



An  
Bord  
Pleanála

## Inspector's Report ABP-312283-21

### Development

Retain and complete mixed-use development (residential and retail) in 5 three storey blocks

### Location

Mount Usher View, Ashford, Co. Wicklow.

### Planning Authority

Wicklow County Council

### Applicant(s)

Vartry Developments Limited

### Type of Application

Application under section 177E of the Planning and Development Act, 2000 (as amended) for Substitute Consent

### Observer(s)

- (1) Joe Kavanagh
- (2) Konrad & Katherine Jay
- (3) Stuart Martin
- (4) Pdraig Humby
- (5) Robert Kavanagh
- (6) Brian Walsh

(7) Ashford Development Association  
Limited

(8) Niall Waldron

**Date of Site Inspection**

6<sup>th</sup> December 2023

**Inspector**

Louise Treacy

## **1.0 Introduction**

- 1.1. This report provides an assessment of an application for substitute consent to retain and complete a mixed-use development (retail and residential) in 5 no. 3-storey blocks, located at Ashford, Co. Wicklow, under Section 177E of the Planning and Development Act, 2000 (as amended). The application has been made by Vartry Developments Ltd. who are stated to have acquired the site in July 2020. It follows a decision by An Bord Pleanála to grant the applicant leave to apply for substitute consent on 22<sup>nd</sup> July 2021 (ABP Ref. 309566-21 refers), which concluded that exceptional circumstances exist such that it would be appropriate to permit the regularisation of the development through the submission of this application.
- 1.2. The Planning and Development, Maritime and Valuation (Amendment) Act, 2022 (Commencement of Certain Provisions) (No. 2) Order 2023 (S.I. 645 of 2023) came into effect on 16<sup>th</sup> December 2023. The Commencement Order brings into operation sections (10) to (21), sections (23) to (40) and subsections (8) to (12) of section (41) of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022. Consequently, as now required, the assessment of this application for substitute consent includes consideration of ‘exceptional circumstances’.

## **2.0 Site Location and Description**

- 2.1. The subject site has a stated area of approx. 1.19 ha and is located at Mount Usher View, Ashford, Co. Wicklow. The site is located on the western side of the junction of Mount Alto Road (local road L1096) and Main Street (regional road R772) at the southern end of the town. The northern portion of the site fronts directly onto Main Street, while the southern portion fronts onto Mount Alto Road. The slope of the site increases noticeably from north to south and from east (front) to west (rear). The rear site boundary is characterised by a steep rock face with vegetation.
- 2.2. The site currently accommodates a partially completed mixed-use development, arranged in 5 no. blocks. The development has been subject to vandalism, resulting in a poor streetscape context at this location. The site is enclosed by hoarding along the public footpath, with only the northern end being accessible at the time of the inspection. The remainder of the development is visible from the surrounding public road network.

- 2.3. Blocks A and B are located towards the northern end of the site and are characterised by blockwork which has been completed to 1<sup>st</sup> floor level only. Blocks C and D are located on the southern end of the site fronting onto Mount Alto Road and are 3-storeys in height. These blocks have been substantially completed and are characterised by projecting bay windows and rendered façades. Block E is located on the southwestern portion of the site, to the rear of Blocks C and D, and comprises 4 no. semi-detached dwellings of 2.5-storeys in height. These units have been completed to roof level but appear to be unrendered and are not weather tight.
- 2.4. The site is adjoined to the north by a petrol station and associated retail unit and by a detached dwelling to the south. The lands to the rear (north-west and south-west) are elevated above the site and accommodate detached residential dwellings. A 2-storey, detached residential dwelling and a 2-storey commercial unit are located on the opposite side of Mount Alto Road to the south-east of the appeal site, fronting onto Main Street (regional road R772).

### **3.0 Proposed Development**

- 3.1. The development for which substitute consent is sought consists of the development permitted under Planning Authority Reg. Ref. 081704 (as extended under Planning Authority Reg. Ref. 14118) for a mixed-use residential, retail and office development consisting of 24 no. residential units (20 no. 3-bedroom, terraced houses above either retail or office space and 4 no. 4-bedroom, semi-detached houses) in 5 no. blocks. This permission was implemented in 2015, with the site being regraded and construction commencing on the 5 no. blocks. Only Blocks C and D (11 no. residential units with offices below) were substantially progressed to completion stage, with work halting on the site in 2016.
- 3.2. The development as described by the applicant currently consists of:
- Blocks A & B consisting of 9 no. 2.5 storey, terraced houses with retail (528 m<sup>2</sup>) below are completed to pad or 1<sup>st</sup> floor plate level only.
  - Blocks C & D consisting of 11 no. 3-storey, terraced houses with ground floor offices are complete.

- Block E consists of 2 no. 2.5 storey, semi-detached houses and is complete to roof level but not weather tight. (For the avoidance of doubt, I would note that Block E includes a total of 4 no. semi-detached houses).

3.3. Vehicular access from Mount Alto Road (L1096) is available at the north-eastern and south-eastern ends of the site. Site services have been installed, or lands cleared for that purpose, over an area of approx. 0.93 ha to facilitate ancillary site development works that will be completed in accordance with Planning Authority Reg. Ref. 08/1704.

3.4. The construction of a new 300 mm diameter surface water sewer on Main Street which will discharge to the Vartry River was proposed as part of the development but did not commence during the construction works which have already been carried out on the site.

## 4.0 Planning History

4.1. **ABP Ref. 309566-21:** Application for leave to apply for substitute consent granted by the Board on 22<sup>nd</sup> July 2021 for the retention and completion of a mixed-use development in 5 no. 3-storey blocks.

4.2. **Planning Authority Reg. Ref. 18/603; ABP Ref. 303081-18:** Planning permission refused on 27<sup>th</sup> July 2020 for the retention and completion of development commenced under Planning Authority Reg. Ref. 08/1704. In refusing permission to retain and complete the development, the Board was not satisfied beyond reasonable scientific doubt, that the development for which retention permission was sought, would not have had significant effects on The Murrough Wetlands SAC (site code: 002249) and The Murrough SPA (site code: 004186) and therefore, that the development for which retention was sought, would have required Appropriate Assessment.

4.3. **Planning Authority Reg. Ref. 16/105:** Planning permission refused on 31<sup>st</sup> March 2017 to retain 11 no. 3-storey residential terraced units as constructed (Blocks C&D) and permission to complete same; permission for 9 no. 2-storey, terraced residential units over 9 no. retail units in 3 storey blocks (A&B); permission for 6 no. semi-detached, 3-storey, 4-bedroom units in Block E (4 no. permitted under reg. ref.

08/1704); retention and completion of all ancillary site works and services including landscaping and boundary treatments.

- 4.4. Permission was refused for 1 no. reason on the basis that the proposed development would endanger public safety by reason of a serious traffic hazard because it had not been demonstrated that a safe entrance, in terms of sightline distances and traffic turning movements, could be provided to serve the development.
- 4.5. **Planning Authority Reg. Ref. 14/1188:** Extension of duration of Planning Authority Reg. Ref. 08/1704 granted until 15<sup>th</sup> August 2019.
- 4.6. **Planning Authority Reg. Ref. 08/1704:** Planning permission granted on 18<sup>th</sup> May 2009 for 528 m<sup>2</sup> retail space and 24 no. houses (20 no. 3-bedroom terraced and 4 no. 4-bedroom semi-detached units).

## 5.0 Policy Context

### 5.1. Wicklow County Development Plan 2022-2028

#### 5.2. Core / Settlement Strategy

- 5.2.1. Ashford is identified as a level 5 settlement, “Small Town – Type 1” in the county hierarchy. The Core Strategy provides for an average growth rate of c. 20% between 2016 and 2031 across the 5 no. settlements in this tier, which is a population increase of approx. 1,500 persons. Ashford will significantly exceed this target due to legacy housing developments under construction. The goal for the town is to limit further development, other than for town centre / infill / regeneration.
- 5.2.2. **Zoning Principle 1 (Compact Growth):** In accordance with National Policy Objective 3c of the National Planning Framework, a minimum of 30% of the housing growth targeted in any settlement is to be delivered within the existing built-up footprint of the settlement.
- 5.2.3. For levels 1-5 of the settlement hierarchy, and in cognisance that the potential of town centre regeneration / infill / brownfield sites is difficult to predict, there shall be no quantitative restriction inferred from the Core Strategy and associated tables, on the number of units that may be delivered on town centre regeneration / infill / brownfield sites.

- 5.2.4. **Zoning Principle 2 (Delivery of Population and Housing Targets):** Town centre regeneration / infill / brownfield developments normally located within the existing built-up part of the settlement, generally on lands zoned 'town centre', 'village centre', 'primary area', 'existing residential' and other similarly zoned, already developed lands will be prioritised and promoted in the first instance for new housing development.
- 5.2.5. **Zoning Principle 3 (Higher Densities):** It is an objective of the Council to encourage higher residential densities at suitable locations, particularly in existing town / village centres and close to existing or proposed major public transport corridors and nodes.
- 5.2.6. **Zoning Principle 4 (Sequential Approach):** A sequential approach for new residential development will be taken, with priority location 1 relating to the densification of the existing built-up area, re-use of derelict or brownfield sites, infill and backland development.
- 5.2.7. **Objective CPO 4.2:** To secure compact growth through the delivery of at least 30% of all new homes within the built-up footprint of existing settlements by prioritising development on infill, brownfield and regeneration sites and redeveloping underutilised land in preference to greenfield sites.
- 5.2.8. **Objective CPO 4.3:** Increase the density in existing settlements through a range of measures including bringing vacant properties back into use, reusing existing buildings, infill development schemes, brownfield regeneration, increased building height where appropriate, encouraging living over the shop and securing higher densities for new development.
- 5.3. **Town and Village Centres**
- 5.3.1. **Objective CPO 5.1:** To protect and maintain the viability of town and village centres, target the reversal of decline and deliver sustainable reuse and regeneration outcomes.
- 5.3.2. **Objective CPO 5.2:** To protect and increase the quality, vibrancy and vitality of town and villages centres by promoting and facilitating an appropriate mix of day and nighttime uses, including commercial, recreational, civic, cultural, leisure and

residential uses and to control uses that may have a detrimental impact on the vitality of the streetscape and the public realm.

