate, and from the significant screening afforded to this southern boundary. The appellant also refers to the local services centre, which I consider to be of an appropriate scale and height (opposite the office buildings which are also three storeys in height) to contribute positively to the character and public realm of the area.
- 7.4.27. In summary, the proposed development includes the required range of building typologies that comply with national policy supporting compact growth and the planning guidelines on building heights. I have reviewed the visual impact assessment included within Chapter 13 of the EIAR, and note that while the proposed development will be visible from Kennyswell Road and Breagagh Park in particular, I am overall satisfied that the site can accommodate the scale and height of development proposed and the proposal will not have a significant negative visual impact on the area (this position includes the potential marginal increase in principal building height of apartment blocks discussed in Section 7.4.40 below).

Design of Residential Component

- 7.4.28. As the appeal site is a greenfield site located approximately 1km to the west of the centre of Kilkenny City, guidance from the planning guidelines on 'Sustainable Residential Development in Urban Areas, 2009' which indicates appropriate densities of development in cities and larger towns is applicable. Due to the site's semi-rural, transitional context and having regard to its location outside of the centre of the city, I consider the site can be classified as an outer suburban site, where net

densities of between 35 and 50 dwellings per hectare are encouraged. This classification is consistent with those afforded to recent planning consents in adjacent locations to the west and north of the proposed development.

- 7.4.29. The total site area is stated as 12.84 ha gross. The applicant indicates that Breagh Park measures 3.96 ha, that the commercial uses measure an area of 1.52 ha, resulting in a net calculation for the site as 7.36 ha. This was not disputed by the Planning Authority, and the methodology employed by the applicant for the calculation is in line with the planning guidelines. Therefore, the net developable area as indicated by the applicant is 7.36 ha, resulting in a net density of 36 units per hectare. This density is appropriate within the national policy context and is in accordance with the Development Plan, which does not prescribe a maximum density for schemes.
- 7.4.30. The residential component is accommodated in eight blocks within the scheme, namely Blocks A, B, C, D, E, F, G and H. It includes for an equal mix of houses and apartments, served by a hierarchy of roads and different functioning public open spaces. The residential unit mix caters for a range of 1, 2, 3, and 4 bedroom units, with proportions comprising c. 44% 3 bedrooms, c. 33% 2 bedrooms, c.17% 1 bedroom and c.6% 4 bedrooms. There are 16 typologies proposed, including semi-detached, terrace and end of terrace dwellings, apartments, and duplexes. I consider the range of designs and the mix to be reasonable to cater for varying household needs, which will supplement the existing housing stock of the surrounding area.
- 7.4.31. I have reviewed the Architectural Design Statement, Dwg No. 18271-PLA-002, which indicates the residential typologies proposed in the scheme, the Schedule of Accommodation, and the individual plans and elevations of each unit type. I highlight to the Board that there are some discrepancies in the typologies referred to, colour coding, and number of units in these documents and the Dwg No. Therefore, for clarity and ease of reference, I have compiled the following table to outline in summary the residential unit type in each of the blocks (block references are those used in Dwg No. 18271-RFI-008).

Table 6: Block composition of Residential Unit Types

Block	House Type and number		Total Houses	Apartment Type and building number		Total Apts	Total Units in each Block
A	C	5	16	F	4	8	24
	C1	5					
	C2	4					
	K	2					
B	D	9	34	None			34
	D1	12					
	J	6					
	K	1					
	M	4					
	M1	2					
C	D	9	31	None			31
	D1	9					
	J	5					
	K	2					
	M	4					
	M1	2					
D	B	7	20	F	2	4	30
	C	5					
	C1	2					
	C2	2		L	1	6	
	K	4					
E	B	10	10	F	3	6	16
F	C	1	22	None			22
	C1	1					
	C2	1					
	D	2					
	D1	6					
	J	10					
	K	1					
G	None			G	16	31	31
H	None			A	5	20	78
				E	2	16	
				H	3	36	
				L	1	6	
Total	133			133			266

7.4.32. The 133 houses comprise ten different house types (Types B, C/ C1/ C2, D/ D1, J, K and M/ M1), with variations in typology of two and three storey semi-detached, terrace and end of terrace units with 2, 3, and 4 bedrooms. Blocks B, C and F located on the eastern and southern areas of the scheme predominantly accommodate Types D, J and M, semi-detached 3 bedroom houses laid out in blocks with rear gardens back-to-back and surface car parking within the curtilage to the front of the properties. Blocks A, D and E in the northwest and central areas of the site comprise a mix of houses and apartments. The houses, predominantly

Types B, C and K are two and three storey terrace and end of terrace houses with 2, 3, and 4 bedrooms.

- 7.4.33. The 133 apartments comprise six different apartment types (Types A, E, F, G, H, L), with variations in typology of apartments and duplexes with 1, 2 and 3 bedroom units arranged in blocks of between two and four storeys in height. Type A are three storey buildings containing 4 duplex units in each (essentially two storey duplexes over lower ground floor apartments with a shared entrance lobby area at ground floor level), all units are dual aspect. Type E are four storey buildings accommodating 8 apartments in each, all of which are dual aspect. Type F are two storey buildings with 2 apartments in each, all of which are dual aspect. Type G are two storey buildings with 2 apartments in each, save one, all of which are dual aspect. Type H are three storey buildings with 12 apartments in each, 6 of which are dual aspect. Lastly, Type L are three storey buildings with 6 apartments in each, all of which are dual aspect.
- 7.4.34. The residential Blocks A, D and E in the northwest and central areas include Type F and Type L apartments in two and three storeys at the block edges. Denser blocks of apartments and duplexes of three and four storeys (Types A, E, H, and L) are sited along the western edge of the development addressing the public park. A two storey apartment block, Block G, with 1 and 2 bedroom units is located in the southeastern corner of the site. This apartment block is Type G, designed as 16 buildings with, for the most part, each building within the Block accommodating two apartments with shared accesses around a central courtyard area. One of the buildings to the northeast of the block instead as an amenity/ office space at ground floor level instead of an apartment, thereby the Block contains 31 individual units. Parking for the apartment units is provided as communal surface car parking around the perimeters of, and in proximity to, each block.
- 7.4.35. In respect of residential standards, the Development Plan does not include specific quantitative standards instead deferring to standards for houses and apartments included in national best practice guidance 'Quality Housing for Sustainable Communities, 2007' and planning guidelines 'Sustainable Urban Housing: Design Standards for New Apartments' (updated in 2020) respectively.

7.4.36. The following table summarises the key quantitative features of residential unit type and indicates the achievement of the national applicable minimum standards.

Table 7: Key Characteristics of each Residential Unit Type

Residential Type	Unit Type Reference	Building Height/ Storeys	Bedroom Number	c. Floor Area sqm	Required Floor Area sqm
Houses					
Terrace	B	3	4	124	120
Terrace & End of Terrace	C	2	3	122	100
Terrace & End of Terrace	C1	2	3	117	100
Terrace & End of Terrace	C2	2	3	105	100
Semi Detached	D	2	3	118	100
Semi Detached & Terrace	D1	2	2	115	100
Semi Detached & Terrace	J	2	3	117	100
Semi Detached & Terrace	K	2	2	84	80
Terrace	M	2	3	118	100
End of Terrace	M1	2	3	97	92
Apartments					
Duplex	A	3	2	95	73
			3	99	90
Apartment	E	4	2	69 & 72	63
Apartment	F	2	2	75	73
Apartment	G	2	1	59 & 61	45
			2	69 & 75	63
Apartment	H	3	1	53 & 59	45
			2	74	73
Apartment	L	3	2	69 & 72	63

7.4.37. For the proposed houses, Table 5.1 of the best practice guidance sets out the target floorspace provision (total, living, bedroom, storage) for dwellings with various occupants, bedrooms, and building heights. Of relevance to the proposed development, these include target standards for 2, 3, and 4 bedroom houses of two and three storeys height.

7.4.38. The proposed apartments are required to comply with quantitative and qualitative standards included in the planning guidelines on ‘Sustainable Urban Housing: Design Standards for New Apartments, 2020’. These include statutory SPPRs on minimum floor areas (SPPR 3), the proportion of specific bedroom unit types in a scheme (SPPR 1), dual aspect ratios (SPPR 4), floor to ceiling heights (SPPR 5), and maximum number of apartments per floor per core (SPPR 6). Other advice in

the guidelines include the provision of privacy strips for ground floor apartments, and of a building lifecycle report for the running and maintenance costs of the apartments.

- 7.4.39. I have reviewed the Schedule of Accommodation and the individual plans submitted for each residential unit design. I confirm that the houses (semi-detached, terrace and end of terrace), and apartments comply with their applicable minimum standards in respect of gross floorspace, aggregate living and bedroom areas, room sizes and widths, storage areas, and private open space (garden or balcony/ terrace area as relevant). For the apartments, this also includes compliance with the applicable SPPRs 1, 3, 4 and 6.
- 7.4.40. However, from a review of the section drawings, I note that SPPR 5 is not complied with whereby the ground floor apartments in building Types A, E, F, G, H and L do not achieve the minimum 2.7m floor to ceiling height. Instead the floor to ceiling height varies between 2.475m (Types E and L) to 2.550m (Type G). As SPPR 5 is a statutory requirement, in the event of a grant of permission, I recommend a condition be attached ensuring the provision of the minimum ground floor height and that the applicant submit revised plans and sections accordingly to the Planning Authority. There are different ways by which the ground floor apartments may meet the requirement (lower the ground floor levels, increase the principal building heights, or revise the internal heights of the other storeys). In terms of assessment, the worst-case scenario is for a visual impact through an increase in principal building heights by between 0.15m for Type G and a maximum of 0.225m for Types E and L. I consider this to be a marginal increase and have incorporated this allowance into my assessment.
- 7.4.41. In respect of private open space design and provision, I positively note that the rear gardens associated with the dwellings vary in shape and area, providing a satisfactory amount of private amenity space and achieve adequate separation distances to adjacent dwellings. Generally, back to back distances of 22m are achieved where windows are directly opposing. In respect of the apartments, I note the design approach for terraces/ balconies as an enclosed 'winter garden' design with the upper floor (second or third depending on the typology) having an open balcony area. From a review of the site layout plans, the proposed ground floor apartments adjacent to public areas including streets and open spaces, are provided

with privacy strips and/ or private open spaces that are delineated with landscaping and various boundary wall treatments.

- 7.4.42. While the applicant has not submitted a building lifecycle report, I note from information in the Architectural Design Statement and the Planning Compliance Report that consideration has been given to materials, servicing, landscaping and subsequent management of communal areas of the scheme. I am satisfied that consideration of costs has been a factor in the design and that the absence of this report has not prevented an assessment of the scheme.
- 7.4.43. In terms of design, I consider the residential component has a simple architectural design and elevational treatment. The houses principally feature two bays, pitched roof profiles and slight variations in porches and gable-fronted features. The apartment blocks have simple elevation designs with unfussy fenestration arrangement, hipped roof profiles, and variations in building heights resulting in fluctuations in roof levels. The external finishes comprise render for the two storey houses and a mix of render and brick for the houses and apartment blocks in excess of three storeys design. The principal heights range between c. 9m for the two storey houses to c. 14m for the four storey apartment block.
- 7.4.44. I note that the appellant cites dissatisfaction with the design of residential unit types A, B, E, F, H and L. As examined in Section 7.4.23 above, these unit types correspond with the typologies that are in excess of three storeys in height, which I have already determined to be appropriate. While I note a number of the blocks feature hipped roof profiles on certain buildings, and consider that a more contemporary design approach could have been employed, I accept that the requirement for using this roof profile has arisen from the intersection points with other gable-ended buildings. I consider the design and elevational treatment to be consistent with the other typologies within the scheme, and to be consistent with other existing residential developments in the vicinity, in particular, in the adjacent Robertshill estate.
- 7.4.45. In summary, while reference has been made to the design of the residential unit types cited by the appellant, an assessment has been undertaken of the design and layout of the residential component in its entirety and of each constituent part to ensure a thorough assessment of the proposed residential component. I consider

the houses, apartments and duplexes meet the required qualitative and quantitative standards laid out in national guidance (save for SPPR 5 of the apartment design guidelines which can be addressed by condition). The building types are distinctive in architectural design, yet with common features and external finishes to ensure the scheme is sufficiently coherent and in keeping with its receiving environment.

