



An
Bord
Pleanála

Inspector's Report

ABP-314318-22

Development

Mixed development of retail unit for licensed alcohol sales, café / restaurant for takeaway facilities and associated site works. Retail unit fronting courthouse road.

Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) are submitted with application.

Location

c.2.607 ha Site, Located north of Courthouse Road and east of, Mill Road, Fermoy, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

217462

Applicant(s)

Tesco Ireland Limited

Type of Application

Permitted

Planning Authority Decision

Grant with conditions

Type of Appeal

Third Party

Appellant(s)

Michael Riordan

Observer(s)

Gillian Cussen

Date of Site Inspection

14th of April and 11th of August 2023

Inspector

Adrian Ormsby

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1.0 Site Location and Description

- 1.1. The site is located centrally in Fermoy and on the south side of the River Blackwater. It is an existing underutilised brownfield site much of which was once used as a 'Sawmill'. The site is located c. 4-500 metres west of a flyover of the M8 Cork to Dublin motorway. However access to the motorway is c. 2.5 km north and south of the site.
- 1.2. The southern part of the site fronts the N72 national road (O'Rahilly Row/Patrick St) linking Fermoy to the N25 north of Dungarvan and Mallow west of the site. This southern part of the site opposes the Fermoy Courthouse and Town Hall building which includes the Fermoy Fire Station. The site is bounded to the public path by a high boundary wall with rail style fencing and an existing vehicular entrance. A Super Valu and Lidl both operate opposite and immediately east of this part of the site.
- 1.3. The northern part of the site is relatively flat and in an unkempt and unsightly condition from the public road. The northern boundary includes a drainage ditch and an existing pumping station. The sites western boundary adjoins the 'Mill Road' and benefits from two existing but gated fenced up entrances. This boundary adjoins the public path and includes a low level boundary wall with mesh style fencing providing clear visibility into the site. The vehicular entrances benefit from low splayed pier walls. Much of the site is hard surfaced. The northern boundary of the site adjoins part of the Fermoy Flood Defence Scheme. A third wooden gate style structure with higher piers is located along the western boundary to the southern part of the site but fronting directly onto the path of Mill Road. This appears to provide access to the rear of residential properties on Mill Road.
- 1.4. To the south west of the site there is a terrace of four two storey houses and a number of buildings in commercial use wrapping around the corner of Mill Road and the N72. No's 1-4 Mill Road known as Lisneaux Terrace are all recorded on the 2022 Record of Protected Structures (RPS) as No's 02122 – 02125 and the NIAH Reg no's 20820056 - 20820059- ¹. There is also Limestone Kerbing located on O' Rahilly Row/Patrick Street to the southern boundary which is recorded on the RPS as 02277. Opposing this kerbing and the site to the south and south east there are a

¹ <https://www.buildingsofireland.ie/buildings-search/building/20820059/1-lisieux-villas-mill-road-fermoy-fermoy-co-cork> (accessed 15/09/23) No. 1 only

large number of other protected structures including a Monument on O' Rahilly Row (02170), the Fermoy Court House (02171) and a number of houses and other buildings (RPS ref No. - 02162 – 02173). These are all detailed on the NIAH. A recently developed and operational Primary Care Centre is located to the north east boundary of the site also of Mill Road. Part of this site includes a Protected Structure i.e. the Former Water Mill, Mill Road reference number 02264 as per the RPS. This is further detailed on the NIAH as Reg No: 20821055².

- 1.5. The Mill detailed above is also indicated as Recorded Monument CO035-0250 'Corn Mill (Disused)' and the zone of notification extends into the north eastern part of the site. A zone of notification exists around the 'Historic Town of Fermoy' (CO35-107) with its boundary located c. 250m west of the site.
- 1.6. A large part of Fermoy is designated within one formal Architectural Conservation Area. This includes the protected structures and other buildings to the south west of the site along Mill Road and O' Rahilly Row/Patrick Street, buildings opposite to southern boundary stretching from No. 50 O' Rahilly Row/Patrick Street to the Townhall Court house buildings and much of the lands along the north east and northern boundary of the site as far as the Blackwater river.
- 1.7. The site has a stated site area of 2.607 ha.