- 5.3.3. **Objective CPO 5.3:** To particularly promote and facilitate residential development in town and village centres.

#### 5.4. **Housing**

- 5.4.1. **Objective CPO 6.7:** The design and layout of new residential and mixed-use development shall deliver highly permeable, well-connected streets which facilitate active street frontage in accordance with best practice set out in the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (DEHLG May 2009) and the Design Manual Urban Roads and Streets (DTTS & DECLG 2013).
  - 5.4.2. **Objective CPO 6.13:** To require that new residential development represents an efficient use of land and achieves the minimum densities as set out in Table 6.1 subject to the reasonable protection of existing residential amenities and the established character of existing settlements.
  - 5.4.3. A density standard of 30-40+ units for mainly residential schemes is identified for centrally located sites in small towns such as Ashford. The development and design standards for mixed use and residential housing developments are set out in Appendix 1, Section 3.0 of the plan.
  - 5.4.4. **Objective CPO 6.16:** To encourage and facilitate high quality well-designed infill and brownfield development that is sensitive to context, enables consolidation of the built environment and enhances the streetscape.
- #### 5.5. **Car / Bicycle Parking**
- 5.5.1. Car parking standards are set out in table 2.3 (Appendix 1 of the plan). The minimum standard for dwellings of 3-4 bedrooms in locations where public transport and parking enforcement are not available, is 2 spaces per unit. Retail uses require 4 no. spaces per 100 m<sup>2</sup> of floor area.



## 5.6. Ashford Town Plan 2022-2028

## 5.7. Land Use Zoning

- 5.7.1. The majority of the site is subject to a “TC – Town Centre” zoning, which has the objective “to provide for the development and improvement of appropriate town centre uses including residential, retail, commercial, office and civic use”. A small section of the site along its rear boundary is zoned “RE – Existing Residential” which has the objective “to protect, provide and improve residential amenities of existing residential areas”. The site is also located within the regeneration boundary of the town centre area as illustrated on map no. 4 of the plan.
- 5.7.2. The development plan does not identify permissible uses under each zoning objective. Rather, the Planning Authority shall determine each proposal on its merits and shall only permit the development of uses that enhance, complement, are ancillary to, or neutral to the zoning objective. Uses that are materially inconsistent with and detrimental to the zoning objective shall not be permitted.

## 5.8. Housing

- 5.8.1. **Objective ASH1:** New residential development shall comply with the principles, objectives and standards set out in the Wicklow County Development Plan.

## 5.9. Economic Development and Employment Objectives

- 5.9.1. **Objective ASH2:** To facilitate and support the development of Ashford Town Centre in accordance with the provisions of this plan and to encourage the development of new employment, including but not limited to retail / retail services, business support services (such as solicitors, accountants, architects, etc), start-ups etc within the TC zone.

## 5.10. Service Infrastructure

- 5.10.1. Ashford is served by the Wicklow Sewerage Scheme, which has sufficient capacity to meet the needs of the plan area up to 2031. The town is served by the Wicklow Water Supply Scheme, which has sufficient supply to meet the projected population needs of the town.

**5.11. Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities, (2024)**

- 5.11.1. These Guidelines set out national planning policy in relation to the planning and development of settlements and housing. Guidance in relation to small and medium sized towns such as Ashford (1,500 – 5,000 population), is set out in Section 3.3.4. Given the range of settlement types in this tier, Planning Authorities will need to refine density standards (as per table 3.6) to respond to local circumstances. Appropriate densities should be refined based on the criteria of accessibility and considerations of character, amenity and the natural environment as per Section 3.4 of the Guidelines. The strategy for such towns is to support consolidation within and close to the existing built-up footprint.
- 5.11.2. Development standards for housing are set out in Chapter 5. Specific Planning Policy Requirements (SPPR) are set out for separation distances (SPPR1), minimum private open space standards, car parking (SPPR3) and cycle parking and storage (SPPR4). Guidance is also provided in relation to public open space standards and the assessment of acceptable levels of daylight.

**5.12. Quality Housing for Sustainable Communities Best Practice Guidelines for Delivering Homes Sustaining Communities (2007)**

- 5.12.1. These Guidelines set out target gross floor areas for a range of different dwelling types. The target gross floor area for 3-bedroom, 3-storey, 5-person dwellings is 102 m<sup>2</sup> (Blocks C, D and E of the subject development refer). Guidance is also provided in relation to the minimum floor area of living rooms, bedrooms and storage areas.

**5.13. Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2022)**

- 5.13.1. These Guidelines identify the minimum floor areas and standards for apartment units (duplex units in Blocks A and B of the development refer). The key standard in this instance is an overall floor area requirement of 90 m<sup>2</sup> for a 3-bedroom unit, with storage space of 9 m<sup>2</sup>, private amenity space of 9 m<sup>2</sup> and communal amenity space of 9 m<sup>2</sup>. Minimum requirements are also identified for minimum living room/kitchen dining room and bedroom widths and areas.

5.13.2. Cycle parking is required at a rate of 1 cycle storage space per bedroom, with visitor parking required at a rate of 1 space per 2 no. residential units. A benchmark guideline for car parking for apartments in peripheral or less accessible urban locations is 1 space per unit, with visitor parking at a rate of 1 space for every 3-4 units.

#### 5.14. **National Planning Framework**

5.14.1. The following National Policy Objectives (NPOs) are noted:

5.14.2. **NPO 3(a):** Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.

5.14.3. **NPO 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.

5.14.4. **NPO 35:** Seeks to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

### 6.0 **Planning Authority Report**

6.1. A report on the application was received from Wicklow County Council on 17<sup>th</sup> January 2022. The report includes, inter alia, information in relation to Ashford's position in the county settlement hierarchy and the site's zoning objective.

6.2. The Chief Executive recommends that substitute consent be granted as the proposed development would not result in significant effects on the environment or a European site, would be acceptable in terms of traffic and pedestrian safety, would not result in adverse impacts on the amenities of the area and adjoining properties, would comply with the zoning objective for the site, and would therefore, be in accordance with the proper planning and sustainable development of the area. Suitable planning conditions are identified in the event the Board grants substitute consent in this instance.

## 7.0 Third Party Observations

7.1. A total of 8 observations has been made on the application by: (1) Ashford Development Association Ltd., River Run Studio, Nun's Cross, Ashford, Co. Wicklow, (2) Niall Waldron, Cuan na Carraige, Mount Alto, Ashford, Co. Wicklow, (3) Brian Walsh, Kingfisher, Main Street, Ashford, Co. Wicklow, (4) Robert Kavanagh, Mount Alto, Ashford, Co. Wicklow, (5) Padraig Humby, The Chester Beatty Inn, Main Street, Ashford, Co. Wicklow, (6) Joe Kavanagh, Attwood, Ballinalea, Ashford, Co. Wicklow, (7) Stuart Martin, Cois Dara, Main Street, Ashford, and (8) Konrad & Katherine Jay, Mount Usher Gardens, Ashford, Co. Wicklow.

7.2. The issues which are raised can be summarised as follows:

- Site notices inaccurate/invalid.
- The developer intends to seek permission for a completely new development which has no bearing on the previous permission.
- The whole site requires redevelopment/demolition. A new planning permission is required rather than substitute consent.
- The Supreme Court ruled in *An Taisce v McQuaid* that the failure to make provision for public participation at the leave to apply for substitute consent stage is inconsistent with the public participation rights conferred by and outlined in the EIA Directives.
- Substitute consent should not be applied to a non-regularised development at any time.
- Potential impacts on surface water quality of the River Vartry. The developer should not be permitted to develop a new surface water sewer given the sensitivity of the river and potential impacts on Natura 2000 sites.
- The concerns of Wicklow County Council in relation to foul, surface water and water services have not been addressed. The applicant's attenuation calculations are difficult to interpret.
- Environmental issues with the combined trench to the front of the site which accommodates water, sewerage, surface water and electrical services. A

demolition order must include the built structures above and below ground before any retention or planning permission is considered.