Design of Commercial Component

- 7.4.46. The commercial component of the proposed development is accommodated in Blocks J, K, and L of the scheme, which correspond with the nursing home, the local services centre, and the office buildings with the childcare facility respectively.
- 7.4.47. For the most part, the design approach for the commercial component is consistent with that of the residential component. In particular, the nursing home and local services centre are of a scale, fenestration arrangement, roof profile and with external finishes that are similar to the apartment typologies. The principal heights of the commercial components range between 11.2m for the office buildings, 11.6m for the nursing home, and 11.8m for the local services centre.
- 7.4.48. The nursing home is a three storey building, with a rectangular footprint arranged around a central courtyard. The home comprises 126 no. bedrooms, activity rooms, and staff facilities with a stated floorspace of c.7,237 sqm. The building is accessed from the northeastern elevation, with car parking spaces provided around the perimeter of the block. The internal layout of the floors for residents is positively noted with bedrooms having aspects to the exterior public realm or internal courtyard, dayrooms are located at the corners of the floors, and a large activity room is at ground floor with an aspect onto Breagagh Park. In respect to the external design and elevational treatment of the nursing home, as stated above, the building is of a scale, fenestration arrangement, roof profile with a mix of render and brick external finishes that are similar to the apartment typologies within the scheme and those of the adjacent existing developments to the south, and on balance is considered to be acceptable.
- 7.4.49. The local services centre is centrally located within the scheme, accommodating an 'L' shaped footprint on the block edge with street frontage to the northern and western elevations. The centre has three storeys of accommodation, including two commercial/ retail units at ground floor level (gross floorspace indicated as c.327

sqm) and four office units on the upper levels (floorspace of c.722 sqm). Vehicular access for servicing is available to the rear of the plot via an archway in the northern elevation. The design of the local services centre has a number of similarities with that of the nursing home in terms of scale, proportions, roof profile and external materials. Again, regarding the design of the building, I consider the approach taken to be acceptable, the centre will be consistent with the remainder of the scheme yet sufficiently distinct to be legible as a commercial component at the block edge.

- 7.4.50. In the application documentation, the units are referred to as commercial/ retail in use and the applicant requests that the use thereof be kept sufficiently broad to allow a range of potential end users. The local services centre is sited adjacent to residences in Block E, and in the interests of clarity and protecting the amenity of these residences I consider that use of the two ground floor units be determined by condition and be within the definition of shop in the Planning and Development Regulations, 2001 as amended. As I have previously commented in Section 7.4.8 above, I consider that the upper floors of the local services centre lend themselves to potential change of uses to other medical or professional services if and when such requirements arise.
- 7.4.51. The architectural treatment for the office buildings in Block L does differ from the nursing home and local services centre. A more contemporary design and selection of materials is used, reflective of the office use and incorporating glazed feature-corners, vertical emphasis fenestration, complete coverage with brick finishes and flat roof profiles. The offices are three storeys over two levels of basement car parking, and will serve as landmark buildings due to their design, incorporation of the childcare facility at ground floor level, and being sited in close proximity to the main entrance into the scheme, Breagh Park and the local services centre. I consider the contemporary design proposed to be of a high quality, which will add to legibility in the area.
- 7.4.52. The southern-most office building accommodates a childcare facility at ground floor level, with a floor area of c.733 sqm and indicated as serving 80 children. I have reviewed the plans and particulars, and confirm in brief that the scale of provision (the residential component of the proposal generates a requirement for 59 spaces, when 1 bed apartments are excluded), and the design, siting, accessibility of the facility are in accordance with the requirements of the applicable planning guidelines

'Childcare Facilities – Guidelines for Planning Authorities, 2001' and 'Sustainable Urban Housing: Design Standards for New Apartments, 2020'. The additional 21 spaces available can cater for demand from employees of the other commercial uses or from the wider community. I consider the siting of the facility to be convenient and accessible, being in close proximity to the main entrance and access road, with an amended set down area and increased car parking provision in the FI response are also positively noted. The hours of operation for the facility are indicated as 8.00 to 18.30 Monday to Friday, which are acceptable.

7.4.53. Of relevance to both the residential and commercial components, I note the appellant's position in respect of quality external materials to be used in the proposed development. I consider the range of finishes indicated in the plans and particulars including brick, render, glazing, roof materials to be acceptable. Due to the common design approach for the components, which also incorporates boundary walls, bin and bicycle storage units, and to ensure the coherence of the scheme, I recommend that all external finishes be as has been indicated and subject of an appropriate condition in the event of a grant of permission.

Boundaries

7.4.54. The treatment of site boundaries was subject of the FI request and subsequent FI response. In particular, the northern boundary with Rothe Terrace is raised by the appellant in the appeal. The landscaping plans submitted in the FI response indicate the boundary treatment comprises the maintenance of the riparian corridor along the Breagh River to the west, slope planting along the eastern boundary, a combination of robust shrub and woodland planting along the southern boundary, and woodland planting along the northern boundary.

7.4.55. With regard to the latter, Dwg No. 18271-RFI-013 includes a cross section indicating Rothe Terrace, the existing sloping bank, and the proposed development. The cross section further specifies the boundary treatment with existing boundary hedging to be retained and reinforced with native species where necessary, and the existing embankment planting will be enhanced and reinforced with native species of trees and shrubs. In the appeal, the appellant welcomes the landscaping proposals but requests a fence be provided between the proposed access road and the border with Rothe Terrace to protect the existing boundary. Due to the steeply sloping nature of

the existing embankment, the difference in ground levels between Rothe Terrace and the proposed development, the design and scale of the proposed access road which is adjacent to the embankment, and the extent of proposed landscaping, I consider the amenity and privacy of the properties on Rothe Terrace to be sufficiently safeguarded and do not consider the additional fence between the road and boundary to be necessary.

7.4.56. In summary, while I note the concerns raised by the appellant, I do not consider it necessary to redesign and/ or omit the elements referred to in the scheme, that being, the apartment typologies, the local services centre and the nursing home. On balance, when considered as a whole, the proposed development is consistent with its receiving area which itself is in a transitional context and its constituent parts are distinctive yet sufficiently complimentary to ensure the creation of a characterful new development.

7.5. Taking in Charge

7.5.1. In the Planning Authority's appeal response on the first party appeal relating to the issue of development contributions towards the development of Breagh Park, the Planning Authority has requested that Condition 7(c) of the grant of permission, which refers to the establishment of a management company in respect of waste storage areas, be broadened for the management company to manage all areas within the proposed development that would not be taken in charge.

7.5.2. As the proposed development comprises a mix of residential and commercial uses, that the residential component includes for 133 apartments, and there are a number of communal or shared facilities and amenities including public open spaces, car and bicycle parking, bin storage areas, and landscaping, I consider it appropriate and necessary for a management company to be established that would have a broader remit than the waste storage areas. This can be appropriately addressed by way of condition.

8.0 Appropriate Assessment

8.1. Overview

This section of the report considers the likely significant effects of the project on European sites by undertaking a number of distinct steps including, in compliance with Article 6(3) of the EU Habitats Directive and the sections 177U and 177V in Part XAB of the Planning and Development Act 2000, as amended, screening the need for appropriate assessment; reviewing the Natura Impact Statement and associated documents; and undertaking an appropriate assessment of implications of the proposed development on the integrity of any identified European sites.

8.2. Compliance with Article 6(3) of the EU Habitats Directive

- 8.2.1. The Habitats Directive is concerned with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Of relevance to the proposed development, Article 6(3) of this Directive requires that any project not directly connected with or necessary to the management of a European site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The Board must be satisfied that the proposal will not adversely affect the integrity of the site before consent can be given.
- 8.2.2. The project at Robertshill, a mixed use development adjoining the Breaghagh River which is a tributary of the River Nore, is not directly connected to or necessary for the management of any European site and therefore is subject to the provisions of Article 6(3).

8.3. Screening the need for Appropriate Assessment

- 8.3.1. The first test of Article 6(3) is to establish if the project could result in likely significant effects to a European site. This is considered Stage 1 of the appropriate assessment process, that being, screening. The screening stage is intended to be a preliminary examination. If the possibility of significant effects cannot be excluded on the basis of objective information, without extensive investigation or the application of mitigation, a plan or project should be considered to have a likely significant effect and appropriate assessment carried out.

Background on the Application

- 8.3.2. The applicant submitted a Screening Report for Appropriate Assessment (SRAA) prepared by Openfield Ecological Services, dated November 2019, with the planning application. Following a FI request from the Planning Authority, an updated SRAA, dated April 2020, was submitted as part of the FI response.
- 8.3.3. In the interests of clarity, references herein to the SRAA are meant to the updated report submitted in the FI response, dated April 2020.
- 8.3.4. The applicant's SRAA provides a description of the proposed development, the nature and features of the site, indicates the dates of surveys (January and May 2019 and an invasive species survey on foot of the FI request in March 2020), and identifies two European Sites, the River Nore SPA (004233) and the River Barrow and River Nore SAC (002162), within a possible zone of influence of the development.
- 8.3.5. The SRAA is supported by associated reports including, as submitted initially in the planning application, an Engineering Planning Report, Flood Risk Assessment, and outline Construction Environmental Management Plan; and associated reports that were provided and/ or updated in the FI response, including the EIAR Supplementary Report with Chapter 7 Biodiversity, Storm Water plan, Flood Risk Assessment Memorandum, Landscape Plan, Public Lighting Design Report, and an Invasive Alien Species Assessment Report.
- 8.3.6. The SRAA refers to direct consultations with the Development Applications Unit (NPWS) of the Department of Culture, Heritage and the Gaeltacht, and Inland Fisheries Ireland (IFI).
- 8.3.7. For the River Barrow and River Nore SAC, of the species listed as qualifying interests, the SRAA identifies that the main channel of the River Nore provides habitat for the White-clawed crayfish, all Lamprey species, Atlantic Salmon and Otter, and refers to the habitat 'floating river vegetation' (i.e. the Water Courses of plain to montane levels with the *Ranunculus fluitantis* and *Callitriche-Batrachion* vegetation) (pg 16). The SRAA finds that of this habitat and these species, only the Atlantic Salmon may be affected by the proposed development due to its required water quality target (pg 19).
- 8.3.8. Also for the River Barrow and River Nore SAC, the SRAA finds that otters are present along the Breagh River (pg 18), assumed to be connected to the

population on the River Nore, and that there are no habitats listed as qualifying interests along the Breaghagh River.

- 8.3.9. For the River Nore SPA, the SRAA is not definitive on the presence of kingfishers on the Breaghagh River, stating the species is likely to be in the area (pg 17), but in summary states there is no pathway to the area of the SPA through which the species could be affected.
- 8.3.10. The applicant's SRAA concludes that: *'No negative effects are predicted to occur to the River Nore SPA when measured against its conservation objectives. Hydrological pathways exist to the River Nore; significant effects cannot be ruled out to the following area – River Barrow and River Nore SAC'*. The report concludes *'that a full AA will be required'* and refers to the submitted Natura Impact Statement (NIS).
- 8.3.11. Having reviewed the initial documents, relevant third party submission, and updated documents included within the FI response, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Test of Likely Significant Effects

- 8.3.12. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 8.3.13. The project is examined in relation to any possible interaction with European sites designated SACs and/ or SPAs to assess whether it may give rise to significant effects on any European Site.

Description of Development

- 8.3.14. The applicant provides a description of the proposed development on pages 5, 7 and 8 of the SRAA and in Chapter 2 of the EIAR Supplementary Report. A description of the proposed development as modified through the FI response is provided in Section 2.0 of this report. In summary, the development comprises:

- A mixed use scheme (total floor area of c.40,000 sqm) on a greenfield site measuring 12.84 ha;

- Mix of uses include residential use of 266 units (c.27,500 sqm); commercial use with offices, childcare facility, local services centre and a nursing home (c.12,500 sqm); and recreational use through a public park along the Breagagh River (3.96 ha);
- Access via two vehicular accesses, including one with a bridge over the Breagagh River, two additional pedestrian accesses, basement and surface car parking and bicycle parking stands;
- Servicing through new connections to the existing foul sewer (running along the Breagagh River to the west of the site) and to the existing water supply system (ring main adjacent to the site); and
- Provision of a new surface water system with an attenuation storage tank located in the Breagagh Park, and outfall pipe and headwall discharging to the Breagagh River.
- Construction phase involves site preparation and soil clearance involving loss of habitats on eastern side, and dust and noise occurrence.
- Operation phase is the occupation of development with associated human disturbance in addition to noise and artificial light.

8.3.15. The applicant provides a description on the nature of the site on pages 5 and 6 of the SRAA and in Chapters 2 and 7 of the EIAR Supplementary Report. The key characteristics include:

- The habitats in the site are classified as being neutral grassland and scrubs, the northern and eastern boundaries as hedgerow, and the western boundary as treeline with riparian woodland characteristics next to the Breagagh River.
- The Breagagh River is described as fast flowing and characterised as an eroding river.
- The Breagagh River provides a direct hydrological route to the River Nore which is stated as being over 900m to the east of the site.
- At the meeting point, the Breagagh River enters the River Barrow and River Nore SAC and the River Nore SPA.

- Invasive species noted in the site include Spanish Bluebells and three-cornered garlic, but no Japanese Knotweed.
- No habitats exist at the development site which are examples of those listed on Annex I of the Habitats Directive.