2.0 Proposed Development

- 2.1. The application is for-
 - construction of a single storey retail unit
 - 3,739 sq.m gross floor area
 - c. 1,626 sq.m convenience net sales area and
 - c.775 sq.m comparison net sale area)

² <https://www.buildingsofireland.ie/buildings-search/building/20821055/mill-road-fermoy-fermoy-co-cork>
accessed 15/09/23

- The unit includes a licensed alcohol sales area, bulk store, ancillary offices, staff facilities, cage marshalling area, recycling area, bin storage, service yard, and associated directional signage;
- 1 no café/restaurant with takeaway c. 323 sq.m gross floor area
- 1 no retail unit c. 259 sq.m gross floor area
- internally illuminated elevation signage on the northern and southern elevations, and wall mount signage at the vehicular entrance
- 150 no. car parking spaces and 72 no. cycle parking spaces
- click and collect set down area with canopy structure and associated signage
- upgraded signalized junction at the vehicular access off mill road and set down/ loading bay along courthouse road
- landscaping including a public plaza linking Courthouse Road and Mill Road
- pedestrian access points off Mill Road and through a landscaped urban space along Courthouse Road frontage linking with a new toucan crossing
- a ESB substation and switch room, attenuation tank, feature and street lighting, plant, trolley shelter/bays and all ancillary site development works, landscaping, enabling works and site services.

2.2. The Application is accompanied by-

- A Planning Report (Avison Young)
- A Retail Impact Statement (RIS) (Avison Young)
- An Environmental Impact Assessment Report (EIAR)
- An Appropriate Assessment Screening Report (AASR) and Natura Impact Statement (NIS) (Doherty Environmental Consultants Ltd.)
- A Transport Assessment (Systra Ltd.)
- An Outline Construction Environmental Management Plan (RSK Ireland Ltd)
- An Engineering Planning Report (Pinnacle Consulting Engineers)
- Site Specific Flood Risk Assessment (Kilgallen & Partners Consulting Engineers) and

- A number of other reports relating lighting, sustainability and electrical (Tierney & Co. Engineers) and Arboriculture (Doherty Environmental Consultants Ltd.)

2.3. The Planning Authority sought Further Information (FI) on the 24/02/22 in relation to a number of matters. The most pertinent of these is summarised as follows-

- How future phases of development with land uses specified can be facilitated along Mill Road in accordance with the Town Development Plan
- Traffic Assessment matters including the potential for a future connection to a possible inner distribution road connecting to the N72, connectivity to the public realm and EV car parking provision.
- Matters relating to the sites interaction with the Fermoy Flood Relief Scheme and consultation with the OPW and the Site Specific Flood Risk Assessment (SSFRA)
- Matters relating to the EIAR including a need for an addendum addressed the extent of filling proposed on site.

2.4. The Applicants responded to the FI request on the 20/05/22 and included-

- A 'Future Site Development Capacity Study' prepared by Joseph Doyle Architects
- Details in relation to a meeting with the Council Engineers discussing the Traffic Assessment, future connectivity to the N72 and the public realm etc.
- Details addressing the flood relief scheme and the SSFRA.
- An update to chapter 7 of the EIAR Lands, soil, geology and Hydrogeology and an Outline Construction Environmental Management Plan.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission on the 13/07/2022 subject to 37 conditions. The following conditions are highlighted-

- C2 Amendments to the scheme
- C3 Development Contribution €211,305.55
- C4 Special Contribution €90,000
- C14 Archaeological Monitoring
- C28 Works and Mitigation measures specified in the NIS shall be implemented.
- C33 Protection of stone paving along the N72 i.e. Protected Structure

4.0 Planning Authority Reports

4.1. Planning Reports

- 4.1.1. The planning reports generally reflect the decision of the Planning Authority. Following receipt of FI all EIA issues are considered adequately addressed. An Appropriate Assessment (AA) screening report was submitted with the application and concluded a Natura Impact Statement (NIS) was required. Following receipt of FI the Planning Authority found the information and mitigation measures outlined in the NIS to be acceptable.