- The proposed cutting of the cliff face to accommodate an underground car park is a major environmental issue, with no geological study or expert geologist attached to the project. Such excavations will destabilise the foundations of the houses built above the cliff and the current excavations have already caused damage.
- No details provided of the rock face treatment post excavation.
- Slag piles from previous face cutting have not been removed.
- The proposed development does not adhere to the objectives for Ashford as set out under the Draft LAP 2022.
- The granting of substitute consent would overlook many previous deficiencies in the development, which should be fairly assessed under a new planning application.
- AA screening report contains misleading information in relation to surface water, the rNIS contains inaccuracies and only considers the previous construction phase and not the future construction phase and operational phase. The rNIS does not consider the impact of constructing a surface water sewer along the full length of Main Street.
- No history of compliance with the legal requirements of planning law. Conditions issued by Wicklow County Council and An Bord Pleanála have not been complied with.
- Road safety concerns – no road safety audit submitted. The sightline requirements at the site junction should not be relaxed as any collision may impact on the dwelling to the east of the development (Kingfisher). The barrier installed to the rear of this property is inadequate and incorrectly fitted.
- Structural damage to adjacent residential property due to rock breaking and noise impacts on the existing business operated at this location.
- No existing Block F on the site – new planning application required for this development.

- Blocks C & D are built in the incorrect position and are too close to the roadside. The position of the first dwelling adjacent to the southern access is incorrect, which has narrowed the entry/egress.
- Windows to Blocks C & D are out of character with the area and should not be allowed.
- Surface water seepage from the rock face to the rear cannot be rectified and will result in inhabitable living accommodation.
- The inclusion of community meeting rooms within the site would be a waste of financial resources, with such facilities better accommodated on a greenfield site.
- The existing site structures are becoming more derelict and are an unacceptable visual blight on the village.
- The site poses a health and safety hazard which attracts vermin, vandalism and littering.
- An Bord Pleanála's decision to refuse retention permission should be retained and any attempt to use substitute consent should be denied.
- The site shows poor surface water soakage in the event of prolonged rain. Future calculations of the absorption capacity of the ground must take into account the scale of excavation proposed and the escarpment to the rear, which will funnel water towards street level.
- If pollution of the River Vartry was to occur, it would have a serious impact on Mount Usher Gardens.
- The proposed plans for the disposal and attenuation of wastewater, surface water run-off and storm water drainage remain inadequate and pose an unacceptably high risk of serious pollution to the Vartry River, Mount Usher Gardens, lands downstream and the Murrough saltmarshes.
- The developer should be required to carry out an EIA under a new planning application to confirm beyond scientific doubt, that the good status of the Vartry River will not be compromised in any way by their development.

- There are no special circumstances which would enable the development to be retained.

## 8.0 Prescribed Bodies

- 8.1. **Inland Fisheries Ireland (4<sup>th</sup> March 2022):** Notes that the River Vartry is a site of conservation sensitivity. Best practice measures identified to prevent impacts on surface waters. Suitable conditions identified in the event substitute consent is granted.
- 8.2. **Irish Water:** None received.
- 8.3. **Fáilte Ireland:** None received.
- 8.4. **The Heritage Council:** None received.
- 8.5. **An Taisce:** None received.
- 8.6. **Dept. of Housing, Local Government and Heritage:** None received.
- 8.7. **An Chomhairle Ealaíon:** None received.
- 8.8. **Transport Infrastructure Ireland (TII):** TII has no observations to make on the application (report received on 23<sup>rd</sup> February 2022 refers).

## 9.0 First Party Response

- 9.1. A first party response to the third-party submissions, the Planning Authority's report and the submissions of the prescribed bodies was received from the applicant on 19<sup>th</sup> October 2022. The response can be summarised as follows:
  - A valid site notice was erected. Third party observations have been received and there can be no doubt that there has been ample opportunity for any third party to engage in public participation.
  - The planning status of the partially completed units must be regularised before the site can be developed further. This can only be achieved through the substitute consent process. The planning merits are such that consent should be granted in this instance.
  - Part V proposals were submitted as part of the substitute consent application.

- There is a substantial history of planning approvals and refusals on the site. There has also been changes in ownership, together with broader economic circumstances, which have delayed the development and made it unviable to complete.
- The water quality concerns raised in the previously refused application (ABP Ref. 303081-18) have been addressed, including in the remedial NIS.
- The applicant is not seeking permission for a completely new development. The changes to what was previously approved are covered by what is essentially a retention application in the form the current substitute consent application. Minimal changes are proposed to what was previously permitted.
- The rNIS has considered the development in its entirety. All submitted material demonstrates no negative impacts arise to the water quality of Natura 2000 sites.
- The site currently presents an eyesore and there is no possibility that it can remain as it is. It is an appropriately zoned, brownfield site in a prominent town centre position and should be developed consistent with the principles of recent government advice entitled “Town Centre First”.
- No previous concerns were expressed by the Planning Authority or the Board regarding the proximity of the development to the main road. Any criticism on this basis is unjustified from an urban design perspective.
- The failure to make provision for public participation at the leave to apply for substitute consent stage is a matter for consideration by the legal advisors of An Bord Pleanála and the State. It is not considered that any interested party has been inconvenienced or disadvantaged in any way in this process. The suggestion by the objectors that an alternative application would better place them to object is not true.
- Wicklow County Council and An Bord Pleanála have not expressed any previous concerns in relation to the design of the development. The current application seeks minor changes to the development that has already been permitted.



- The substitute consent procedure is available to regularise those elements on the site which are to be retained. A demolition order is unnecessary, and the current planning process should be allowed to run its course.
- No significant surface water pathway to the River Vartry existed during the construction works which have been carried out. The proposed surface water pipe from the site was not constructed during these works.
- The weak hydrological connection to the River Vartry and Wicklow Bay via the existing combined surface network and the weak hydrogeological pathway via groundwater flows were found to have negligible potential for significant impacts to The Murrough Wetlands SAC and SPA. A series of mitigation measures to protect the water quality of the River Vartry during the construction phase are provided in the rNIS.
- A surface water sewer is proposed but not built. Surface and foul water are separated on site to best practice. There is no reason why private developers cannot fund and implement infrastructure to accommodate their development. The proposal to lay this pipe was previously agreed with the Planning Authority under Planning Authority Reg. Ref. 18/603, so the principle is established and accepted.
- There is no direct discharge to the River Vartry and consequently, no waste water discharge whatsoever further downstream to the Natura 2000 sites.
- A Certification of Feasibility from Irish Water accompanies the response. There is adequate pressure in water supply at the upper level of the site. Any concerns regarding the proximity of water infrastructure and service ducts could be addressed by planning condition if greater separation is required.
- The surface and foul water sewers are separate. Attenuation calculations are contained in the engineering report submitted with the application.
- There is no combined trench proposed in this instance irrespective of what was previously proposed. All drainage services will be taken in charge to the standards of Wicklow County Council and Irish Water.
- It is considered that the rock face is capable of being excavated. Testing of the rock will be carried out prior to construction and detailed method

statements for rock excavation and soil nailing (if necessary) will be developed. The applicant will accept a planning condition to this effect.

- Should substitute consent be granted, on site slag piles will be removed off site. This matter can be addressed by condition.
- The application falls to be determined in accordance with the adopted County and Town Plan, which were in place at the time the application was prepared and submitted to the Board. No provision is contained within the Planning and Development Act, 2000 (as amended) that any application should or can be determined against a draft plan.
- There is no road widening objective in the adopted County / Town plan. It is proposed to reinforce the existing “Armco” roadside barrier as illustrated on Drawing No. 930/244A/C04/2 prepared by Molony Millar.
- The appearance of the windows and façade materials can be addressed by condition.
- A Flood Risk Assessment has been submitted. The site is not located within a flood zone.
- There is sufficient open space to provide a reasonable level of amenity on this infill, brownfield site. Some 1,726 m<sup>2</sup> is proposed which is marginally below the required standard of 1,785 m<sup>2</sup>. The site is proximate to Mount Usher Gardens and other recreational areas and open space.
- SuDS measures are integrated into the proposed design and a petrol interceptor is also proposed. The site is unsuitable for a full range of SuDS measures due to the site rock and the prevailing topography.
- No impacts to surface water are anticipated during the operational phase. Regular maintenance and inspection of surface water infrastructure can be conditioned if planning permission is granted.
- The submitted attenuation figures are based on 100-year plus 20% climate change, which is accepted as standard practice. The site is not located in an environmentally sensitive area and there are no environmentally sensitive receptors in close proximity.

- Neither the Vartry River nor Mount Usher Gardens are protected European sites and are therefore not considered as part of the Appropriate Assessment process.
- All construction works carried out on site and all proposed works were fully assessed in the accompanying rNIS. The potential for significant impacts to downstream European sites during the operational phase of the development were found to be negligible.
- The applicant had no involvement in the implementation of previous planning applications on the site.
- No road safety concerns have been raised by Wicklow County Council in their comments on the application.
- The sightlines are 2.0 m x 49 m in accordance with DMURS for 50 kmph.
- Vibration monitors will be installed, and vibration limit levels set to prevent damage to buildings during the construction works and a planning condition will be accepted to this effect. The project engineers have reviewed the photographs provided in the submission of D. Robert Kavanagh and have concluded that they are not of serious structural significance.
- Construction working hours can be limited by condition.
- Block F is outside the confines of this substitute consent planning application and will require a separate application.
- The entrance to the proposed car park is 135 mm higher than the main road (see Drawing No. 930/244/C01-1).
- Surface water from the on-site rock will be collected in gullies and acodrains, which is standard, and will feed into the surface water network. There will be no seepage of water into any structures.
- The proposed community rooms will meet local needs. Larger facilities, where needed, can be availed of elsewhere in the town.
- The obtaining of substitute consent should be acknowledged by the Board as a necessary step to regularising in planning terms, the existing on-site development.