8.3.16. Taking account of the characteristics of the project in terms of its location and the scale of works, the following issues are considered relevant to allow the identification of likely significant effects on a European site:

- Construction related effects through uncontrolled surface water/ silt/ construction related pollution; and
- Effects arising from habitat and/ or species disturbance during construction and/ or operation phases.
- There are no likely significant effects arising from habitats loss or fragmentation.

Submissions and Observations

8.3.17. A third party submission received by the Planning Authority had queried whether a botanical survey had been undertaken, identified a number of plant species in the site that, while not protected, were considered to be integral to the local biodiversity. The submission was the subject of a FI response confirming a botanical survey had been undertaken and updates were made to Chapter 7 Biodiversity in the EIAR Supplementary Report.

8.3.18. In respect of submissions from prescribed bodies that may be applicable to matters relating to appropriate assessment, I note that An Bord Pleanála referred the appeal case to the Development Applications Unit (inclusive of NPWS) of the Department of Culture, Heritage and the Gaeltacht, An Taisce, Inland Fisheries Ireland (IFI), and the Heritage Council, however no responses were received at the time of assessment.

European Sites

8.3.19. The appeal site is not located in or immediately adjacent to a European site. The Breagh River forms the western boundary of the appeal site which flows in a

northerly direction intersecting with the River Nore c. 1.2km downstream, at the Abbey Quarter, south of St Francis Bridge.

8.3.20. The River Nore has a SPA designation, the River Nore SPA (004233) and a SAC designation, the River Barrow and River Nore SAC (002162) which overlap in parts along its length. These European Sites are located 931m and 940m respectively due east of the closest corner of the site.

8.3.21. A summary of these European sites including their conservation objectives and qualifying interests, whether there is a connection (source-pathway-receptor), and possibility of likely significant effects arising are presented in the table below.

8.3.22. There are no other European sites that have been considered as being potentially within the zone of influence due to the nature and scale of the proposed development, and the distance from and absence of a connection to the appeal site.

Table 8: Screening Summary Matrix

European Site (code) Conservation Objectives and Qualifying Interests	Distance from Devt (m)/ Connection (source, pathway, receptor)	Likely Significant Effect	Screening Conclusion
<u>River Nore SPA (004233)</u> To maintain or restore the favourable conservation condition of the species – Kingfisher.	931m (at closest). No connections (source-pathway-receptor).	None arising.	Screened out for need for AA.
<u>River Barrow and River Nore SAC (002162)</u> To maintain the favourable conservation condition of the following species – Desmoulin's whorl snail; White-clawed crayfish; and Killarney fern. To restore the favourable conservation condition of the following species – Sea	940m (at closest). An ecological connection exists between the development site (source) via the Breagh River (pathway) to the River	Likely significant effects may arise on the water quality in Breagh River from pollution during construction and/ or operation phases affecting habitats/	Screened in for need for AA as effects cannot be ruled out without further analysis and assessment.

<p>lamprey; Brook lamprey; River lamprey; Twaite shad; Atlantic salmon; Otter; and Nore freshwater pearl mussel.</p> <p>Conservation objective under review for the species – Freshwater pearl mussel.</p> <p>To maintain the favourable conservation condition of the following habitats – Estuaries; Mudflats and sandflats not covered by sea water at low tide; Salicornia and other annuals colonizing mud and sand; Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation; European dry heaths; Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels; and Petrifying springs with tufa formation.</p> <p>To restore the favourable conservation condition of the following habitats – Atlantic salt meadows; Mediterranean salt meadows; Old sessile oak woods with Ilex and Blechnum in the British Isles; and Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae).</p>	<p>Barrow and River Nore SAC (receptor).</p> <p>There are no other connections (source-pathway-receptor) between the development site and the SAC.</p>	<p>species in the river environment.</p> <p>Likely significant effects may arise on the habitat quality of Breagagh River's riparian corridor/ riverbanks during construction and/ or operation phases affecting species in and/ or along the river environment.</p>	
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Identification of Likely Significant Effects

- 8.3.23. The River Nore SPA has a single qualifying interest, the kingfisher bird, the conservation objective for which is to maintain or restore its favourable conservation condition. Due firstly, to there being no substantive ecological linkage or connection, based on the source-pathway-receptor principle, between the development site and the SPA; and secondly, due to the proposed development, by virtue of its nature and scale, would not be likely to give rise to significant effects on the species, its habitat or its longterm condition, the need for appropriate assessment of the River Nore SPA has been screened out.
- 8.3.24. The River Barrow and River Nore SAC consists of the catchments of these two rivers passing through eight counties from the Slieve Bloom mountains in Offaly to the estuary at Creaden (Creadaun) Head in Waterford. In the Conservation Objectives report for the SAC, the NPWS identifies 22 qualifying interests, comprising 11 habitats and 11 species with varying objectives for their conservation condition. (The NPWS's Site Synopsis lists an additional habitat, reefs, which I note is linked to the Sabellaria alveolate reef which is included within the estuary habitat in the Conservation Objectives report).
- 8.3.25. I have reviewed the applicant's SRAA, the NPWS's Conservation Objectives report (with Maps 1-7 indicating geographic occurrence of certain qualifying interests), Natura 2000 form, and the Site Synopsis, and information available on the habitat 'water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation' through www.europa.eu (for ease of reference herein I refer to this habitat as water courses with vegetation).
- 8.3.26. The water courses with vegetation habitat can be present in natural watercourses such as streams and rivers, and the structure of this habitat can be described as layered communities of mostly rooted plants.
- 8.3.27. There is an ecological connection between the appeal site and the SAC, based on the source-pathway-receptor principle. This constitutes a hydrological connection via surface water discharges associated with the proposed development into the Breagh River which intersects with the SAC. Through this connection, during both construction and operation phases, there could be likely effects on the relevant qualifying interest in the river ecosystem due to the potential impact on water quality.

- 8.3.28. The proposed development includes a new access road, a bridge and Breaghagh Park all in direct proximity to the Breaghagh River. As such, there is an ecological connection through which during both construction and operation phases, there could be likely effects on the relevant qualifying interests in and/ or along the riparian corridor/ riverbanks due to species disturbance.
- 8.3.29. There are a number of permitted developments (outlined in Section 4.0 Planning History of this report) in the vicinity of the proposed development which could give rise to the potential for in-combination effects associated with activities during construction and operation phases on the SAC and the relevant qualifying interests.
- 8.3.30. Therefore, in summary, there are activities during the construction and operation phases of the development that could give rise to likely significant effects, on their own and in-combination with other projects, on the qualifying interests of the SAC such that the need for appropriate assessment of the SAC cannot be excluded without further analysis and assessment.

Mitigation Measures

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

8.4. Screening Determination

- 8.4.1. The project was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that the project individually or in combination with other plans or projects could have a significant effect on River Barrow and River Nore SAC (002162) in view of the site's conservation objectives and qualifying interests, and that appropriate assessment, and submission of a NIS, is therefore required.
- 8.4.2. The possibility of significant effects on another European site hereunder has been excluded on the basis of nature and scale of the proposed development, separation distance and lack of substantive ecological linkage between the proposed works and the River Nore SPA (004233).

8.5. Natura Impact Statement

- 8.5.1. The planning application was accompanied by a NIS prepared by Openfield Ecological Services, dated November 2019. Following a FI request from the Planning Authority, an updated NIS, dated April 2020, was submitted as part of the FI response. In the interests of clarity, references herein to the NIS are meant to the NIS dated April 2020.
- 8.5.2. The NIS examines and assesses the potential adverse effects of the proposed development on the River Barrow and River Nore SAC. In addition to the surveys, reports and consultations which supported the preparation of the SRAA, as outlined in Sections 8.3.5 and 8.3.6 above, the author provides further details on the consultation, on-site meeting, and requirements of IFI.
- 8.5.3. Pg 10 of the NIS elaborates further (than had been identified in the SRAA, pg 16, also see Section 8.3.7 above), that the main channel of the River Nore ‘may also hold the ‘floating river vegetation’ habitat and further consideration is given to how the proposed development may affect same.
- 8.5.4. The NIS considers in-combination effects with other plans and projects on the SAC in ‘Step 2 – Impact Prediction’, identifies and assesses possible adverse effects of the proposed development on the River Barrow and River Nore SAC in ‘Step 3 – Conservation Objectives’ and provides details of mitigation measures, how and when they will be implemented in ‘Step 4 – Mitigation’.
- 8.5.5. The applicant’s NIS outlines the analysis of the proposed development which resulted in detailed consideration being given to the how key species, the Atlantic Salmon, and the Otter, the ‘floating river vegetation’ habitat, and the integrity (structure and function) of the SAC would be affected. The NIS concludes that *‘...Arising from this assessment, mitigation has been proposed. With the implementation of these measures, significant effects to the integrity of the SAC are not expected to occur. This conclusion is based on best scientific knowledge’*.
- 8.5.6. Having reviewed the initial documents, relevant third party submission, updated documents included within the FI response, and more detailed information in the NIS regarding consultations undertaken by the author/ on behalf of the applicant, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation objectives of European site, the River Barrow and River Nore SAC alone, or in combination with other plans and projects.

8.6. Appropriate Assessment of Implications of the Proposed Development

- 8.6.1. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European site. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.
- 8.6.2. I have relied on the following guidance: Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities, DoEHLG (2010); Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC, EC (2002); and Managing Natura 2000 Sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC, EC (2018).

The European Site

- 8.6.3. The River Barrow and River Nore SAC (002162) is subject to this appropriate assessment. A description of the SAC, its conservation objectives and qualifying Interests, including any relevant attributes and targets for the site are set out on pgs10-17 of the SRAA, pg 10 of the NIS, and outlined in Table 1 of this report as part of my assessment. I have examined the Conservation Objectives report, Natura 2000 form, and the Site Synopsis available through www.npws.ie. I have also examined information on the water courses with vegetation habitat through www.europa.eu.
- 8.6.4. Of the qualifying interests in the SAC, a number can be disregarded from further consideration. These include the habitats and species that are features of/ dependant on the estuary environment (i.e. estuaries including reef, tidal mudflats and sandflats, salt marsh habitats including mud, sand and salt meadows, and twaite shad). These include the species which are known to only occur in certain locations in the SAC (Desmoulin's whorl snail, freshwater pearl mussel and Nore freshwater pearl mussel are not recorded in the River Nore downstream of the project). These also include the habitats and species for which there is no ecological connection, based on the source-pathway-receptor principle, and therefore no effect can arise (i.e. woodland habitats including oak woodlands and alluvial forests, petrifying springs, tall herb fringe communities, dry heaths and the Killarney fern).

8.6.5. The remaining qualifying interests that could potentially feature in the main channel of the River Nore that could come within influence of the proposed development, include the water courses with vegetation habitat, the fish species, Atlantic salmon, white-clawed crayfish and the sea, river and brook lampreys, and the otter. Of the fish species, the crayfish and lamprey species can be disregarded as their standard of required water quality is not likely to be affected by the proposed development.

8.6.6. Following consideration of the above, I identify the relevant qualifying interests to be the:

- Atlantic salmon (due to the species requiring a Q4 unpolluted water quality standard);
- water courses with vegetation (due to the full habitat's distribution being unknown (Conservation Objectives report, NPWS) and therefore its potential to be within the river ecosystem under the influence of the proposed development, and due to all aquatic organisms being affected by water quality); and
- otter (due to species disturbance).

Aspects of the Proposed Development

8.6.7. The main aspects of the proposed development that could adversely affect the conservation objectives of the SAC assessed include construction related pollution events and/ or operation impacts on water quality in the Breagagh River, which in turn could negatively affect the River Nore, which has the Q4 unpolluted water quality standard required by Atlantic salmon, and may hold the water courses with vegetation habitat.

8.6.8. These construction events and/ or operation impacts on water quality therefore include the:

- construction of the project (subsurface infrastructure, including an attenuation tank proximate to the river, and all above structures, roads and areas of hardstanding);
- construction of the access road and bridge over the Breagagh River;
- development and use of the public open space, the Breagagh Park; and

- surface water discharging via a new outfall pipe with headwall to the Breagagh River.

8.6.9. In relation to Atlantic salmon, pollution caused from sediment, hydrocarbon residues, and cement during the construction phase of the proposed development can reduce water quality, light penetration thereby fouling the gills and spawning beds of the fish. While in relation to the water courses of vegetation habitat, similarly construction related pollution can affect all aquatic organisms and to varying degrees

8.6.10. In relation to the otter population, construction related activities resulting in disturbance and/ or displacement of the otter population along the Breagagh River, and ongoing disturbance through increased human activity (noise, light, recreational use) throughout the operation phase. A worst-case scenario would be an abandonment of their use and occupation of the river due to the extent of construction and operation related disturbances.

Mitigation Measures

8.6.11. Mitigation measures are outlined in Step 4 of the NIS. There are three categories presented including those addressing pollution prevention in the river during construction and operation, disturbance to the otter population during construction and subsequently during operation.