4.2. Other Technical Reports

- Water Services
 - 24/02/22- No objection
- Public Lighting-
 - 24/02/22- No objection
- Environment Report
 - 04/02/22- no objection
- Fire Officer
 - Undated- Recommends a condition be attached in relation to provision of hydrants

- Area Engineer
 - 21/02/22- Further Information required on a number of matters
 - 05/07/22- To bring about public realm upgrades a special contribution should be levied, no objection subject to conditions
- Coastal Management & Flood Projects Department-
 - 21/02/22- FI required relating to the sites interaction with the Fermoy Flood Relief Scheme, consent from the OPW and matters relating to the submitted SSFRA.
 - 04/07/22- Subject to conditions proposal acceptable.
- Archaeology-
 - 21/02/22- No objection subject to archaeological monitoring
- Ecology-
 - 23/02/22- FI required in relation to the NIS & flood related matters and landscaping
 - 07/07/22- the information and mitigation measures outlined in the NIS is acceptable. No objection subject to condition including landscaping.
- Conservation Officer-
 - 07/07/22- FI report. No objection subject to condition
- Planning Department Architect
 - No report identified on file, comments detailed in Planning Reports

4.3. Prescribed Bodies

- TII-
 - 24/01/22- No objections raised
- Inland Fisheries Ireland-
 - 07/02/22- Concerns raised in relation to discharge of polluting matters during construction, the need for SUDs the importance of biosecurity

measures against the spread of invasive species in the context of the proximity of the site to the Munster Blackwater.

- HSE South Emergency Management Function-
 - 25/01/22- No specific observations but a number of recommendations regarding site operations are detailed.
- HSE Environmental Health Officers
 - 08/02/22- A number of recommendations are made
- Irish Water-
 - 11/02/22- No objection
- OPW-
 - 22/02/22- Observations include the right of entry on the property to carry out works etc. in connection with Fermoy Flood Relief Scheme, the requirement for consent for works impacting the flood defences under Section 9, maintenance of the proposed attenuation tank, reconsideration of the 'chamber CH4/3' and possible redesign of access road to provide access for maintenance and inspections etc.

4.4. Third Party Observations

Five observations were received. The concerns raised can generally be summarised as follows-

- A number of supermarkets in the town, potential for hoarding up of businesses and impact on small businesses
- Proximity to ecologically sensitive sites including SAC 002170 with potential impacts during the construction phase.
- Alternative sites available in the town
- Significant impacts on traffic volume and congestion in the town
- The proposal is much needed and a welcome addition to the local area

5.0 Planning History

This Site-

- ABP-316880-23- Inclusion of the land on the residential zoned land tax draft map, decision pending
- None other recent

North of Site-

- ABP-310687 (18/4750)- Point of Detail in relation to Condition no. 43. Board's Decision quashed by Order of the High Court (Perfected on the 25th January, 2023), New Case Number ABP-317224-23- decision pending
- ABP-303233-18 (18/4750) - Change use of building to Primary Healthcare Centre, demolish existing link, extension of existing building, refurbishment of protected structure building, reconfigure car park and erect signage. **Grant** 17/04/19

East of Site-

- ABP-302449-18 (184037) Demolition of existing Lidl. The construction of the proposed new Licenced Discount Food store **Grant** 24/04/2019

West of Site (c. 150m)

- ABP-313763-22- Proposed Fermoy Weir remedial works and fish bypass on the River Blackwater, Local Authority application. Decision **pending**.

6.0 Policy Context

6.1. National Policy

6.1.1. National Planning Framework (NPF)

- The NPF details an ambition to create a single vision, a shared set of goals for every community across the country. These goals are expressed as National Strategic Outcomes Relevant outcomes include-
 - *National Strategic Outcome 1 Compact Growth*

Carefully managing the sustainable growth of compact cities, towns and villages will add value and create more attractive places in which people can live and work. All our urban settlements contain many potential development areas, centrally located and frequently publicly owned, that are suitable and capable of re-use to provide housing, jobs, amenities and services, but which need a streamlined and co-ordinated approach to their development, with investment in enabling infrastructure and supporting amenities, to realise their potential. Activating these strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development, is a top priority.

- *Page 83 discusses ‘Hierarchy of Settlements and Related Infrastructure’ and graphically demonstrates Commercial development such as supermarkets, restaurants, mix of retail as appropriate to ‘Smaller Towns and Villages’ and ‘Shopping Centres, Retail Warehousing and Range of restaurants’ as appropriate to ‘Large Towns’.*

- *National Policy Objective 11*

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

6.1.2. Town Centre First- A Policy Approach for Irish Towns (February 2022) (TCF)

- Page 5 of the Executive Summary states-

“The Town Centre First policy aims to create town centres that function as viable, vibrant and attractive locations for people to live, work and visit, while also functioning as the service, social, cultural and recreational hub for the local community”

- Appendix 2 states-

“The aim of revitalising our towns and urban areas is strongly reflected in the objectives and priorities of the National Planning Framework. Many of the

National Strategic Outcomes identified in the NPF, such as Compact Growth, Strengthened Rural Economies and Communities, Sustainable Mobility, Enhanced Amenities and the Transition to a Low Carbon Society, are all closely aligned to a focus on improving our towns and supporting their increased population and employment growth in the future.