- The refusal reasons issued in relation to the previous application on the site (ABP Ref. 303081-18) are addressed in the current application documents.
- The storm water outlet is limited to a rate of 12.55 l/s. Wastewater and surface water runoff are separated in the first instance. Surface water is collected in an attenuation tank, with discharge limited to an acceptable level. There is no unacceptable rate or quality of runoff to the River Vartry, Mount Usher Gardens, downstream or to any Natura 2000 sites.
- An EIA is not required in this instance. The site does not exceed any thresholds for which EIA is mandatory and the likely impact itself is not considered significant in terms of the EIA Directive and available guidelines.

9.2. The response includes a copy of correspondence from Uisce Éireann which confirms that water and wastewater connections can be facilitated subject to a valid connection agreement being put in place.

### 9.3. **Applicant's Response to Section 132 Notice**

9.3.1. The Board issued a Section 132 notice to the applicant on 12<sup>th</sup> October 2023 requesting the submission on/before 1<sup>st</sup> November 2023 of the following:

“Such information as you consider material for the purposes of the Board’s satisfying itself on the question of the existence or not of exceptional circumstances that would justify a grant of substitute consent by the Board. In this regard you should note that the Board is precluded from granting such consent unless it is now satisfied that exceptional circumstances exist, irrespective of whether this matter was already previously assessed by the Board at any leave for substitute consent phase or was not required to be assessed at that stage.

You should also note that the Board shall not be bound by, take account of or otherwise have regard to any previous decision it made in respect of this question and will, in that context, consider the matter by way of a Board constituted of members who were not previously involved in assessing this question in respect of the development the subject of the application”.

9.3.2. The applicant submitted a response to this request on 31<sup>st</sup> October 2023 which can be summarised as follows:

- The development would not in any way circumvent the objectives of either the Environmental Impact Assessment Directive or the Habitats Directive. The process for determining the effect on the environment or on any designated site has been carried out in accordance with best practice and appropriate regulations.
- The applicant in this case was relatively recently involved with the site, having passed through the hands of developers, builders and receivers. The applicant has made all reasonable attempts to rectify all planning matters on the site. Section 177I(2)(e)(i) correspondence from Wicklow County Council confirms their continued support for the subject development.
- Submissions on the applications have been received from 2<sup>nd</sup> and 3<sup>rd</sup> parties. A response to these submissions has been provided by the applicant and if there is material of a substantial nature in this submission, there can be a further readvertisement. The applicant is not aware of any substantive issues raised at this stage that 2<sup>nd</sup> and 3<sup>rd</sup> parties were not already aware of.
- The potential effects on The Murrough Wetlands SAC and The Murrough SPA are addressed in the remedial NIS which concludes that the development did not, and will not, impact significantly on either designated site.
- These designated sites and the River Vartry will be protected through a series of mitigation measures to protect water quality during the construction of the surface water sewer. SuDS measures and a petrol interceptor are also proposed. No impacts on surface water are anticipated during the operational phase. Regular maintenance of all surface water infrastructure can be required by condition.
- There was no significant hydrological or hydrogeological pathway from the site to the River Vartry or downstream European sites during the works already undertaken on the site.

- The works already undertaken on the site would have had a negligible effect on any designated site. The permitted surface water sewer and headwall discharging to the River Vartry were never constructed. The mitigation now proposed for these aspects of the development will ensure no impact will occur, with the effects arising being negligible.
- Wicklow County Council has not taken enforcement action against the applicant in this instance. The applicant was not involved in implementing the previous permission pertaining to the site or with the management of the site.
- The circumstances around why substitute consent is required in this instance is exceptional.
- The application on the site for retention permission (PA Reg. Ref. 18603) was granted by the Planning Authority but was subject to a third-party appeal. During the course of determining the appeal the Board decided that the proposed surface water discharge should have progressed to a Stage 2 AA.
- In view of the retention element of the proposal and the requirement for AA, the appeal was incapable of being determined by the Board. Were it not for this, it is considered that planning permission would have been granted by the Board. This outcome required the obtaining of substitute consent for the works undertaken.
- The site is located in the town centre and is zoned for town centre development in the Ashford Town Plan 2022. Government guidance, including the “Town Centre First Policy” (2022) advocates bringing into productive use, brownfield, central, zoned and serviced sites, especially residential.
- The population projections contained in the 2022 County Plan have been superseded. This plan underestimated population growth based on 2016 Census figures, which would indicate there is a requirement to zone additional land in the county.
- The existing incomplete development would meet at least some of the housing demand in the county and the State.

- It makes sense to grant substitute consent in this instance, where there is no negative impact on the environment.
- The development complies with the relevant provisions of the county and town plans 2022.
- No issues are raised in the town plan with respect to water supply or wastewater.
- The site remains within the town centre and existing residential zoning and is now located within the “regeneration and renewal area” of the town, which fully supports rather than hinders the development.
- There is no amenity order relating to this town centre site.
- There is no requirement for a remedial EIAR.
- Wicklow County Council has confirmed in their submission that relevant history files, all relevant information, enforcement-related correspondence and relevant development plan information has been provided to the Board.
- Wicklow County Council is not aware of any current, anticipated or previous significant effects on the environment and are of the opinion that substitute consent should be granted in this instance.
- The applicant is happy to accept the planning conditions identified by the Planning Authority.

## 10.0 **Assessment**

10.1. Having undertaken an inspection of the site and having reviewed the contents of the application and the submissions made by third parties, prescribed bodies and the Planning Authority, I am satisfied that the issues for consideration in this case include:

- Exceptional Circumstances
- Principle of the Development / Application
- Overall Standard of Development
- Impact on Neighbouring Properties

- Wastewater and Surface Water Management
- Remedial Appropriate Assessment

10.2. Each of these issues is addressed in turn below.

### 10.3. **Exceptional Circumstances**

10.3.1. The tests / matters to have regard to in considering exceptional circumstances in an application for substitute consent are set out in Section 30 of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022. Section 30 amends Section 177K of the 2000 Act as follows:

**(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive.**

10.3.2. The need to submit this substitute consent application has arisen on foot of the refusal of permission issued under ABP Ref. 303081-18 whereby the Board determined that the development for which retention permission was sought, would have required Appropriate Assessment. In such circumstances, the Board concluded it was precluded from granting permission for the development.

10.3.3. This substitute consent application includes a remedial Appropriate Assessment Screening Report and a remedial NIS, and as such, I am satisfied that the proposed development would not circumvent the purpose and objectives of the Habitats Directive. Having regard to the nature and scale of the development, comprising a mixed-use scheme of 24 no. dwelling units above either retail or office space on an urban infill site, I am also satisfied that the requirement to undertake a remedial Environmental Impact Assessment does not arise in this case.

**(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised.**

10.3.4. The applicant acquired the site in July 2020, which coincided with the Board's determination on the previous application to retain and complete the existing development. The applicant subsequently sought leave to apply for substitute consent (ABP Ref. 309566-21 refers). As such, it is evident that the applicant was aware that the development was unauthorised.



10.3.5. In my opinion, the applicant's knowledge of the site planning history would not preclude the granting of substitute consent in this instance if deemed appropriate by the Board, given that this process is the only mechanism through which the status of the existing development may be regularised.

**(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired.**

10.3.6. No. The applicant advertised their intention to lodge this application by the appropriate form of public notice as submitted to the Board on 16<sup>th</sup> December 2021. This development does not require the undertaking of a remedial Environmental Impact Assessment. The application is accompanied by a remedial NIS which was made available for review on the Board's website. The public has had the opportunity to review the information contained within this assessment, and to provide their commentary in relation to same through the making of submissions to the Board (see summary of third-party submissions in Section 7.0 of this report).

**(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.**

10.3.7. No actual or likely significant effects on the environment on foot of the proposed development have been identified. The only pathway which existed for adverse effects on the integrity of a European site (The Murrough SPA and The Murrough Wetlands SAC) during the construction phase was a weak hydrological pathway via the combined sewer network and a weak hydrogeological pathway. The potential for significant effects via these pathways during the construction phase was negligible.

10.3.8. The proposed construction of the new surface water sewer on Main Street and discharging to the Vartry River could have resulted in potential impacts on The Murrough SPA and The Murrough Wetlands SAC due to possible discharges of surface waters containing sediment, silt and other pollutants. The construction of this surface water sewer has not been commenced, and as such, no such impacts could have arisen. The remedial NIS which accompanies the application sets out detailed

mitigation measures to avoid any such future impacts in the event substitute consent is granted for the completion of the development.

**(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.**

10.3.9. No remedial mitigation measures are identified / required.

**(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.**

10.3.10. On-site works undertaken in 2015-2016 resulted in enforcement action by Wicklow County Council (ref. UD 4470C). A copy of the enforcement correspondence from this time has been provided to the Board by the Planning Authority. The site was not within the applicant's ownership at this time. In my opinion, the applicant is making appropriate efforts to regularise the status of the existing development on the site through the substitute consent procedure.

**(g) such other matters as the Board considers relevant.**

10.3.11. These matters are considered in full within the following sections of my report.

10.3.12. I have had regard to the previous Board considerations with reference to the applicant's exceptional circumstances with reference to their leave to apply for substitute consent and that decision stands apart from my assessment of this case. In addition, I note the submissions received from the applicant with reference to this current application for substitute consent and the exceptional circumstances as they have been set out and reiterated. Given the foregoing, I am satisfied that the applicant has adequately demonstrated there are exceptional circumstances pertaining with specific reference to Section 177K(1J) of the Planning and Development Act, 2000 (as amended).