8.6.12. The mitigation measures which I consider address the likely significant effects specific to the proposed development (that being, not general measures included or referred to in the outline CEMP and/ or the IFI construction guidelines) include those:

- In respect of the Breagagh River's water quality, the requirements relating to the positioning of the surface water outfall pipe to the Breagagh River to allow for access and maintenance; provision of a silt barrier along the Breagagh River to be retained for the lifetime of the project, and pollution prevention measures are to be monitored, inspected and recorded and are to be the responsibility of the on-site manager.
- In respect of disturbance to the otter population during construction, the riparian zone is to be protected by being fenced off, labelled and staff informed.

- In respect of disturbance to the otter population during operation, the landscaping plan to be reviewed by an ecologist, with artificial lighting considered, the riparian vegetation remaining intact and no insurmountable barriers installed.

8.6.13. On balance, I consider that the mitigation measures are clear, straightforward and that conclusions can be reached whereby the likely significant effects of the proposed development on the qualifying interests of the SAC previously identified have been addressed. The requirement for the implementation of the identified mitigation measures is recommended to be subject of a condition in the event of a grant of permission.

8.6.14. Overall, the measures proposed are effective, reflecting current best practice, and can be secured over the short, medium and longer term and the method of implementation can be through a detailed management plan.

In Combination Effects

8.6.15. Step 2 of the NIS considers the potential for cumulative or in combination effects with other plans and projects on the River Barrow and River Nore SAC.

8.6.16. In respect of plans, the applicant's NIS refers to the extent of zoned lands in the vicinity of the development site in the Kilkenny City and Environs Development Plan 2014-2020. In the Plan, the site is zoned for development as are additional lands to the north and west of the site, also in proximity to the Breaghagh River. The NIS states that a full appropriate assessment was undertaken of the Plan which found that, subject to mitigation measures, the implementation of the Plan would not have adverse impacts on Natura 2000 sites. I note that in addition to the referred to zoning of the site and adjacent lands, the Plan also includes policies for the provision of road and recreational infrastructure in the vicinity of the site and Breaghagh River. I consider this determination to be reasonable.

8.6.17. I have reviewed the NIR of the Kilkenny City and Environs Development Plan 2014-2020, which considered the River Barrow and River Nore SAC and included mitigation measures to protect its integrity, principally relating to ensuring the implementation of development management standards.

- 8.6.18. In respect of projects, the applicant's NIS refers to permitted planning consents in the vicinity of the development site, including permissions for residential development on adjacent lands to the west and north. The NIS states that these give rise to potential in combination effects such as additional load on the wastewater treatment and water supply systems for the City, and cumulative construction impacts such as run-off and loss of habitat but concludes these are not likely significant effects on the SAC due to sufficient capacity in the systems and to mitigation measures being included for in the proposed development to address construction and operation related impacts. I consider this conclusion to be reasonable.
- 8.6.19. I have further reviewed these planning consents and highlight that for PA Ref. 17/801, permission was granted with conditions attached in respect of surface water infrastructure; for PA 17/886, PL10.303427, the Board screened out the requirement for appropriate assessment and granted permission with conditions attached in respect of surface water infrastructure; and for PL10.305062, the Board undertook a full appropriate assessment of the proposed development and granted approval with a number of conditions attached relating to protecting water quality of the Breagagh River during construction and operation phases.
- 8.6.20. In summary, the potential for in combination effects arising from plans and projects has been referred to and considered in the applicant's NIS, and I have further considered and assessed the potential through reviewing the NIR of the Kilkenny City and Environs Development Plan 2014-2020 and the relevant planning consents in the vicinity of the proposed development with potential to impact on the Breagagh River and thereby on the SAC. I am satisfied that there are no in combination effects arising with other plans and projects from implementing the proposed development.

8.7. Appropriate Assessment Conclusion

- 8.7.1. The proposed mixed use development at Robertshill has been considered in light of the assessment requirements of sections 177U and 177V in Part XAB of the Planning and Development Act 2000, as amended.
- 8.7.2. Having carried out screening for appropriate assessment of the project, it was concluded that it may have a significant effect on the River Barrow and River Nore SAC (002162), and an appropriate assessment was required of the implications of

the project on the qualifying interests of the SAC in light of its conservation objectives.

8.7.3. Following an appropriate assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore SAC (002162), or any other European site, in view of the site's conservation objectives.

8.7.4. This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the conservation objectives of the River Barrow and River Nore SAC.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the River Barrow and River Nore SAC (002162).

9.0 Environmental Impact Assessment

9.1. Statutory Provisions

9.1.1. The mixed use development provides for 266 residential units, commercial uses comprising offices, a childcare facility, a local services centre with two commercial/retail units, a nursing home and a public park. The proposal is on a site measuring 12.84 ha that is located within Kilkenny City's urban boundary.

Requirement for an Environmental Impact Assessment

9.1.2. Section 172(1)(a) of the Planning and Development Act 2000, as amended, and Item 10(b), Part 2, Schedule 5 of the Planning and Development Regulations 2001, as amended provides that an EIA is required for infrastructure projects that involve:

- iv) Urban Development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.

9.1.3. The applicant has therefore prepared an EIAR for the proposal, which was submitted with the planning application, dated November 2019. Items in the EIAR were subject

of a FI request by the Planning Authority and the applicant submitted an EIAR Supplementary Report in response, dated May 2020. In the interest of clarity, references herein to the EIAR are meant to the initial EIAR and as relevant, amended by the EIAR Supplementary Report.

- 9.1.4. The following subsections examine the EIAR to ensure that statutory provisions of EIA Directive 2014/52/EU as transposed in the Planning and Development Act 2000, as amended (principally in Section 171A, Part X) and the Planning and Development Regulations 2001, as amended (principally in Article 94, and Items 1 and 2, Schedule 6) have been complied with. These include the content of the EIAR, examination of the likely significant direct and indirect effects, identification of risk of major accidents and disasters, consideration of reasonable alternatives and undertaking of consultations.

Content of the Environmental Impact Assessment Report

- 9.1.5. The EIAR is laid out in two parts, referred to as Parts A and B. Part A comprises a Non-Technical Summary of the EIAR, which fulfils the requirement of Article 94(c) of the Planning and Development Regulations 2001, as amended. Part B comprises the Main Report with 18 chapters, a number of which include appendices.
- 9.1.6. Chapter 1 sets out the introduction and methodology including, as required by Article 94(e), a list of the competent experts involved in preparing the EIAR. Chapter 2 provides a description of the site, context, and proposed development, which accords with Item 1(a), Schedule 6. Chapter 3 presents the strategic, regional and local planning policy context, and Chapter 4 details the scoping and consultation undertaken with a range of prescribed bodies and the Planning Authority. Chapter 5 examines reasonable alternatives, as required by Item 1(d), Schedule 6. Chapters 6 to 16 inclusive examine the likely significant effects, as required by Item 1(b), Schedule 6 of the proposed development on the environmental factors identified in Section 171A(b)(i) of the Planning and Development Act 2000, as amended. Chapter 17 examines potential of interactions between the environmental factors. Chapter 18 provides a summary of mitigation measures, in accordance with Item 1(c) and Item 2(g) of Schedule 6.

- 9.1.7. The EIAR refers to supplementary documentation that accompanies the application which is required to be read in conjunction with the EIAR, of note are the TTA, Engineering Planning Report, SSFRA, SRAA and NIS.

Likely Significant Direct and Indirect Effects

- 9.1.8. As required by Item 1(b) and Item 2(e), Schedule 6, the EIAR describes and assesses the direct and indirect significant effects of the project on the specific environmental factors identified in Section 171A(b)(i) of the Planning and Development Act 2000, as amended. These are: (a) population and human health; (b) biodiversity with particular attention to the species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC; (c) land, soil, water, air and climate; (d) material assets, cultural heritage and the landscape. It also considers the interaction between the factors referred to in these points (a) to (d).
- 9.1.9. As referred to above, these environmental factors and the interaction between the factors correspond with Chapters 6 to 17 inclusive of the EIAR. The contents and layout of the chapters is consistent with a review of the receiving environment, and the identification of likelihood of impacts, the significance of impacts over do-nothing scenario, construction and operation phases, and cumulative impacts.
- 9.1.10. Each of the chapters identifies, where necessary, remedial and mitigation measures which are proposed in order to avoid, prevent or reduce and if possible offset likely significant adverse effects on the environment.

Risk of Major Accidents and/ or Disasters

- 9.1.11. Section 171A(b)(ii) of the Planning and Development Act 2000, as amended and supplemented by Item 2(e)(i)(IV) of the Planning and Development Regulations 2001, as amended require that the expected effects derived from the vulnerability of the project to major accidents and/ or disasters that are relevant to the project concerned are considered.
- 9.1.12. Chapter 2 of the EIAR includes a description of the risks of accidents having regard to substances or technologies used. I note that this section primarily focuses on construction related risks and, due to the nature of the project, which is determined to be relatively benign, considers that there are no significant risks arising from the operation of the project. While this section is brief and focuses on risks within the

project, I consider there to be sufficient information submitted to allow a broader assessment of this issue. Chapter 6 of the EIAR supplements the information in Chapter 2, with a section on risk referring to the SSFRA that has been undertaken for the site and the provision of safe vehicular accesses for the scheme. An outline CEMP has been submitted as part of this application and is reproduced as an appendix in Chapter 2 of the EIAR, which includes measures to reduce the risks of major accidents and disasters to human health. I note that the site is not in an area prone to natural disasters.

- 9.1.13. Chapter 6 of the EIAR, refers to the only Seveso site in Kilkenny City, Grasslands Fertiliser, a manufacturing and storage facility which is indicated as being 1km to the northwest of the site. It is considered that due to the separation distance there is unlikely to be a direct effect on the proposed development. I note that the site is outside of the 700m consultation boundary as identified on the Development Plan zoning map, and that the Planning Authority did not consult with the Health and Safety Authority on the proposed development. On balance, having regard to the location of the site, the adjacent land uses, the existing land use in addition to the current zoning of the site, I am satisfied that the risk to the project of a major accident and/ or disaster is low, and that the proposed uses, a mix of residential, commercial and recreational, are unlikely to be a risk in and of themselves.

Reasonable Alternatives

- 9.1.14. Item 1(d) and Item 2(b), Schedule 6 of the Planning and Development Regulations 2001, as amended require that reasonable alternatives be considered. Chapter 5 of the EIAR addresses the alternatives considered. The site is zoned for a combination of 'Mixed Use' and 'Amenity/ Green links/ Biodiversity conservation/ Open Space/ Recreation'. In addition, the Mixed Use zoning is subject to the site specific Z1 objective, which has a number of design-based caveats relating to access, permeability and the provision of a public park along the Breagagh River. The alternatives considered relate to variations in the land use mix, design, layout, access and density of the scheme. In addition to a do-nothing alternative, the applicant outlines three alternatives considered for the site, which were subject to pre planning consultations held with the Planning Authority. No alternatives were considered in the EIAR in respect of processes or mitigation measures.

9.1.15. Having regard to the parameters of the underlying zonings and the requirements of the specific Z1 objective, I am satisfied that alternative locations and alternative processes are not relevant to the proposal. In my opinion reasonable alternatives have been explored and the information contained in the EIAR with regard to alternatives provides a justification in environmental terms for the chosen scheme and is in accordance with the legislative requirements.

Consultations

9.1.16. The Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended include for information being made available, consultations, and public participation in the EIA process. I am satisfied that the participation of the public has been effective, and the application and appeal documentation have been made accessible to the public by electronic and hard copy means with adequate timelines afforded for submissions.

9.1.17. In respect of the contents of the EIAR, Chapter 4 of the EIAR outlines several consultations undertaken by the applicant with prescribed bodies and the Planning Authority. I consider a number of these consultations to be noteworthy and informative as there has not been formal engagement by certain relevant prescribed bodies during the processing of this appeal case, for instance, IFI and NPWS.

Conclusion on Statutory Provisions

9.1.18. I am satisfied that the EIAR has been prepared by competent experts to ensure its completeness and quality, that a Non Technical summary has been provided, in language understood, and that the information contained in the EIAR adequately describes the project and site, and identifies and describes and the direct, indirect and cumulative effects of the proposed development on the environment, interaction of same and mitigation measures. The EIAR includes consideration of risks and/ or disasters, alternatives, and consultations that have been undertaken. Therefore, I consider the statutory provisions arising from EIA Directive 2014/52/EU as transposed in the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended have been complied with.

9.2. Assessment of the Likely Significant Direct and Indirect Effects

9.2.1. The likely significant direct and indirect effects of the proposed development on the environment are considered under the headings below which follow the order of the factors as set out in Section 171A(b)(i) of the Planning and Development Act 2000, as amended:

- (a) Population and human health
- (b) Biodiversity, with particular attention to the species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC
- (c) Land, soil, water, air and climate
- (d) Material assets, cultural heritage and the landscape, and
- The interaction between the factors referred to in points (a) to (d).

9.2.2. Within each of the environmental factors above, I also examine and assess the remedial and mitigation measures identified to avoid, prevent or reduce and if possible offset likely significant adverse effects on the environment.