In particular, securing compact and sustainable growth is a key objective - this means tackling the inefficient recent pattern of urban sprawl through favouring more compact forms of development that focus on reusing 'brownfield' land, building up infill sites and reusing or redeveloping existing sites and buildings. Many of our towns are well placed to support new development to consolidate within their existing footprint and provide new life and opportunities in a compact setting.

6.2. Regional Spatial & Economic Strategy for the Southern Region 2020 (RSES)

- 6.2.1. Section 1.1 details the RSES is a 12-year strategic regional development framework to guide change in the region. It establishes a broad framework for the way in which society, environment, economy and the use of land should evolve.
- 6.2.2. Section 2.4 deals with the Cork Metropolitan Area Strategic Plan and the Wider Region'. It states-

“There is a close network and functional relationship between the city, metropolitan area and settlements such as the ring towns of Mallow (a Key Town) Bandon, Kinsale, Fermoy, Macroom and Youghal and other towns in North and West Cork including Mitchelstown, Charleville, Kanturk and Clonakilty. The RSES supports the sustainable, employment-led growth, consolidation and enhancement of services for such settlements”

- 6.2.3. The following Regional Planning Objective is considered relevant-

- RPO 55- Retail, It is an objective to-
 - a) *Improve the physical appearance, vitality and vibrancy of city centre, town centre and village locations through collaboration between Planning Authorities and Retail Traders Associations in regeneration / public realm projects and other measures;*

- b) *Ensure that retail development is focussed on urban and village centres with the application of a sequential approach to consideration of retail development which does not fall into this category;*
- c) *Prepare Retail Strategies in accordance with the Retail Planning Guidelines including Joint Retail Strategies where applicable. Proposed public realm or urban regeneration projects should be assessed for potential impacts on the receiving environment including capacity of existing services at project level. Where public realm or urban regeneration projects would significantly increase shopper/visitor numbers, planning authorities should ensure that projects include sustainable management of increased demand for access to city/town centre locations.*

6.3. Cork County Development Plan 2022-2028 (CDP)

- The Plan came into effect on 6th of June 2022 and replaced the previously operative County Development Plan, Municipal District Local Area Plans and the nine Town Development Plans of the former Town Council Towns which included Fermoy.

6.3.1. Volume 1

- Chapter 9 of the CDP deals with Town Centres and Retail. The following Objective is relevant-
 - *TCR 9-1: Town Centres-*
 - a) *Maintain, strengthen and reinvent the role of town centres as dynamic, attractive, resilient, inclusive, cultural and creative environments and enhance their mixed-use character by encouraging the retention and development of general office, retail, housing, office-based industry, community, civic and entertainment uses.....*
- Table 9-1 (page 199) sets out the ‘Retail Network/Hierarchy and Objectives (set within County and Metropolitan Context)’. Under the tier ‘*Sub-Regional/ Ring Towns/ Large County Towns*’ Fermoy is identified as a ‘Ring Town’ to which the following is stated-

Ring and Larger County Towns which generally perform important sub-county retailing functions and include some of the major retailing chains, particularly convenience. In general, these have a population in excess of 5,000 or are designated as Ring Towns in consecutive plans.

The following 'Objective' applies-

TCR 9-8: Support the vitality and viability of the Ring and Larger towns and to ensure that such centres provide an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchment areas.

- Chapter 11 is titled 'Water Management'. The CDP online mapping system shows that all the site is located within Flood Zone A. Section 11.11 deals with 'Flooding'. Objective WM11-15 states-

WM 11-15: Flood Risk Assessments

"To require flood risk assessments to be undertaken for all new developments within the County in accordance with The Planning System and Flood Risk Management – Guidelines for Planning Authorities (2009) and the requirements of DECLG Circular P12/2014 and the EU Floods Directive.