#### **10.4. Principle of the Development / Application**

10.4.1. This application seeks substitute consent to complete a development which was originally granted permission by Wicklow County Council in 2009 (Planning Authority Reg. Ref. 08/1704 as extended under Planning Authority Reg. Ref. 14/118). This permission was part implemented on the site, but the development was not completed, and the previous planning permissions have now expired. The Board subsequently refused permission to retain and complete the development under ABP

Ref. 303081-18. In reaching its decision, the Board considered that the development had the potential to have significant effects on European sites and would have required AA. In that circumstance, the Board considered it was precluded from granting permission.

10.4.2. While the third parties submit that the whole site requires demolition/redevelopment, that a new planning application is required, and that substitute consent is not the appropriate application procedure in this instance, I am satisfied that the applicant is following the correct process in seeking to regularise the status of the existing, part-completed development as provided for under Part XA of the Planning and Development Act, 2000 (as amended). In this regard I note that the development will continue to be adjudicated on its merits.

10.4.3. In considering the principle of the development, I note that the Wicklow County Development Plan, the Ashford Town Plan, the recently adopted Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities and the NPF continue to promote the mixed-use development of town-centre sites in the interests of promoting the efficient use of zoned, urban land. In my opinion, the proposed development remains consistent with the existing policy context pertaining to the site. As such, I am satisfied that the principle of the development remains acceptable.

#### 10.5. **Overall Standard of Development**

10.5.1. The proposed residential units significantly exceed current **floorspace** requirements with reference to the Apartment Design Guidelines and the Quality Housing for Sustainable Communities Guidelines. The floor area of the units in Blocks C and D has been increased by 21 m<sup>2</sup> above that permitted, through the inclusion of a playroom and utility room at the rear of the office space at ground floor level. In my opinion, these amendments are acceptable and would not materially alter the overall nature and scale of the development as originally permitted. In the interests of clarity, I note that the ground floor offices within these blocks form part of each residential unit, rather than comprising separate commercial units.

10.5.2. The applicant highlights that Blocks A and B were originally permitted with 'A' pitched dormer windows (see Drawing No. 2018\_013\_3.1.005) but has included drawings which illustrate flat dormers to these blocks, to reflect those which have been

implemented on Blocks C and D. In my opinion, either window treatment would be appropriate at this location, but I note that the flat roof dormer (as shown on Drawing Nos. 2018\_013\_3.1.102 and 2018\_013\_3.1.104) may be most appropriate in the interests of consistency. In my opinion the provision of flat roof dormer windows to these blocks would not be a material alteration to the permitted development and I consider that this matter can be addressed by condition should the Board decide to grant substitute consent.

10.5.3. The applicant also highlights changes which have been made to the units in Block E (semi-detached dwellings). The units as granted accommodated a garage with 2 no. car parking spaces and storage at ground floor level, with bedrooms at the upper ground floor level and kitchen and living accommodation at 1<sup>st</sup> floor level. An internal stairway is now proposed within the garage space at ground floor level to provide access to the upper floors, resulting in the loss of one car space. The accommodation on the upper ground floor and 1<sup>st</sup> floor levels has also been switched. The Planning Authority has recommended that 2 no. car parking spaces be provided to house type E as originally permitted (condition no. 8 of the Planning Authority's report refers).

10.5.4. I consider that the alterations which are proposed to Block E are acceptable given that they comprise internal modifications to each unit. In considering the reduced car parking at ground floor level within the units, I note that 1 no. additional car parking space is identified for each unit adjoining the amenity space beside this block (Proposed Lower-Level Site Plan Drawing No. 3.1.099 refers). As such, each unit in Block E will continue to be served by 2 no. car parking spaces and the attachment of a condition in relation to this matter is unnecessary in my opinion.

10.5.5. The **private open space** for each of the residential units is confirmed in the applicant's Housing Quality Assessment. The 3-bedroom duplex units in Blocks A and B are provided with rear gardens ranging in size from 67 m<sup>2</sup> – 78 m<sup>2</sup>, which significantly exceeds the required minimum standard (9 m<sup>2</sup>). SPPR2 of the Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities, 2024 requires that minimum private open space of 40 m<sup>2</sup> be provided for 3-bedroom dwellings. All the 3-bedroom units in Blocks C, D and E have private rear gardens which range in size from 60.6 m<sup>2</sup> – 73.8 m<sup>2</sup>. As such, I am satisfied that the quantum and layout of the private open space is acceptable.

- 10.5.6. Policy and Objective 5.1 of the 2024 Guidelines requires that not less than 10% and not more than a minimum of 15% of the net site area of mixed-use developments with a residential element shall be provided as **public open space**. Two parcels of communal open space are proposed on the north-western and western portions of the site, to the rear of Block A and adjacent to Block E. A small play space of 150 m<sup>2</sup> for children up to the age of 6 is also proposed between these parcels of open space. The total open space figure is 1,726 m<sup>2</sup> which includes the amenity lands at the centre of the site (2 no. parcels), grassed areas and native tree and shrub planting to the north and west of the central area and the playground. This quantum exceeds 10% of the site area, excluding the public roads. In my opinion, the layout and quantum of the communal open space is acceptable.
- 10.5.7. The Planning Authority has recommended that detailed proposals of the design and layout of the public open space and of all boundary treatments, including the design and finish of all retaining walls and structures, be submitted for written agreement prior to the commencement of development (condition no. 7 of the Planning Authority's report refers). Given the infill and sloping nature of the site, I consider that this is a reasonable requirement. This matter can be address by condition should the Board decide to grant substitute consent in this instance.
- 10.5.8. Each of the residential units in Blocks A, B, C and D have 2 no. surface **car parking** spaces. A total of 13 no. universal access car parking spaces are provided across the site. The remaining spaces (29 no.) will serve the retail units/visitors. Table 2.3 of Appendix 1 of the county development plan identifies a parking standard of 4 spaces per 100 m<sup>2</sup> for town centre retail uses, which equates to a requirement for 20 no. spaces based on a stated retail area of 506.4 m<sup>2</sup>. While I note that the Design Standards for New Apartments Guidelines for Planning Authorities, 2022 identify a car parking standard of 1 no. space per apartment unit, I consider that the provision of 2 no. spaces for the duplex units in Blocks A and B is acceptable having regard to the somewhat peripheral location of the site and the limited public transport services in Ashford. On balance I consider the proposed parking provision to be acceptable.
- 10.5.9. No **bicycle parking** is identified on the site plan drawings. While Blocks B, C and D have rear garden access and Block E has garage storage at ground floor level, I note that the duplex units in Block A have no rear garden access. I consider that

these units should be provided with secure cycle parking facilities. Visitor cycle parking should also be provided. This matter can be addressed by condition.

- 10.5.10. There are 2 no. **vehicular entrances** into the site, one located at the north-eastern corner of the site serving Block A and the second located at the south-eastern site corner serving the remainder of the development. A raised table is proposed across the latter junction and the required sightlines in accordance with DMURS standards are stated to have been achieved. The applicant's Engineering Report also states that the structural strengthening of the existing Armco collision barrier opposite this junction on Mount Alto Road is proposed. The Planning Authority has recommended that appropriate conditions be attached regarding the submission of final details of works adjacent to the public road and a Stage 3 Road Safety Audit (condition nos. 11 (a) and (b) of the Planning Authority's report refers). In my opinion, these requirements are reasonable and can be addressed by condition.

#### 10.6. **Impact on Neighbouring Properties**

- 10.6.1. The third-party observers submit that the existing site structures constitute an unacceptable visual blight on the village. It is submitted that the site poses a health and safety hazard which attracts vermin, vandalism and littering. It is also considered that the windows to Blocks C and D are out of character with the area and should not be permitted.
- 10.6.2. The third parties also raise concerns that the proposed excavation of the rock face to the rear of the site will destabilise the foundations of the houses above. It is submitted that the previous excavations have already caused damage and that slag piles have not been removed from the site. It is noted that there is no geological study provided with the application and no geological expert attached to the project. Concerns are also raised in relation to noise arising on foot of rock excavations and water seepage from the rock face, which it is submitted, will result in inhabitable living accommodation.
- 10.6.3. I acknowledge that the existing, part-completed development, which has been subject to vandalism and is enclosed by hoarding at the public road, has a significant negative visual impact on the character of Mount Alto Road and the southern end of Main Street, including neighbouring residential dwellings. However, in submitting this

substitute consent application, I am satisfied that the developer is seeking to resolve the planning status of the site and to address these issues through completing the previously permitted development.

10.6.4. The applicant acknowledges that the windows to Blocks C and D were permitted with a pitched roof profile but have been constructed as flat dormer windows and are proposed to remain as such. In my opinion, the design of the windows as constructed is acceptable and has no negative impact on the character of the streetscape.

10.6.5. In addressing the third-party concerns in relation to on-site rock excavation, the applicant submits that the rock face is capable of being excavated, that rock testing will be carried out prior to construction and that detailed method statements for rock excavation and soil nailing (if necessary) will be developed. I consider this to be a reasonable approach to these construction issues and I note that the Planning Authority has previously granted planning permission for the proposed development on the subject site. In my opinion, these matters, and other construction issues, can be agreed with the Planning Authority prior to the commencement of development should the Board decide to grant substitute consent in this instance.