9.2.3. My assessment herein is based on the information provided by the applicant, including the EIAR and accompanying documentation, to the information contained in the third party observations, submissions from prescribed bodies, the first and third party appeals and responses to the appeals by the appellant, applicant and Planning Authority as relevant, and on my site visit.

9.2.4. In Section 6.0 of this report, I have presented the first and third party appeals made by the applicant and appellant respectively, and the responses made by the applicant and Planning Authority. I consider the main issues raised in the appeal that are specific to the EIA to be:

- Population and Human Health;
- The Landscape; and
- Material Assets: Traffic and Transport.

9.2.5. This EIA has had regard to the planning assessment of relevant issues set out in Section 7.0 and to the appropriate assessment set out in Section 8.0 of this report. This EIA Section of the report should therefore be read in conjunction with those sections.

9.3. Population and Human Health

Receiving Environment

- 9.3.1. Chapter 6 of the EIAR addresses population and human health, and provides an overview of the receiving environment on items such as employment activity, housing stock, social services and infrastructure, land use and settlement patterns, and risk of accidents and disasters.

Construction, Operation and Cumulative Impacts

- 9.3.2. I highlight that while the EIAR refers to the proposed development being constructed in six phases over an extended appropriate period of 10 years, the applicant does state in Section 6.4 under likelihood of impacts, that consideration of phases being progressed in tandem has been assessed as the worst-case scenario and that overall impacts are unlikely to be different.
- 9.3.3. The construction phase involves site clearance, excavation and construction works. The applicant examines effects to water (surface water and services), noise, air quality, visual, economic, social patterns, land uses, health and safety, and risk of accidents. The impacts identified are considered as being temporary and described as ranging from insignificant to negative. It is accepted that the construction phase will have some minor temporary residual effects associated with nuisance on population and human health. The most notable effects are those relating to noise, air quality, traffic, and social patterns/ land use (residential amenity of proximate residents). Some temporary positive effects are identified during construction relating to employment and economic activity.
- 9.3.4. The applicant submits (with updated information in Chapter 3 of the EIAR Supplementary Report) that when operational the proposed development could increase the number of residential units in the city by 266 with an associated population increase of 603 persons. The commercial component of the scheme is estimated as potentially employing 410 employees. The Breagh Park is an extensive area of public open space that will function as a regional park serving more than the local community.
- 9.3.5. The principal operation phase impacts identified are those associated with traffic and noise, altered built environment, additional landscaping, increased opportunities for

using and supplementing adjacent social infrastructure (schools, community and health facilities). The overall effect will be permanent, long-term and positive due to the provision of additional residential units, employment facilities, community parkland, and pedestrian and cycling infrastructure. The impacts associated with water (supply and wastewater) will be negligible given the availability of sufficient capacity in these services.

Mitigation Measures and Impact Assessment

9.3.6. In respect of mitigation measures, the applicant proposes two key measures to address the range of construction and operation phase effects. Firstly, is the preparation by the contractor of a finalised CEMP including a Traffic Management Plan (TMP), and secondly, the preparation by the contractor of a Construction and Demolition Waste Management Plan (CDWMP) in accordance with the relevant guidelines. I consider these mitigation measures to be necessary and appropriate.

9.3.7. A number of the effects relevant to population and human health correspond to issues raised in the third party appellant's case, namely, traffic safety and construction related impacts. These have been examined and assessed in Section 7.0 of this report.

9.3.8. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form part of the proposed scheme, by the proposed mitigation measures, and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects in terms of population and human health.

9.4. Biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC

9.4.1. Chapter 7 of the EIAR addresses biodiversity, detailing the site characteristics and methodology of the ecological assessment. I highlight that the likely effects, direct and indirect, of the proposed development on species and habitats for which European sites adjacent to the site are designated are considered in Section 8.0 of this report relating to appropriate assessment, which informs the conclusions of this EIA.

Receiving Environment

- 9.4.2. Site visits were conducted in January and May 2019, with surveys undertaken of habitats and mammals. A bat survey was undertaken in October 2019, and an alien invasive species was completed in March 2020.
- 9.4.3. The validity of the field surveys was raised by a third party observation and was subject of a FI request. In the FI response, the applicant confirmed a botanical survey was undertaken and the alien invasive species survey was added.
- 9.4.4. In terms of the receiving environment, habitats and flora of the appeal site are identified. The site is described as a large open space of rough grazing land with dominant habitats of neutral grassland and scrub. The northern and eastern boundaries comprise hedgerow habitat. The western boundary comprising the fast flowing Breaghagh River and its riparian corridor are characterised as eroding river, with treeline featuring riparian woodland habitats. The habitats are evaluated and rated with the neutral grassland and Breaghagh River with its riparian corridor being of local importance, higher value, and the scrub and hedgerow being of local importance, lower value.
- 9.4.5. There are no habitats within the site which are examples of those listed on Annex I of the Habitats Directive or records of rare or protected plants.
- 9.4.6. The development site is within the catchment area of the River Nore, which is incorporated within the River Barrow and River Nore SAC and the River Nore SPA, both of which are rated as being of international importance.
- 9.4.7. The site surveys identified Spanish Bluebells and Three-cornered Garlic, the former of which is identified as an alien invasive species. The site surveys in January and May 2019 and a subsequent survey for invasive species in March 2020 did not identify any Japanese knotweed.
- 9.4.8. The site surveys included incidental sightings and signs of faunal activity, and where suitable habitat has been identified within known ranges of certain protected species, the EIAR concludes the likely presence of that species for assessment purposes. This approach is taken for the otter species whereby the survey in January 2019 found evidence of otter activity on the Breaghagh River, and though no evidence was

found in the survey in May 2019, the EIAR assumes the presence of otter due to the favourable habitat in and along the Breagagh River.

- 9.4.9. There was no evidence of other potential species protected under Annex II & V of the Habitats Directive such as badger or Irish hare during the surveys. The habitats to support deer, pine martin or red squirrel are not present at the site. The potential for some protected mammal species to be present including hedgehog and pygmy shrew is accepted.
- 9.4.10. A bat survey was undertaken in October 2019 which provided evidence of three protected species, the Soprano pipistrelle, Common pipistrelle and Daubenton's bat. Activity of the former being most notable along the river and the edges of the adjacent residential areas to the north and east of the site. No evidence of a roost was located in the site (there are no buildings and no evidence was found in the trees on site) and the EIAR concludes there is a roost in a neighbouring area.
- 9.4.11. The EIAR notes that there is no suitable habitat present in the site for birds on Birdwatch Ireland's red list/ birds of high conservation concern. A survey for breeding birds was undertaken in May 2019 and the species noted were on Birdwatch Ireland's green list, except for swallow which is on the amber list, though it is highlighted that the presence of swallow was noted for feeding not nesting at the site.
- 9.4.12. The EIAR states that fisheries survey data is not available for the Breagagh River, instead highlights the data for the River Nore system which is of high fisheries value with populations of salmon, trout and lamprey. Of note, is that there are no recordings of the protected freshwater pearl mussels in the River Nore downstream of the appeal site.

Construction, Operation and Cumulative Impacts

- 9.4.13. The principal construction phase impacts identified include the removal of the grasslands, scrub and hedgerow habitats. The habitat along the riparian corridor of the Breagagh River will be disturbed and lost in the area required for the construction of the access road and bridge. From site clearance, there will be flora and fauna species mortality. There will be disruption to the Breagagh River ecological corridor used by populations of otter, bats and fish. There is potential for pollution of the Breagagh River and a reduction in water quality. Table 7.7 of Chapter 7 categorises

the significance of these effects, identifying the mortality of animals, disturbance to otters and river water pollution as among the most significant effects and requiring mitigation measures.

- 9.4.14. The principal operation phase impacts include the potential for water pollution from the wastewater and surface water arising from the development, from artificial lights, and on Natura 2000 sites. Of these impacts, wastewater and surface water pollution risks are not considered to be of significance due to the available capacity in the city's wastewater system and the use of SUDs measures designed into the scheme. Effects from artificial lighting from the development on bats is considered significant and requiring mitigation measures.
- 9.4.15. The cumulative impacts identified relate to increases in demand on services arising from implementing permitted developments in the vicinity of the proposed development. However, it is stated, that there is sufficient capacity in the wastewater and water systems. There is potential for cumulative effects of varying significance through the loss of habitats, conversion of open land to hard surfaces, and loss of pollutants and water pollution during construction phases of these adjacent developments. These impacts too are required to be addressed through the mitigation measures.

Mitigation Measures and Impact Assessment

- 9.4.16. In respect of mitigation measures, I note that several measures are identified to address significant effects associated with principally construction, but also operation, related effects. These include seasonal site clearance works outside of the nesting season or under instruction of an ecologist; limit damage to the grassland habitat where the public park is proposed through protection measures during construction and once operational through a seasonal mowing regime; removal of trees under supervision of a bat specialist; inspection of the riparian corridor of the Breagh River for otter holts prior to construction works on the access road and bridge; best practice site management during construction works to prevent water pollution and implementation of the CEMP; treatment of alien invasive species during the growing season; and preparation and implementation of an artificial lighting plan by an ecologist. With the implementation of these mitigation measures, the residual impacts are considered to not be significant.

- 9.4.17. In the accompanying NIS, the European Site screened in for assessment is the River Barrow and River Nore SAC. The conclusion of the NIS, and attested to the appropriate assessment contained in Section 8.0 of this report, is that provided mitigation measures are incorporated in full, there will be no significant direct, indirect or cumulative negative impacts on the integrity of the European Site. Mitigation measures include those to protect water quality in the Breagagh River, to fence off the Breagagh River and its riparian corridor during construction to prevent disturbance of the otter population, and that an ecologist reviews the final landscape plan with consideration given to artificial lighting, the riparian vegetation remaining intact and no insurmountable barriers installed.
- 9.4.18. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form part of the proposed scheme, by the proposed mitigation measures, and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects in terms of biodiversity, or on the species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC.

9.5. Land and Soils

Receiving Environment

- 9.5.1. Chapter 8 of the EIAR addresses land and soils. The chapter refers to the historic use of the site for sand and gravel extraction during the 1900s, and more recent grass cover and housing for horses. The presence of numerous spoil heaps and larger stockpiles of sand and gravel material across the site is referred to. The composition of the site is outlined with soils for the majority of the site comprising glaciofluvial sands and gravels, with mineral alluvium along the western part of the site associated with the Breagagh River; subsoils are limestone gravels, and sandstones and shale to the west; and bedrock for the full site of Ballyadams Formation, a limestone with clay wayboards.
- 9.5.2. There is no evidence of contamination in the site from EPA waste licencing records or ground investigations. Ground investigations, a combination of 25 boreholes and trial pits, typically indicate topsoil over made ground fill reflective of the site's

extractive industry use and the existence of stockpiles of material across the site. Gravels were identified as widespread across the site.

Construction, Operation and Cumulative Impacts

- 9.5.3. The principal construction phase impacts arise on soils and subsoils from the initial site clearance works and the removal of the stockpiles (estimated as 30,000m³); extensive stripping and widespread excavation of soils and subsoils for the project (estimated at 70,000 m³ with reuse in landscaped areas of 21,000 m³); on subsoils through contamination by construction-related fuel use and storage, construction traffic fuels and on-site storage of waste materials; and on subsoils through subsurface construction works, notably including a two-level basement carpark under the office blocks with a final level of 46.3m OD and the installation of the attenuation tank and surface water infrastructure in the Breagagh public park with a final level of 47.95m OD. While no land raising or importation of fill is anticipated, the potential requirement may result in contamination of subsoil if imported material is unsuitable.
- 9.5.4. The principal operation phase impacts are on subsoils and arise from contaminated surface water runoff from roads, hardstanding areas and a poorly designed drainage system. Cumulative impacts identified on the underlying geology of the area arise from the wider construction of buildings, infrastructure and hardstanding.
- 9.5.5. The construction, operation and cumulative effects are predicted to be short to long-term in duration and imperceptible to moderate in significance, the latter requiring mitigation measures.

Mitigation Measures and Impact Assessment

- 9.5.6. Mitigation measures intended to address the range of construction phase effects are set out in section 8.6.1 of the EIAR. I consider that these are extensive and wide ranging, including procedures for site investigations and soil sampling; for topsoil reuse and storage; for sequencing of soil and subsoil removal, excavation, and landscaping works; suitable surface water runoff and sediment control measures; procedures for fuel and waste material storage and disposal; implementation of measures included in the CEMP and the CDWMP. The mitigation measure for operation phase effect is the requirement for an appropriately design drainage

system to prevent contamination to underlying subsoils from road and parking area runoff.

- 9.5.7. Following the implementation of the mitigation measures, the predicted residual impacts to the underlying subsoils and bedrock geology are predicted to be long-term and imperceptible.
- 9.5.8. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form part of the proposed scheme, the proposed mitigation measures, and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative impact in terms of land and soils.