#### **10.7. Wastewater and Surface Water Management**

10.7.1. Third parties have raised concerns regarding the site surface water, wastewater and stormwater infrastructure/management proposals. It is considered that the plans which have been submitted remain inadequate and pose an unacceptably high risk of serious pollution to the Vartry River, Mount Usher Gardens, downstream lands and the Murrough saltmarshes.

10.7.2. Dedicated surface water sewers have been constructed on the site under Planning Reg. Ref. 08/1704 (as illustrated on Molony Millar Drawing No. 930-244A-C02). There is an existing 225 mm diameter combined Local Authority sewer located along Mount Alto Road to the front of the site, which connects to a 300/375 mm combined sewer on Main Street. It is proposed to discharge surface water runoff from the site to a new 300 mm diameter surface water sewer on Main Street, discharging to the Vartry River. I note that Inland Fisheries Ireland has recommended appropriate conditions be attached in relation to the construction of this sewer if substitute consent is granted.

- 10.7.3. Run-off from the site will drain to a surface water attenuation tank of 400 m<sup>3</sup> on the north-eastern part of the site, which has been designed to accommodate the 100-year return storm event plus a 20% allowance for climate change. The gravity outfall from the tank will be controlled by a Hydrobrake at an equivalent greenfield discharge rate of 12.55 l/s and will flow to the proposed surface water sewer. A Klargest petrol bypass interceptor is proposed to deal with fuel related pollutants from the access roads and parking bays.
- 10.7.4. The subsoil under the site is rock, and as such, is unsuitable for infiltration. Final discharge from the site will be limited to the current greenfield discharge rate. To reduce and attenuate surface water flows, the principles of SuDS will be incorporated through interception storage, comprising rainwater butts to the rear rainwater downpipes on all residential units, with the proposed landscaping providing some further limited storage. The nature of the underlying rock does not allow for the inclusion of any conventional soil infiltration devices, while the proposed pitched roofs cannot accommodate green roofs.
- 10.7.5. A Flood Risk Assessment is included with the application. The site is located within Flood Zone C (low risk) for all sources of flooding and the assessment concludes there is no risk of fluvial or coastal flooding or flooding from pluvial sources. Groundwater flooding is not a key risk at the site.
- 10.7.6. Foul water sewers have also been constructed on the site under Planning Reg. Ref. 08/1704 (as illustrated on Molony Millar Drawing No. 930-244A-C02). Existing incomplete foul sewers and manholes are proposed to be cleared of rubble, high pressure cleaned and rehabilitated. Section 4.2 of the applicant's Engineering Report states that all private connections (Block C & D) are to be saddled into the existing Mount Alto Road / Main Street combined sewer. The number of new residential units is identified as 11. It is unclear whether this figure has been quoted in error or relates to foul water connections yet to be implemented on site, given that the development includes a total of 24 no. residential units. In any event, I note the Ashford Town Plan confirms that the Wicklow Sewerage Scheme has sufficient capacity to meet the needs of the plan area up to 2031.



10.7.7. I also note that the applicant will be required to enter into pre-connection water and wastewater agreements with Uisce Éireann and that the services infrastructure, including that pertaining to surface water, will be constructed to the standards of this authority and the Planning Authority. I also note that the Planning Authority has recommended that substitute consent be granted in this instance. In conclusion, I am satisfied that the surface water and foul water discharges from the site can be accommodated by the existing and proposed service infrastructure.

#### 10.8. **Appropriate Assessment (AA): Stage 1 Screening**

10.8.1. The application is accompanied by a remedial AA screening assessment and a remedial NIS. The remedial NIS considers the impact of the development which has already been carried out on relevant European sites and the impact of future permitted development which has not yet been implemented. In this regard I note that this application was lodged in 2021, and as such, the requirements which now apply under Part 2, S.27 (2B)(b) of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022 concerning the submission of a Natura Impact Statement regarding the part of the development not yet undertaken at the time of the application, did not apply.

10.8.2. In accordance with Section 177U(4) of the Planning and Development Act, 2000 (as amended), and on the basis of objective information, I conclude that the proposed development is likely to have a significant effect on The Murrough SPA (site code: 004186) and The Murrough Wetlands SAC (site code: 002249) in respect of effects associated with wastewater, surface water discharges and groundwater flows. A remedial appropriate assessment is required on the basis of the effects of the project alone. Further assessment in-combination with other plans and projects is not required at this time (see Appendix 3 for full details of AA screening).

#### 10.9. **Appropriate Assessment: Stage 2 AA**

10.9.1. The subject site is not located within or adjacent to The Murrough Wetlands SAC and The Murrough SPA and none of the qualifying interests of these sites occur within the subject site. As such, there is no potential for **direct impacts** to occur.

10.9.2. Section 177G of Part XA of the Planning and Development Act, 2000 (as amended) requires a remedial NIS to consider, inter alia, significant impacts on any European site which have occurred, which are occurring, or which can reasonably be expected

to occur on foot of the development, and details of any appropriate remedial or mitigation measures undertaken or proposed to be undertaken.

### **Works Already Carried Out**

- 10.9.3. The following development works were carried out on site between July 2015 and November 2016: site clearance; installation of underground services within the application boundary; installation of footpath edge and footpath to the front (east) of the site; construction of entrance in south-eastern site corner; and part construction of the permitted scheme as summarised in Section 3.0 of this report. The construction of the surface water sewer, which is considered as a key pathway for significant effects on the identified European sites, has not been commenced.
- 10.9.4. The only pathway which existed for significant effects during the construction phase was a weak hydrological pathway via the combined sewer network which would have conveyed surface water to Wicklow WWTP and ultimately Wicklow Bay, combined sewer overflows which would have discharged stormwater from the combined sewer to surface water bodies (River Vartry and Wicklow Bay) and a weak hydrogeological pathway.
- 10.9.5. The potential for contaminated stormwater generated at the site during the works already carried out to reach The Murrough Wetlands SAC and The Murrough SPA via **surface water discharges** to the combined sewer network and cause significant effects, would have been negligible as: (i) combined sewer overflows will only overflow during severe rainfall events when the capacity of the combined sewer system is exceeded; (ii) there is significant potential for dilution in the surface water network during heavy rainfall events; (iii) the Wicklow WWTP was functioning below capacity during the carrying out of the construction works; (iv) the treatment plant is compliant with the Discharge Licence and Urban Wastewater Treatment Directive and can meet current and future needs.
- 10.9.6. The potential for contaminants generated at the site to reach The Murrough Wetlands SAC and The Murrough SPA and cause significant effects as a result of **groundwater flows** would have been negligible as: (i) the bedrock underlying the site is characterised by local scale groundwater flow paths; (ii) the intervening separation distances; (iii) the likelihood of the dilution and dispersion of any spillage /

leakage within the groundwater body; (iv) the temporary nature of any accidental pollution events.

10.9.7. Mitigation measures were not necessary to avoid impacts to European sites during the construction works which have been completed on site. Standard best practice measures for surface water protection were contained within the Construction Management Plan which was submitted at Further Information stage of Planning Authority Reg. Ref. 08/1704 as submitted to Wicklow County Council.

#### **Proposed Construction Works (Not Undertaken)**

10.9.8. In considering the **proposed construction** of the new surface water sewer, these works could have resulted in potential impacts on the identified European sites in the absence of specific mitigation measures, due to possible discharges of surface waters containing sediment, silt, oils and/or other pollutants to the River Vartry. These works have not yet been carried out, and as such, there is no possibility that any such impacts occurred.

10.9.9. In addition to the standard best practice construction measures already undertaken, the following additional mitigation measures are proposed for future construction works:

- No washdown of plant or equipment on site.
- No washout of concrete mixer trucks on the site.
- All works will comply with statutory legislation including Local Government (Water Pollution) Acts, 1977 and 1990.
- Training of site personnel in the implementation of environmental control and emergency procedures.
- Protection of storm drain inlets prior to soil disturbing activities.
- Monitoring of concrete pumping.
- Off-site soil and lubricant changes/maintenance.
- Double handling of imported materials will be avoided.
- Temporary oil interceptor facilities will be installed/maintained where site works involve the discharge of drainage waters to nearby watercourses.

- Regular inspection and maintenance of containment and treatment facilities.
- Refuelling of plant only at designated stations.
- All personnel will be trained in pollution incident control response.
- Only emergency breakdown maintenance carried out on site.
- Removal of waste from portaloos and welfare units by a licenced waste disposal contractor.
- Construction phase wastewater will be stored and disposed of by discharge to foul sewer or tankering off site.

10.9.10. The following specific mitigation measures are proposed in relation to the proposed construction of the new surface water sewer and headwall, which will discharge surface water to the Vartry River:

- A small coffer dam will be placed in the river at the outfall during the construction phase.
- All instream works will be carried out in accordance with an approved method statement, which will be agreed in advance with IFI and implemented under the direction of IFI personnel.
- Headwall construction works will be supervised by an Ecological Clerk of Works.
- No instream works shall be undertaken during the closed season for such works (1<sup>st</sup> Oct – 30<sup>th</sup> June).
- A constraints zone will be identified and implemented at the headwall construction area adjacent to the River Vartry.
- No stockpiling of construction materials within the constraints zone.
- No refuelling of machinery or overnight parking of machinery permitted in the constraints zone.
- Monitoring of concrete pumping; no mixer washings or excess concrete discharged on site.
- All machinery operations shall take place from the riverbank.