9.6. **Water Hydrogeology, Hydrology and Flooding**

- 9.6.1. Chapter 9 of the EIAR examines hydrogeology, hydrology and flooding. I highlight that a standalone SSFRA was prepared for the proposed development and accompanied the initial planning application. The study area of the SSFRA was subject to a FI request, and a memorandum on the FRA was included in the FI response (the study area remained unchanged). The SSRFA and FRA memorandum are read in conjunction with this chapter.
- 9.6.2. Additionally, I highlight that Chapter 15 Material Assets: Water Services of the EIAR examines and assesses the water services infrastructure (surface water, foul water drainage and water supply) for the proposed development.

Receiving Environment

- 9.6.3. With regard to hydrogeology, the majority of the site is underlain by the Kartisified limestone aquifer, and the northeast of the site by the Kilkenny sand and gravel aquifer, both of regional importance. Under GSI classifications of aquifer vulnerability, indicating the ease of groundwater to be contaminated by human activities, the majority of the site has a medium vulnerability rating based on the majority of subsoil being 5-10m in depth, while the west of the site has a low vulnerability rating corresponding with the Breagh River and its alluvial floodplain.
- 9.6.4. With regard to hydrology, the site is located in the South Eastern River Basin District in the Barrow catchments, and the Breagh River has a Water Framework Directive

(WFD) status of 'moderate' with a '1a at risk' status of not achieving good status as is the intent of the WFD.

- 9.6.5. With regard to flooding, the Breaghagh River has a documented history of flooding in OPW records. Flooding instances occurred at a location further along the river to the northeast of the site at Water Barrack Road in the city, and numerous times on Circular Road, in immediate proximity to the site. From the classifications and mapping in the South Eastern CFRAMS applicable for Kilkenny City, part of the site adjacent to the Breaghagh River is determined as being in Flood Zone A.

Construction, Operation and Cumulative Impacts

- 9.6.6. The principal construction phase impacts arise on groundwater and surface water from initial site clearance of the existing overburden and vegetative cover with sediment erosion and silt laden run off; on groundwater particularly through dewatering to enable excavation and construction works associated with the basement car park and surface water infrastructure and attenuation tank; on groundwater and surface water from contamination through fuel spillages and storage, waste production and storage, gases and pollutants, wash water from concrete trucks and machinery; on flooding and water quality in the Breaghagh River from soil stripping, silt laden run off, and construction works for the access road and bridge with earthen embankments over the river.
- 9.6.7. The principal operation phase impacts arise on groundwater and surface water from contaminated surface water runoff from roads, hardstanding areas and a poorly designed drainage system; on groundwater and surface water from reduced infiltration of rainwater to the underlying aquifers due to increased hardstanding; on flooding of the Breaghagh River from increased hardstanding and reduced rainfall infiltration with increased overland surface water flows; on flooding from the road, bridge and embankment construction in the Breaghagh River's floodplain which will lead to a decrease in flood storage capacity; and on groundwater and surface water from flooding in the basement carpark levels due to extreme surface water runoff events or the Breaghagh River flooding.
- 9.6.8. The potential for cumulative impacts from existing and other permitted development is identified as an increased risk to surface water and ground water conditions. In relation to flood risk on the Breaghagh River, existing development is incorporated

into current flood levels. The implementation of the mitigation measures is considered as the appropriate solution to address these impacts.

- 9.6.9. The construction and operation phase impacts range in their predicted effect from short to long-term in duration and imperceptible to profound in significance. In particular, the construction effects associated with contamination are classified as being adverse and moderate to significant, all requiring to be addressed through mitigation measures. The cumulative effects are predicted to be long-term in duration and imperceptible in significance.

Mitigation Measures and Impact Assessment

- 9.6.10. Mitigation measures intended to address the range of construction phase effects are set out in Tables 9.10 and 9.11 of the EIAR. I consider that these are extensive and wide ranging, and I highlight a number are similar to measures included to address related significant effects identified in Chapter 8 Land and Soils. Notable measures include procedures for site investigations and soil sampling; for topsoil reuse and storage; for sequencing of soil and subsoil removal, excavation, and landscaping works; suitable surface water runoff and sediment control measures; procedures for fuel and waste material storage and disposal; implementation of measures included in the CEMP and the CDWMP.
- 9.6.11. In respect of the operation phase, the incorporation of SUDs measures into the design of the scheme, with all surface water flows from the development draining to the new surface water network, being attenuated on site and discharging at a greenfield runoff rate, has ameliorated the significant effects. Similarly, in respect of flooding effects, mitigation measures have been incorporated into the design of the scheme through the SSFRA. Fundamentally, all proposed buildings are located in area identified as Flood Zone C, with the exception of the access road and bridge.
- 9.6.12. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form part of the proposed scheme, by the proposed mitigation measures, and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects in terms of hydrogeology, hydrology and flooding.

9.7. Air Quality and Climate

Receiving Environment

- 9.7.1. Chapter 10 of the EIAR examines air quality and climate. In establishing conditions of the local air quality, available sources from similar environments indicate key gases of NO₂ (nitrogen dioxide) and CO (carbon monoxide), and pollutants PM₁₀, PM_{2.5}, and benzene are below national ambient air quality limit values.

Construction, Operation and Cumulative Impacts

- 9.7.2. During the construction phase, the main sources of air quality and climate effects are identified as dust emissions from site preparation and construction activities, dust emissions from construction traffic and engine emissions PM₁₀/PM_{2.5} from construction vehicles and machinery. These are predicted to be short-term in duration, with potential for significant dust soiling 50m from source. The sensitive receptors, residences close to the site boundaries, are identified and a dust management plan has been prepared as a mitigation measure to minimise impacts on these. Effects from greenhouse gas emissions from construction vehicles and machinery are noted, however these are predicted to be short-term and imperceptible.
- 9.7.3. During the operation phase, the main air quality consideration relates to traffic derived pollutants and a change in traffic flows on the road network surrounding the site. A local air quality modelling assessment was undertaken to determine the traffic related effects arising from the operation of the proposal. Four receptors were selected as these were considered to represent the worst-case locations being closest to the site and within 200m of the road links that are likely to be impacted (indicated on Fig. 10.1). The modelling assessment used traffic information, including growth projections and cumulative data, generated for the proposed development.
- 9.7.4. The impact of the proposal on NO₂, PM₁₀, PM_{2.5}, CO and benzene are modelled for the opening year in 2022 and a design year in 2037. The results indicate that the proposed development will not exceed the national ambient air quality standards and the impact of these gases and pollutants are predicted to be long-term and imperceptible.

Mitigation Measures and Impact Assessment

- 9.7.5. There are two mitigation measures identified to address the construction phase effects on air quality and climate. These include the coordination, implementation and monitoring of a dust management plan under the remit of the main contractor (Appendix 10.3 of the chapter contains a detailed dust management plan); and the development of a system to ensure engines of all vehicles (on-site and delivery) are not left on running idly. Residual effects are identified for dust emissions and are predicted to be short-term and not significant once the dust management plan is implemented.
- 9.7.6. There are no mitigation measures required to address operation phase effects, and no residual effects predicted.
- 9.7.7. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form part of the proposed scheme, by the proposed mitigation measures, and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects in terms of air quality and climate.

9.8. **Noise and Vibration**

Receiving Environment

- 9.8.1. Chapter 11 of the EIAR addresses noise and vibration. Existing residential developments (single residences, residential street and housing estates) adjacent to the north, east and south of the site are identified. Baseline noise monitoring was undertaken during daytime hours in May 2019 at three boundary locations proximate to these noise sensitive receptors (indicated on Fig. 11.2).

Construction, Operation and Cumulative Impacts

- 9.8.2. The methodology employed establishes noise criteria threshold values for the construction phase of the project and generates associated noise impacts at four noise assessment locations (indicated on Fig. 11.3). The noise impacts generated during construction are described, including noise arising from site clearance, use of machinery and vehicles, building construction works, and landscaping works. Presented as the worst-case scenario, for the closest noise assessment location, without mitigation measures, the construction noise impact is considered to be

negative, significant and short-term. Vibration impacts are considered as neutral, imperceptible and short-term due to the construction method using standard excavation machinery.

- 9.8.3. During the operation phase, consideration is given to noise arising from road traffic and mechanical plant. The predicted change in noise levels generated from the traffic associated with the proposed development is predicted to be neutral, imperceptible, and long-term. The location of mechanical plant is stated as undetermined but will be located and designed to operate within the noise threshold values included in the chapter.
- 9.8.4. Potential for cumulative impacts arising from the construction of other adjacent permitted development is noted and stated as requiring the implementation of mitigation measures to ensure that such impacts are short-term and not significant. In respect of cumulative impacts during the operation phase, due to the noise levels associated with additional traffic levels being imperceptible, it is predicted that similarly sized developments are unlikely to give rise to a significant impact and any largescale development will likely require its own EIA.

Mitigation Measures and Impact Assessment

- 9.8.5. There are three mitigation measures proposed to address construction effects. These include compliance with the range of best practice control measures included in the relevant standard BS 5228 Parts 1 and 2 (2009, 2014); designation of an environmental liaison officer during construction works with a role of informing closest noise sensitive receptors; and phase working programme devised to minimise noise impacts and disturbance. It is envisaged that once these mitigation measures are implemented that noise can be reduced to within the noise threshold value limits, thereby residual effects are negative, moderate and short-term.
- 9.8.6. At operation stage, no specific mitigation measures are identified for traffic related noise, with residual effects being neutral, imperceptible and long-term. In respect of mechanical plant, it is stated that these will be sited, designed and attenuated to meet noise threshold values included in the chapter, and residual effects are negative, not significant and long-term.
- 9.8.7. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form

part of the proposed scheme, by the proposed mitigation measures, and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects in terms of noise and vibration.

9.9. **Material Assets: Traffic and Transport**

- 9.9.1. Chapter 14 of the EIAR examines traffic and transport as a component of the material assets environmental factor. The chapter contains a summary of the detailed TTA, which is a standalone report and is read in conjunction with this chapter.

Receiving Environment

- 9.9.2. The site is within the city's boundary, 1.1km to the nearest intercity/ national route serving bus stop, 2km to the train station and proximate to the regional and national road network. Several road improvements that have been, are being and are due to be undertaken in the short to medium term, are outlined. Most notable are the works referred to as the Western Environs Phase 1 to the west of the site, specifically, the upgrades of the Circular Road and Kilmanagh Road and provision of a new roundabout at their intersection, an arm of which is planned to allow access into the proposed development.

Construction, Operation and Cumulative Impacts

- 9.9.3. The principal construction phase impacts are an increase in traffic volumes which are not considered to be excessive due to the phasing of the development and the access points both have space for traffic to come off the public roads and enter the site thereby not causing significant disruption to traffic using same.
- 9.9.4. The principal operation phase effects are subject of examination in the TTA by estimating the arising traffic flows using TRICS. The figures generated for the range of land uses and predicted for each of the two vehicular entrances (as there is no link between these) include at the main entrance with the new roundabout 214 in the AM peak and 229 in the PM peak; and 15 in the AM peak and 17 in the PM peak at the Kennyswell Road entrance. The impact on four junctions is analysed using an opening year of 2022 and a design year of 2037. The impact on the new entrance on Kennyswell Road, the main entrance onto the Circular Road roundabout, the

existing College Road/ Circular Road roundabout (to the south of the site) are all determined to be imperceptible. The impact on the Kennyswell Road/ Dominic Street crossroads (northeast of the site) is considered as moderate.

- 9.9.5. Cumulative impacts associated with the permitted development in the vicinity of the site has been incorporated into the TTA by estimating the arising traffic flows also using TRICS.

Mitigation Measures and Impact Assessment

- 9.9.6. In respect of mitigation measures, the applicant proposes five measures to address construction related effects. These include the retention of all spoil and topsoil material associated with Phase 1 construction on the site until its removal can be undertaken using the main access entrance via the new roundabout; continued engagement with the Road Safety Auditors to ensure a safely designed and delivered scheme; the preparation by the contractor of a detailed Construction Traffic Management Plan; the preparation by the contractor of a Construction and Demolition Plan; and measures relating to reducing the number of construction vehicle movements such as use of prefabricated materials, reuse of soils on site within the scheme, and sufficient storage space on site. On implementation of the mitigation measures, the effects are considered to have a short-term, imperceptible, negative effect.
- 9.9.7. I note some of the terminology used and references to plans vary and/ or overlap (I understand the TMP to be part of the CEMP and the demolition plan to the CDWMP). I consider these mitigation measures to be necessary and appropriate.
- 9.9.8. On operation, the development will primarily use the significantly improved transport network adjacent to the site. There are no specific operation phase effects identified, as the traffic analysis predicts the traffic generated as a worst-case scenario that can be absorbed into the surrounding road network, and correspondingly no mitigation measures for same. Residual impacts arising at operation phase are predicted as being negative, moderate, and long-term.
- 9.9.9. A number of the effects relevant to traffic and transport, also correspond with issues raised in the appellant's case. Namely, traffic volumes, traffic safety and construction related impacts, which have been examined and assessed in Section 7.0 of this report.

9.9.10. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form part of the proposed scheme, by the proposed mitigation measures, and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects in terms of traffic and transport.

9.10. **Material Assets: Water Services**

Receiving Environment

9.10.1. Chapter 15 of the EIAR examines water services as a component of the material assets environmental factor. The chapter outlines that the existing IW wastewater network serving the site comprises 525mm to 600mm diameter sewer to the west of the site adjacent to the Breagagh River. Wastewater is sent to the municipal wastewater treatment plant in Kilkenny City, and treated wastewater is discharged into the River Nore. An existing 400mm diameter IW watermain is located along the northern edge of the site adjacent to Kennyswell Road, which has capacity for 250 dwellings. Water is extracted from a point in the River Nore.

Construction, Operation and Cumulative Impacts

9.10.2. The principal construction phase impacts include the provision of a new on-site wastewater network which will drain by gravity to the existing sewer on the west of the site, and of all new connections to the system resulting in disruption of existing services, which is predicted as short-term and not significant in effect. The principal operation phase impacts include increased surface water flows due to increased impermeable areas discharging to the Breagagh River, the impacts of which are not considered significant. Wastewater and water supply will be provided to the proposed development through existing networks, capacity in both systems has been indicated as existing to cater for the proposed development, and the impacts are considered as constant, permanent, and not significant.

9.10.3. I note that in relation to the water services infrastructure, measures have been incorporated into the design of the scheme to address otherwise negative significant effects arising from the proposed development. These include SUDs measures in the surface water design with on-site attenuation and maintaining greenfield runoff

rates, and water supply and wastewater infrastructure being subject to capacity assessments and prior connection agreements with IW.

- 9.10.4. The potential for cumulative impacts on water services infrastructure from adjacent permitted development is noted. In particular, is the increased demand placed on the water supply network from cumulative impacts. The existing IW watermain has capacity for 250 dwellings, and otherwise a new trunk main is planned to connect to an existing trunk main and then to the ring main adjacent to the site. These works are programmed for completion in Q4 2021, thereby within the likely implementation period of the proposed development.

Mitigation Measures and Impact Assessment

- 9.10.5. Mitigation measures intended to address the range of construction phase effects are set out in Section 15.6 of the EIAR. I consider that these are targeted and similar to measures in Chapter 9 Water Hydrogeology, Hydrology and Flooding. Notable measures include the siting and distance of the headwall of the outfall pipe to the edge of Breagagh River, the specific treatment of the channel between the outfall and river, and a silt barrier remaining in place along the river during the lifetime of the project, survey work to identify service infrastructure, consultation with other service providers, and procedures to ensure the minimisation of disruption to services. In respect of the operation phase, as the design and construction of water services will be in accordance with relevant guidelines and codes of practice, no further specific mitigation measures are required.
- 9.10.6. Residual impacts identified as remaining after implementation of the mitigation measures, such as unavoidable interruptions to built services during construction, and upgrades and routine maintenance to networks during operation are described as temporary and not significant, and permanent and beneficial respectively.
- 9.10.7. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form part of the proposed scheme, by the proposed mitigation measures, and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects in terms of water services.

9.11. Material Assets: Resources and Waste Management

Receiving Environment

9.11.1. Chapter 16 of the EIAR examines resources and waste management as a component of the material assets environmental factor. Available services in the vicinity of the site include a Gas Networks Ireland natural gas line in the adjacent road network, electricity by ESB Networks, broadband services by different providers, and household waste collection by different providers. In respect of waste, the presence of spoil heaps that removal to a licensed waste premise are noted.

Construction, Operation and Cumulative Impacts

9.11.2. The principal construction phase impacts relate to waste generated through the activities associated with the removal of spoil heaps, topsoil and subsoils for subsurface construction, and landscaping. New connections to the range of services are predicted cause temporary effects. While operation phase effects are associated with an increase demand in all services.

Mitigation Measures and Impact Assessment

9.11.3. There are three mitigation measures formulated to address the construction phase effects, namely consultation with relevant services providers to ensure provision is safe and timely; identification and risk assessment of services prior to excavation works in public areas; and appropriate on-site storage and off-site disposal of spoil or waste material generated. The implementation of the mitigation measures is stated as minimising the significance of the effect. In respect of the operation phase, the design and construction of the required services infrastructure will be in accordance with relevant guidelines and codes of practice, no further specific mitigation measures are required.

9.11.4. Residual impacts identified as remaining after implementation of the mitigation measures, such as unavoidable interruptions to built services during construction, and upgrades and routine maintenance to networks during operation are described as temporary and not significant, and permanent and beneficial respectively.

9.11.5. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form part of the proposed scheme, by the proposed mitigation measures, and through

suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects in terms of resources and waste management.

9.12. Archaeology and Cultural Heritage

Receiving Environment

- 9.12.1. Chapter 12 of the EIAR examines archaeology and cultural heritage. The site is identified as being in the townland of Robertshill which was historically part of an elevated ridge overlooking the Breagagh River valley. The site is 500m to the medieval walls of Kilkenny town, the western extent of which developed to the edge of the eastern slope of the ridge. The chapter indicates that much of the remaining greenfield land in the townland has been subject to previous disturbance, with historic and modern gravel extraction.
- 9.12.2. White Bridge, the stonewall along Kennyswell Road and the stonewall along the laneway to the rear of the properties on Fatima Place, serving as boundaries to the north and east of the site respectively, are thought to date from the 19th centuries. The remains of a small farmyard are identified in the northeast corner of the site, of 20th century in date and not significant.
- 9.12.3. There are no recorded archaeological monuments within the site or the Robertshill townland, but there are a number and range of monuments in the vicinity with the concentration to the east of Robertshill are associated with the development of the historic town. The closest is Kenny's Well, c. 167m to the northeast of the site.
- 9.12.4. There are no protected structures within the site or the Robertshill townland, but the site does border the western limit of the St. Mary's Architectural Conservation Area (ACA). Rothe Terrace and the eastern part of Kennyswell Road are located within the ACA.
- 9.12.5. Areas of archaeological potential and features of architectural interest are identified including areas along the Breagagh River (AP1) and around the remains of the farmyard (AP2); and the features of White Bridge (AH1), Rothe Terrace in St. Mary's ACA (AH2), the northern boundary wall along Kennyswell Road (AH3), and the eastern boundary wall along the laneway to the rear of the properties on Fatima Place (AH4).

Construction, Operation and Cumulative Impacts

9.12.6. The principal construction phase impacts are on subsurface archaeological remains on areas AP1 and AP2, and feature AH2 which are identified as potentially significant/ significant, likely, and permanent. The effects from the alterations to the boundary walls are identified as moderate, significant, and permanent. The principal operation phase impact arises from archaeological material being exposed in the AP1 area in/ along the Breagagh River, which is predicted to be potentially significant, unlikely, and permanent.

Mitigation Measures and Impact Assessment

9.12.7. There are four mitigation measures formulated to address the construction phase effects, namely the requirement for pre-construction archaeological testing; retention of key features in the scheme including White Bridge, and the northern and eastern boundary walls with the sections removed to provide for new accesses (vehicular and pedestrian) being limited to maximise the structural integrity and a pre-construction photographic record of boundary walls to be prepared and lodged to Kilkenny County Library; additional recommendations for/ of these architectural features to be undertaken in consultation with a relevant specialist; and all Development Plan management standards in respect of St. Mary's ACA to be incorporated. The implementation of the mitigation measures reduces the predicted effects on any remaining features to slight or imperceptible.

9.12.8. For the operation phase effect, in the event of archaeological material being exposed in the Breagagh River or the parkland area, a mitigation measure is identified as being necessary as to inform the future management of the site to prevent any impacts to same.

9.12.9. Residual impacts include the loss of remaining greenfield in the townland, loss of evidence of the elevated ground from which the townland derived its name, archaeological information retrieved by record.

9.12.10. I note the National Monuments Service of the Development Applications Unit provided a report to the Planning Authority recommending conditions for archaeological monitoring of groundworks in the instance of a grant of permission.

9.12.11. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form part of the proposed scheme, by the proposed mitigation measures, and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects in terms of archaeology and cultural heritage.

9.13. **The Landscape**

9.13.1. Chapter 13 of the EIAR examines the landscape. The chapter references a number of supplementary documents which I have read in conjunction with same. These include the Architectural Design Statement including Internal CGI views, the landscaping plans and boundary treatments. For clarity, the landscaping plans were amended and updated in the FI response to the Planning Authority, and the following assessment, as relevant, refers to and is of the subsequent documentation.

9.13.2. I highlight at this point, the examination in Section 7.0 of the Planning Assessment above (specifically Section 7.4.40) of the requirement for the ground floor apartments in building Types A, E, F, G, H and L to have a minimum 2.7m floor to ceiling height. In terms of assessment, the worst-case scenario is for a visual impact through an increase in principal building heights by between 0.15m for Type G and a maximum of 0.225m for Types E and L. I consider this to be a marginal increase and have incorporated this allowance into my assessment.

Receiving Environment

9.13.3. The site is described in terms of its historical and present-day context, its key features, types of boundaries, and notable views and out of the site. The landscape of the site is not considered to be sensitive or vulnerable to change, nor of high landscape character value. Views eastwards across the site to St. Mary's Cathedral in the city centre are notable.

Construction, Operation and Cumulative Impacts

9.13.4. The principal construction phase impacts are increased traffic related visual effects, hoarding, scaffolding, cranes, storage of soils, waste and materials, and fencing off the Breaghagh River.

9.13.5. The principal operation impacts are examined from 7 available viewpoints (A-G), considered for different receptors. From some of the viewpoints the built forms and streetscape of the proposal will be visible. The effects on the landscape vary expectedly in extent, quality, and duration with two views considered as being significantly affected (C from existing houses on Kennyswell Road towards the proposed houses in the north of the site, and D from the back lane of Fatima Place into the northeast area of the site).

Mitigation Measures and Impact Assessment

9.13.6. There are three mitigation measures formulated to address the construction and, to a lesser degree, operation phase effects. These include the implementation of the landscape masterplan in accordance with the phased construction of development; planting within the first planting season at a stage after construction but prior to occupation of residences; and the retention and protection of existing planting along the Breagh River during construction and subsequently in operation.

9.13.7. Residual impacts are identified. The implementation of the mitigation measures is predicted to reduce effects from certain viewpoints to largely moderate and imperceptible. Notably, View D is lessened in effect to moderate and positive though View C will continue to have a significant, minor negative, permanent effect. While accepting the change is permanent, it is considered that the landscape character of the overall area will only be altered in a minor way by introducing a built form into an edge-of- city greenfield site.

9.13.8. I note that the chapter features block outlines as opposed to photomontages of the proposed development. While I consider that photomontages would have been preferable, it has not prevented me from undertaking this assessment. I have been able to supplement the assessment with the other supplementary plans and particulars, including the range of plans and section drawings of and through the proposal, 'Render Views', and internal CGI views included in the Architectural Design Statement. I consider that the site is an edge site in visual and landscape terms whereby the character of the site will change from greenfield to built environment with landscaping, and will be read as part of an urban expansion. The character of the wider area is unlikely to be significantly altered due to the existence of similar designed and scaled buildings, namely Reade Court and Robertshill

estates in the vicinity of the site, the upgraded and widened Circular Road as a definitive urban edge, and the fact that the character of the wider area is currently of a transitional character when regard is also given to the permitted developments to the north and west of the site on greenfield sites.

9.13.9. A number of the effects relevant to the landscape, also correspond with issues raised in the appellant's case. Namely, screening and boundary treatment to the rear of properties on Rothe Terrace, which have been examined and assessed in Section 7.0 of this report.

9.13.10. In conclusion, I am satisfied that all likely significant effects would be avoided, managed, and mitigated by the measures which have been designed into and form part of the proposed scheme, by the proposed mitigation measures, and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects in terms of the landscape.

9.14. **Interactions Between the Environmental Factors**

9.14.1. Chapter 17 of the EIAR examines the significant interactions between each of the environmental factors, presented in a matrix format, and refers to cumulative effects from adjacent permitted development. I have considered the main aspects of the proposed development and the ways in which these interact within the environmental factors and cause interrelated effects. I have examined these interrelationships between factors and whether they might together affect the environment, even though the effects may be acceptable on an individual basis. The chapter does not identify any residual risk of significant negative interaction between any of the factors and no further mitigation measures were required.