- Immediate removal of excess construction material.
- Double handling of imported materials will be avoided.
- Drip trays and spill kits will be made available on site.
- Where in-stream bed material is to be removed, coarse aggregates (if present) will be stockpiled for replacement in the reformed or new channel.
- No direct discharges will be made to waters where there is potential for cement or residues in the discharges.
- The pH of any discharges made during the construction phase of the headwall shall be in the range of 6-9 units and not alter the pH of any receiving waters by more than +/- 0.5 pH units.
- Run-off from the working site and areas of exposed soil to be channelled and intercepted at regular intervals for discharge to silt traps or lagoons with over-flows directed to land rather than to a watercourse.
- The developer will ensure that silt-traps, silt-fencing and swales are regularly maintained during the construction phase.
- Regular review of weather forecasts for heavy rain, with no work carried out during these periods where possible.
- A settlement area for treatment of pumped water from the excavations/the bunded area will be established on site, with a dewatering/silt bag fitted at the discharge point. Alternatively, silt laden waters will be tankered off site to a licensed facility.
- Natural vegetation will be left intact where possible. Survey for invasive species to be carried out at the location of the headwall prior to the commencement of works.
- Biosecurity measures will be strictly adhered to throughout the proposed works.

10.9.11. During the **operational phase**, regular inspection and maintenance of all surface water infrastructure will be carried out to ensure the long-term protection of surface waterbodies hydrologically linked to the development. No remedial mitigation measures are identified.

- 10.9.12. In considering the potential for **in-combination effects** to arise, I note that a search of the existing planning permission on record in the Ashford area at the time of lodgement of the original planning application and the extension of duration application identifies typically small-scale developments in the vicinity of the application site, which would not have resulted in any potential in-combination effects with the proposed development. A review of the Ashford Local Area Plan 2008-2014 also did not identify any potential significant, in-combination effects on any European sites.
- 10.9.13. A review of Wicklow County Council's online planning register for recent, permitted developments in the vicinity of the application site identifies small-scale infill housing schemes on the neighbouring lands to the west, home improvement works to neighbouring residential dwellings and minor modifications to the existing fuel station on the adjoining site to the north. Having regard to the nature and scale of these developments and their location on zoned, serviced land, the potential for in-combination effects with the proposed development does not arise. A review of the Ashford Town Plan 2022-2028 does not identify any potential significant, in-combination effects on any European sites.
- 10.9.14. Having regard to the foregoing, I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects, did not and would not adversely affect the integrity of The Murrough SPA (site code: 004186) and The Murrough Wetlands SAC (site code: 002249), or any other European Site, in view of the sites' Conservation Objectives.

## **11.0 Recommendation**

- 11.1. I recommend that substitute consent be granted for the development subject to the reasons and considerations set out hereunder.

## **12.0 Reasons and Considerations**

12.1.1. In coming to its decision, the Board had regard to the following:

- (a) the EU habitats Directive (92/43/EEC),
- (b) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (c) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European site,
- (d) the conservation objectives and qualifying interests for The Murrough SPA (site code: 004186) and The Murrough Wetlands SAC (site code: 002249),
- (e) the policies and objectives of the Wicklow County Development Plan 2022-2028 and the Ashford Town Plan 2022-2028,
- (f) the nature and extent of the proposed works as set out in the application for approval,
- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the remedial Natura Impact Statement,
- (h) the submissions received in relation to the proposed development,
- (i) and the report of recommendation of the Inspector.

### **Appropriate Assessment Screening**

The Board agreed with and adopted the screening assessment and conclusion of the Inspector's report that The Murrough SPA (site code: 004186) and The Murrough Wetlands SAC (site code: 002249) are the only European sites in respect of which the proposed development has the potential to have a significant effect.

### **Appropriate Assessment**

The Board considered the remedial Natura Impact Statement and associated documentation submitted with the application for approval, the submissions and observations on file, and the Inspector's assessment. The Board completed an Appropriate Assessment of the implications of the proposed development for the affected European sites, namely The Murrough SPA (site code: 004186) and The

Murrough Wetlands SAC (site code: 002249), in the views of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the Appropriate Assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans and projects,
- (b) the conservation objectives for the European sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the subject development on the integrity of the aforementioned European sites, having regard to the sites' conservation objectives.

In overall conclusion, the Board was satisfied that the subject development, by itself or in combination with other plans or projects, would not adversely affect the integrity of these European sites, in view of the sites' conservation objectives.

#### **Proper Planning and Sustainable Development / Likely Effects on the Environment:**

It is considered that in terms of Environmental Impact Assessment, having regard to the scale and nature of the development, the likelihood of significant effects on the environment can be excluded for the purposes of EIA.

It is considered that, subject to compliance with the conditions set out below, the subject development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural, archaeological and built heritage of the area and would not interfere with the existing land uses in the area. The subject development would, therefore, be in accordance with the proper planning and sustainable development of the area.



## 13.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the Planning Authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> 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>
3.	<p>Within six months from the date of this Order, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the Planning Authority, to secure the satisfactory reinstatement of the site, coupled with an agreement empowering the Planning Authority to apply such security or</p>

	<p>part thereof to such reinstatement. 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><b>Reason:</b> To ensure the satisfactory restoration of the site in the interest of visual and residential amenity.</p>
4.	<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) may be referred by the Planning Authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p><b>Reason:</b> 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>
5.	<p>Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the Planning Authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p><b>Reason:</b> To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>

6.	<p>The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
7.	<p>Prior to the commencement of development, the developer shall submit full design details and construction method statements for the proposed surface water sewer and outfall to serve the development, for the written agreement of the Planning Authority.</p> <p><b>Reason:</b> To ensure an appropriate standard of development and in the interest of public health.</p>
8.	<p>The construction of the proposed outfall adjacent to the River Vartry shall be carried out in consultation with Inland Fisheries Ireland and in accordance with an agreed method statement. Any instream works that may be required to facilitate the construction of the proposed outfall must be completed within the open period between July and September of any given year.</p> <p><b>Reason:</b> In order to protect water quality.</p>
9.	<p>Prior to the commencement of development, the developer shall submit for the written agreement of the Planning Authority, drawings showing all development works to be taken in charge designed to meet the standards of the Planning Authority.</p> <p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area.</p>
10.	<p>Prior to the commencement of development, the developer shall submit the following for the written agreement of the Planning Authority:</p>

	<p>(a) A detailed method statement in relating to onsite rock testing, rock excavation and soil nailing (if required), and</p> <p>(b) Full details of all ground works and retaining structures required to facilitate the development.</p> <p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area.</p>
11.	<p>Prior to the commencement of development, the developer shall submit revised drawings to the Planning Authority demonstrating the provision of secure bicycle parking facilities for the residents of Block A and site visitors in accordance with the relevant standards of the Wicklow County Development Plan 2022-2028 and the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, 2022.</p> <p><b>Reason:</b> To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.</p>
12.	<p>The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the Local Authority in the event of the development being taken in charge. Detailed proposals for this shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.</p> <p><b>Reason:</b> To ensure the satisfactory completion and maintenance of this development.</p>
13.	<p>Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.</p> <p><b>Reason:</b> In the interests of amenity and public safety.</p>
14.	<p>Proposals for an estate name, house 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</p>

	<p>and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name 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 of the development shall be erected until the developer has obtained the Planning Authority's written agreement to the proposed name.</p> <p><b>Reason:</b> In the interest of urban legibility.</p>
15.	<p>Proposals for a unit identification and numbering scheme and associated signage for the retail units shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
16.	<p>(a) No external security shutters shall be erected on any of the retail units unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development.</p> <p>(b) No awnings, canopies, projecting signs or other signs shall be erected on the premises without a prior grant of planning permission.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
17.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development. The scheme shall include a plan to scale of not less than 1:500 showing:</p> <p>(a) The species, variety, number, size and locations of all proposed trees, shrubs and soft landscaping treatments, including proposed tree planting within the public realm,</p> <p>(b) Hard landscaping and boundary treatments, including details of play equipment, safety mesh to rock face, retaining walls/structures and proposed street furniture/seating within the public realm.</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously</p>

	<p>damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interest of residential and visual amenity.</p>
18.	<p>(a) The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs and the basement car park shall be in accordance with the detailed standards of the Planning Authority for such works.</p> <p>(b) Prior to the occupation of the development, final design details of all works on or adjacent to the public road, including the upgrade works to the junction of the L1096 and R772, public footpaths, site entrances, safety fencing and crash barriers, road markings and signage, shall be submitted for the written agreement of the Planning Authority.</p> <p>(c) A Stage 3 Road Safety Audit, including a Final Audit Report, for the proposed estate roads/entrance to the development from the public road/road improvement works, prepared in accordance with the National Roads Authority's "Design Manual for Roads and Bridges" shall be submitted. Where the audit identifies the need for design changes, revised design details should be submitted to and agreed in writing with the Planning Authority. The developer shall carry out all necessary works in accordance with the agreed revised design.</p> <p><b>Reason:</b> In the interest of pedestrian and traffic safety and the proper planning and sustainable development of the area.</p>
19.	<p>The external finishes and material to Blocks A, B and E shall match those used on Blocks C and D.</p> <p><b>Reason:</b> In the interests of visual amenity.</p>
20.	<p>The dormer windows of Blocks A and B shall be flat dormer windows as illustrated on Drawing Nos. 2018_013_3.1.102 and 2018_013_3.1.104 submitted to the Board on 16<sup>th</sup> December, 2021.</p>