9.14.2. For the proposed development, I consider the most notable significant interactions, arising from both positive and negative effects, between the environmental factors (as listed in Article 3(1) of the EIA Directive 2014/52/EU) to include:

- Population and human health with the landscape, air and climate (including noise and vibration), and material assets (including each sub-component of traffic and transport, water services, and resources and waste management);

- Biodiversity with land and soils, water (hydrogeology, hydrology and flooding), and the landscape;
- Land and soils with water, material assets, the landscape, and biodiversity;
- Water with land and soils, material assets, and biodiversity;
- Air quality and climate with population and human health, material assets, and land and soils;
- Material assets with population and human health, land and soils, water, and air quality and climate, and biodiversity;
- Cultural heritage with land and soils, and the landscape; and
- The landscape with population and human health, land and soils, water, and biodiversity.

9.14.3. In conclusion, I am satisfied that the effects arising from implementing the proposed development can be avoided, managed and mitigated by the measures which have been incorporated into the design of the project, targeted mitigation measures, and suitable conditions. There is, therefore, nothing to prevent the granting of permission on the grounds of interactions between the environmental factors.

9.15. Reasoned Conclusion on the Significant Effects

9.15.1. I have had regard to the examination of environmental information contained above, in particular to the EIAR and supplementary environmental information provided by the applicant including in the NIS, SRAA, TTA, CEMP, SSFRA, the FRA memorandum, and landscaping plans; to the responses and/ or submissions from the applicant, appellant, Planning Authority, prescribed bodies and observers in the course of the planning application and appeal. I consider that the main significant direct and indirect effects of the proposed development on the environment, which through the implementation of the targeted mitigation measures, predominantly decrease from negative to imperceptible, are as follows:

- On population and human health arising from the creation of a new community through the provision of residences, places for employment and recreational activities;

- On the landscape through the permanent change from a greenfield site to an urban environment and the development of the Breaghagh Park;
- On material assets due to an increase in vehicular, pedestrian and cycle activity on the surrounding road network; in demand on the existing water services systems and additional surface water run-off; and in demand for the disposal of construction and operation waste;
- On land and soils at surface through site clearance, soil removal, hardstanding and buildings; and at subsurface through the construction of the basement car parking and the surface water attenuation tank;
- On biodiversity through the loss of habitats of local value and importance, and on fauna using the site including the river such as otter, bat and fish populations;
- On hydrogeology and hydrology through the construction of the access road and the bridge over the Breaghagh River in part of the floodplain; and
- On archaeological heritage through the excavation as necessary of material exposed through site clearance works.

10.0 Recommendation

10.1. Having regard to the above, it is recommended that permission be granted based on the following reasons and considerations, and subject to the attached conditions:

11.0 Reasons and Considerations

Having regard to the following:

- (a) Policies and objectives on consolidated growth in targeted urban locations in National Planning Framework,
- (b) Policies and objectives in the Regional Spatial and Economic Strategy for the Southern Region, which identifies Kilkenny City as a significant key town,
- (c) Policies and objectives in the Kilkenny City and Environs Development Plan 2014-2020, in particular Z1: Robertshill Mixed Use Zoning objective,

- (d) Terms of Kilkenny County Development Contribution Scheme 2016-2017,
- (e) Policies and SPPRs on appropriate building height in Urban Development and Building Heights, Guidelines for Planning Authorities, 2018,
- (f) Policies on appropriate density in Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009,
- (g) Policies and SPPRs on apartments in Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2020,
- (h) Policies in the Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009,
- (i) Policies in Design Manual for Urban Roads and Streets, 2013, as amended,
- (j) Policies in Childcare Facilities, Guidelines for Planning Authorities, 2001,
- (k) the nature, scale and design of the proposed development,
- (l) the contents of the Environmental Impact Assessment Report, Natura Impact Statement, and other supplementary documentation submitted by the applicant (as amended by the further information submitted on the 20th May 2020),
- (m) the range of mitigation measures set out in the submitted Environmental Impact Assessment Report and Natura Impact Statement (as amended by the further information submitted on the 20th May 2020),
- (n) the availability in the area of a range of social, community and transport infrastructure,
- (o) the planning history of the site and within the area,
- (p) the pattern of existing and permitted development in the area, and
- (q) the submissions made in the course of the planning application and appeal,

it is considered that, subject to compliance with the conditions set out below, that the proposed development:

- would be in accordance with applicable national, regional and local policy,
- would constitute an acceptable mix of land uses and residential density at this location,

- would not seriously injure the residential or visual amenities of the area or of property in the vicinity,
- would be acceptable in terms of design, height and quantum of development,
- would be acceptable in terms of traffic safety and convenience, and
- would not be prejudicial to public health.

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

12.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further information submitted on 22nd May 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>All mitigation and monitoring measures outlined in the plans and particulars, including the Environmental Impact Assessment Report, as set out in Chapter 18 of the EIAR ‘Summary of Mitigation Measures’ and in the Natura Impact Statement, as set out in ‘Step 4: Mitigation’ submitted with application, as amended by the further information submitted on 22nd May 2020, shall be carried out in full, except where otherwise required by conditions attached to this permission.</p> <p>Prior to the commencement of development, the developer shall submit a schedule of mitigation measures as identified to the planning authority for its written agreement.</p> <p>Reason: In the interest of clarity, and to protect the environment.</p>
3.	<p>The proposed development shall be amended as follows:</p> <p style="padding-left: 40px;">(a) The ground floor apartments in building Types A, E, F, G, H and L shall be provided with a minimum 2.7m floor to ceiling height.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	<p>Reason: To ensure compliance with Section 28 Guidelines, and to protect residential amenity.</p>
4.	<p>The period during which the development hereby permitted may be carried out shall be seven years from the date of this Order. The development shall be carried out on a phased basis, in accordance with the Phasing Plan lodged with the application, as amended by the further information submitted on 22nd May 2020, in respect of the provision of surface water infrastructure.</p> <p>Reason: In the interests of clarity, and to ensure the timely provision of development and supporting infrastructure.</p>
5.	<p>Details of the materials, colours and textures of all the external finishes to the proposed buildings, including bicycle and bin storage units, shall be as submitted with the application unless otherwise agreed in writing with the planning authority prior to commencement of development.</p> <p>Reason: To protect the visual amenities of the area.</p>
6.	<p>Details of the layout, height, materials and external finishes of the front and rear screen/ boundary walls to residences, and site boundaries shall be as submitted with the application unless otherwise agreed in writing with the planning authority prior to commencement of development.</p> <p>Reason: To protect the residential and the visual amenities of the area.</p>
7.	<p>The use of the two ground floor units in the local services centre shall be within the definition of 'shop' in the Planning and Development Regulations, 2001, as amended.</p> <p>Reason: In the interests of clarity, and to protect the residential amenity of adjacent properties.</p>
8.	<p>Details of all security shuttering, external shopfronts, lighting, and signage for the retail units, offices, childcare facility, and nursing home shall be agreed in writing with the planning authority prior to their-occupation.</p> <p>Reason: In the interest of clarity, and to protect the visual amenities of the area.</p>

9.	<p>No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.</p> <p>Reason: In the interest of clarity, and to protect the visual amenities of the area.</p>
10.	<p>Proposals for a development name, offices and retail units identification and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.</p> <p>Reason: In the interest of urban legibility.</p>
11.	<p>Proposals for an estate/ street name, house/ apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house/ apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/ marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).</p> <p>Reason: In the interest of urban legibility, and to ensure the use of locally appropriate place names for new residential areas.</p>
12.	<p>Comprehensive details of the proposed public lighting system, which shall include lighting along pedestrian routes through open spaces, to serve the development shall be submitted to and agreed in writing with the planning authority, prior to installation of the lighting. The agreed lighting system shall be fully implemented and operational before any of the residences and/ or commercial units are made available for occupation.</p> <p>Reason: In the interest of public safety and visual amenity.</p>

13.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interests of visual and residential amenity.</p>
14.	<p>The final details of each of the following shall be agreed in writing with the planning authority prior to commencement of development:</p> <ul style="list-style-type: none"> a) speed cushions on the R695 to the east of the Kennyswell Road entrance, b) vehicular entrances (onto Kennyswell Road and Circular Road roundabout), c) pedestrian entrances (onto the laneway at the rear of Fatima Place), d) the internal road network including turning bays, junctions, parking areas, footpaths and kerbs, and the underground car park, e) the bridge and access road over the Breagagh River, and f) cycle tracks. <p>These shall be in accordance with the detailed construction standards of the planning authority for such works, and design standards outlined in DMURS and the National Cycle Manual issued by the National Transport Authority.</p> <p>Reason: In the interest of amenity, traffic and pedestrian safety, and sustainable transportation.</p>
15.	<p>a) The car parking facilities (including a total of 760 spaces) hereby permitted shall be reserved solely to serve the proposed development. 485 clearly identified car parking spaces shall be assigned permanently for the residential development (including visitor) and shall be reserved solely for that purpose. These residential spaces shall not be utilised for any other purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission.</p>

	<p>b) The bicycle parking facilities (including a total of 371 spaces) hereby permitted shall be reserved solely to serve the proposed development. 278 clearly identified bicycle parking spaces shall be assigned permanently for the residential development (including visitor) and shall be reserved solely for that purpose.</p> <p>b) Prior to the occupation of the development, a Car and Bicycle Parking Management Plan shall be prepared for the development and shall be submitted to and agreed in writing with the planning authority. This plan shall provide for the permanent retention of the designated residential car and bicycle parking spaces and shall indicate how these and other spaces within the development shall be assigned, segregated by use and how the car and bicycle parking shall be continually managed.</p> <p>Reason: To ensure that adequate parking facilities are permanently available to serve the residential units and the commercial development, and to prevent inappropriate commuter parking.</p>
16.	<p>A minimum of 10% of all car parking spaces should be provided with EV charging stations/ points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of EV charging points/ stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, the development shall submit such proposals shall be submitted and agreed in writing with the Planning Authority prior to the occupation of the development.</p> <p>Reason: To provide for and/ or future proof the development such as would facilitate the use of Electric Vehicles.</p>
17.	<p>The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive landscaping plans and particulars lodged with the application, as amended by the further information submitted on 22nd May 2020, unless otherwise agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of residential and visual amenity.</p>

18.	<p>The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, constructed, and landscaped in accordance with the landscaping plans and particulars lodged with the application, as amended by the further information submitted on 22nd May 2020, unless otherwise agreed in writing with, the planning authority prior to commencement of development. This work shall be completed in accordance with the Phasing Plan and such areas shall be maintained as public open spaces by the developer until taken in charge by the local authority and/ or management company.</p> <p>Reason: In the interest of nature conservation, residential amenity, and to ensure the satisfactory development of the public open space areas and their continued use for this purpose.</p>
19.	<p>A schedule of landscape maintenance shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development. This schedule shall cover a period of at least three years, and shall include details of the arrangements for its implementation.</p> <p>Reason: To provide for the satisfactory future maintenance of this development in the interest of visual amenity.</p>
20.	<p>(a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.</p>
21.	<p>(a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/ bin storage, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.</p>

	<p>(b) Details of the management company contract, and drawings/ particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the commercial and/ or residential units are made available for occupation in Phase 2 of the Phasing Plan.</p> <p>Reason: To provide for the satisfactory future maintenance of this development, and in the interest of residential amenity.</p>
22.	<p>Surface water drainage arrangements for the proposed development shall be agreed in writing prior to commencement with the planning authority.</p> <p>Reason: In the interest of public health.</p>
23.	<p>The developer shall enter into water and/ or waste water connection agreement(s) with Irish Water, prior to commencement of development.</p> <p>Reason: In the interest of public health.</p>
24.	<p>The construction of the development shall be managed in accordance with a Construction Environmental Management Plan (CEMP), in accordance with the commitments included in the outline CEMP and the Environmental Impact Assessment Report lodged with the application, as amended by the further information submitted on 22nd May 2020, which shall be agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including finalised traffic management measures, and off-site disposal of construction/ demolition waste. In particular, this plan shall stipulate that construction traffic for Phase 1 of the Phasing Plan lodged with the application, as amended by the further information submitted on 22nd May 2020, shall use the Kennyswell Road entrance. Construction traffic for all remaining phases shall only use the Circular Road entrance. Deviation from this arrangement may be facilitated in limited circumstances subject to prior written agreement with the planning authority.</p> <p>Reason: In the interest of protecting the environment, amenities, public health and safety.</p>

25.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
26.	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,</p> <p>(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and</p> <p>(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
27.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies)</p>

	<p>may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
28.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.</p>
29.	<p>The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities (in respect of Roads infrastructure only calculated at 46% of the floorspace of the proposed development) benefiting development in Kilkenny County Council's administrative area that is provided or intended to be provided by or on behalf of the Local Authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000, as amended.</p> <p>The amount of the financial contribution shall be paid upon commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. In accordance with the current scheme the amount of the contribution is calculated at €426,621.94 (four hundred and twenty six thousand, six hundred and twenty one euros and ninety four</p>

	<p>cents). Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme. In particular, the social housing provision included in the Part V agreement subject of Condition 27 of this grant of permission shall be exempted from payment of the Roads infrastructure contribution.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Phillippa Joyce
Senior Planning Inspector

9th March 2021