	<b>Reason:</b> In the interests of visual amenity.
21.	<p>All service cables associated with the proposed development shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure with the proposed development.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
22.	<p>Prior to the commencement of development, the developer shall enter into water and waste-water connection agreements with Uisce Éireann.</p> <p><b>Reason:</b> In the interest of public health.</p>
23.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
24.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the Planning Authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>

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

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Louise Treacy  
Senior Planning Inspector

11<sup>th</sup> June 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	312283-21			
<b>Proposed Development Summary</b>	Retain and complete mixed-use development (residential and retail) in 5 3-storey blocks.			
<b>Development Address</b>	Mount Usher View, Ashford, Co. Wicklow			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	<b>X</b>	
		<b>No</b>		
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>				
<b>Yes</b>			EIA Mandatory EIAR required	
<b>No</b>		<b>X</b>	Proceed to Q.3	
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>		N/A		No EIAR or Preliminary Examination required
<b>Yes</b>		Class 10(b), Schedule 5, Part 2		Proceed to Q.4



**4. Has Schedule 7A information been submitted?**

<input checked="" type="radio"/> <b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

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

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

## Appendix 2 - Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	312283-21	
<b>Proposed Development Summary</b>	Retain and complete mixed-use development (residential and retail) in 5 3-storey blocks.	
<b>Development Address</b>	Mount Usher View, Ashford, Co. Wicklow	
<p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b></p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p>	<p>The subject site located within the existing built envelope of the settlement of Ashford. Planning permission for the proposed development was previously permitted by Wicklow County Council. The site is adjoined by existing residential developments.</p>	No
<p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The removal of topsoil and C&amp;D waste can be managed through an agreed Construction and Environmental Management Plan. Localised construction impacts will be temporary.</p>	No
<p><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p>	<p>The proposed development comprises an infill scheme on a zoned, urban site. The size of the development would not be exceptional in the context of the existing environment.</p>	No
<p>Are there significant cumulative considerations having regard to other existing</p>	<p>There are no significant permitted developments in the immediate vicinity of the site.</p>	No

and/or permitted projects?		
<b>Location of the Development</b> Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?  Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	No – A remedial NIS has been submitted which concludes that the proposed development did not and does not have the potential to have significant impacts on any European sites. These findings are accepted in the AA undertaken by the Inspector.          No	No          No
<b>Conclusion</b>		
<b>There is no real likelihood of significant effects on the environment.</b>   EIA not required.	<b>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</b>  Schedule 7A Information required to enable a Screening Determination to be carried out.	<b>There is a real likelihood of significant effects on the environment.</b>  EIAR required.

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

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

**DP/ADP:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)

### **Appendix 3: AA Screening Determination**

I have considered this substitute consent application in light of the requirements of S177U of the Planning and Development Act, 2000 (as amended). This application seeks permission to retain and complete a partially implemented, mixed-use development of 24 no. residential units over either retail or office space in 5 no. blocks of 2.5 - 3 storeys in height. The proposed development also includes, inter alia, the construction of a new 300 mm diameter surface water sewer on Main Street, which will discharge into the Vartry River approx. 230 m to the north-east of the site. The River Vartry extends through the centre of Ashford from north-west to south-east and flows into Broad Lough Estuary and thereafter Wicklow Harbour.

Third parties have raised concerns regarding the potential impact of the development on the surface water quality of the River Vartry. It is submitted that the developer should not be allowed to develop a new surface water sewer along Main Street given the sensitivity of the river and potential impacts on Natura 2000 sites. It is also considered that if pollution of the River Vartry occurs, it would have a serious impact on Mount Usher Gardens.

The subject site is not located within or directly adjacent to any European site, and as such, there is no potential for **direct impacts** to occur. The subject site is located approx. 2.8 km to the north-west of The Murrough SPA (site code: 004186) and The Murrough Wetlands SAC (site code: 002249) at its closest point. A summary description of these sites is provided on page 16 of the applicant's remedial NIS. The qualifying interests and conservation objectives for these sites are set out in Tables 1 and 2 below.

<b>Table 1: The Murrough Wetlands SAC (site code: 002249) - Qualifying Interests and Conservation Objectives</b>	
<b>Qualifying Interests</b>	<p>Annual vegetation of drift lines [1210]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i> [7210]</p>

	Alkaline fens [7230]
<b>Conservation Objectives</b>	<ul style="list-style-type: none"> <li>- To restore the favourable conservation condition of Annual vegetation of drift lines in The Murrough Wetlands SAC [1210]</li> <li>- To restore the favourable conservation condition of Perennial vegetation of stony banks in The Murrough Wetlands SAC [1220]</li> <li>- To restore the favourable conservation condition of Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) in The Murrough Wetlands SAC [1330]</li> <li>- To restore the favourable conservation condition of Mediterranean salt meadows (<i>Juncetalia maritimi</i>) in The Murrough Wetlands SAC [1410]</li> <li>- To restore the favourable conservation condition of Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i>* in The Murrough Wetlands SAC [7210]</li> <li>- To restore the favourable conservation condition of Alkaline fens in The Murrough Wetlands SAC [7230]</li> </ul>

**Table 2: The Murrough SPA (site code: 004186) – Qualifying Interests and Conservation Objectives**

<b>Qualifying Interests</b>	<p>Red-throated Diver (<i>Gavia stellata</i>) [A001]</p> <p>Greylag Goose (<i>Anser anser</i>) [A043]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Wigeon (<i>Anas penelope</i>) [A050]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Herring Gull (<i>Larus argentatus</i>) [A184]</p> <p>Little Tern (<i>Sterna albifrons</i>) [A195]</p>
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	Wetland and Waterbirds [A999]
<b>Conservation Objectives</b>	<ul style="list-style-type: none"> <li>- To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.</li> <li>- To maintain or restore the favourable conservation condition of the wetland habitat at The Murrough SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.</li> </ul>

In considering the potential for **indirect impacts** to occur, I note that a potential pathway exists between the subject site and the aforementioned European sites on foot of weak hydrological pathways via: (i) wastewater and surface water which will/would have passed through Wicklow wastewater treatment plant and ultimately entered Wicklow Bay via the combined sewerage network; (ii) combined sewer overflows which could discharge both wastewater and stormwater from the combined sewer to surface water bodies (River Vartry and Wicklow Bay); (iii) surface water discharges to the River Vartry during the construction phase due to the construction of the surface water sewer and during the operational phase. These works have the potential to result in changes to environmental conditions such as water quality and habitat degradation. There is also a weak hydrogeological pathway via groundwater flows, which has the potential to impact on groundwater dependent habitats.

<b>Table 1: European Sites At Risk</b>			
<b>Effect Mechanism</b>	<b>Impact Pathway/Zone of Influence</b>	<b>European Site</b>	<b>Qualifying Interest Features at Risk</b>
Deterioration of water quality via wastewater, surface water, and combined sewer overflows	Combined sewer network; surface water discharges to Vartry River	The Murrough Wetlands SAC	Atlantic salt meadows; Mediterranean salt meadows;
Deterioration of water quality via groundwater flow	Groundwater	The Murrough Wetlands SAC	Atlantic salt meadows; Mediterranean salt meadows;
Deterioration of water quality via	Combined sewer network; surface	The Murrough SPA	Red-throated Diver; Greylag

wastewater, surface water, and combined sewer overflows	water discharges to Vartry River		Goose, Light-bellied Brent Goose; Wigeon; Teal; Black-headed Gull; Herring Gull; Little Tern; Wetlands
Deterioration of water quality via groundwater flow	Groundwater	The Murrough SPA	Wetlands

<b>Table 2: Could the project undermine the conservation objectives ‘alone’</b>			
<b>European Site and Qualifying Feature</b>	<b>Conservation objective (summary)</b>	<b>Could the conservation objectives be undermined (Y/N)?</b>	
		<b>Surface Water Pollution</b>	<b>Groundwater Pollution</b>
<b>The Murrough Wetlands SAC</b>			
Atlantic Salt Meadows	Restore favourable conservation condition	Y	Y
Mediterranean salt meadows	Restore favourable conservation condition	Y	Y
<b>The Murrough SPA</b>			
Red-throated Diver	Maintain or restore FCC	Y	N
Greylag Goose	Maintain or restore FCC	Y	N
Light-bellied Brent Goose	Maintain or restore FCC	Y	N
Wigeon	Maintain or restore FCC	Y	N
Teal	Maintain or restore FCC	Y	N
Black-headed Gull	Maintain or restore FCC	Y	N
Herring Gull	Maintain or restore FCC	Y	N



Little Tern	Maintain or restore FCC	Y	N
Wetlands	Maintain or restore FCC	Y	N

In accordance with Section 177U(4) of the Planning and Development Act, 2000 (as amended), and on the basis of objective information, I conclude that the proposed development is likely to have a significant effect on The Murrough SPA and The Murrough Wetlands SAC in respect of effects associated with wastewater, surface water discharges and groundwater flows. A remedial appropriate assessment is required on the basis of the effects of the project alone. Further assessment of in-combination effects with other plans and projects is not required at this time.

I note the applicant included a greater number of European sites in their initial screening consideration with sites within 15km of the development site considered. There is no ecological justification for this, and I have only included those sites with any possible ecological connection or impact pathway in this screening determination.