- *For sites within Flood Zone A or B, a site specific Flood Risk Assessment will be required*
 - *.....*
 - *All proposed development must consider the impact of surface water flood risks on drainage design through a Drainage Impact Assessment. The drainage design should ensure no increase in flood risk to the site, or the downstream catchment*
- Chapter 12 deals with 'Transport and Mobility'
 - Section 12.11 deals with 'Traffic/Mobility Management and Road Safety'.
 - County Development Plan Objective TM 12-8 'Traffic/Mobility Management and Road Safety' states-

- a) *Where traffic movements associated with a development proposal have the potential to have a material impact on the safety and free flow of traffic on National, Regional or other Local Routes, the submission of a Traffic and Transport Assessment (TTA) and Road Safety Audit will be required as part of the proposal. Where a Local Transport Plan exists, it will inform any TTA.*
- b) *Support demand management measures to reduce car travel and promote best practice mobility management and travel planning via sustainable transport modes.*
- c) *For developments of 50 employees or more, residential developments over 100 units, all education facilities, community facilities, health facilities, as well as major extensions to existing such uses developers will be required to prepare Mobility Management Plans (travel plans), with a strong emphasis on sustainable travel modes consistent with published NTA guidance to promote safe, attractive and convenient, alternative sustainable modes of transport as part of the proposal. Where a Local Transport Plan exists, it will inform any Mobility Management Plan.*
- d) *Ensure that all new vehicular accesses are designed to appropriate standards of visibility to ensure the safety of other road users.*
- e) *Improve the standards and safety of public roads and to protect the investment of public resources in the provision, improvement and maintenance of the public road network.*
- f) *Promote road safety measures throughout the County, including traffic calming, road signage and parking.*
- g) *Co-ordinate proposed zoning designations and/or access strategies in settlement plans with speed limits on national roads.*
- Section 12.12 deals with Parking including bicycle and car parking. The following is relevant-
 - *12.12.7- The Council's car parking policy seeks to ensure adequate and appropriate provision of car parking in town*

centres and in relation to almost all forms of new development. It also seeks to balance car parking provision so that it aligns with and supports compact growth and sustainable transport.

- 12.12.15- *County Development Plan Objective TM 12-9: Parking*
“Secure the appropriate delivery of car parking and bicycle spaces and facilities in line with the Standards set out in Section 12.24 of this document:

a) All non-residential development proposals will be subject to maximum parking standards as a limitation to restrict parking provision to achieve greater modal shift.....

e) Connectivity and accessibility between key car parking areas and primary town centre streets is to be safe and convenient.....

- 12.24- Parking Standards-

Table 12.6- Car Parking Requirements for New Developments
(Maximum per sq. m.)-

- Retail- 1 space per 20 sqm + 1 Lorry space per 750 sqm
- Convenience retail 1 space per 20 sqm
- Restaurant, cafes & take-aways 1 space per 5 (net sq.m)

- Chapter 16 deals with Built and Cultural Heritage.
 - Section 16.2.9 details that Fermoy is identified as an Historic Town and that Zones of Archaeological Potential around Historic Towns can be viewed on the Map Browser. I have not been able to identify these zones within the CDP online documentation but do note the site is located c. 250m east of the Zone of Notification as identified by the National Monuments Service.
 - The north east of the site is located within the zone of notification around the ‘Corn Mill (disused)’ which is a recorded monument.

- Chapter 16 also details provisions for Architectural Conservation Areas (ACA) and I note the Map Browser shows the site is not located within the ACA for Fermoy but does border it along its south west, north and north east boundaries. Furthermore a number of protected structures are within close proximity of the site.
- The following Objectives are relevant-

- HE 16-4: Zones of Archaeological Potential in Historic Towns and Settlements

Proposed development works in Historic Towns and settlements, Zones of Archaeological Potential, Zones of Notification and the general historic environs in proximity to the zones, should take cognisance of the impact potential of the works, and all appropriate archaeological assessments employed to identify and mitigate the potential impacts.

- HE 16-5: Zones of Archaeological Potential

Protect the Zones of Archaeological Potential (ZAPs) located within historic towns, urban areas and around archaeological monuments generally. Any development within the ZAPs will need to take cognisance of the upstanding and potential for subsurface archaeology, through appropriate archaeological assessment.

- HE 16-9: Archaeology and Infrastructure Schemes

All large scale planning applications (i.e. development of lands on 0.5 ha or more in area or 1km or more in length) and Infrastructure schemes and proposed roadworks are subjected to an archaeological assessment as part of the planning application process which should comply with the Department of Arts, Heritage and the Gaeltacht's codes of practice. It is recommended that the assessment is carried out following pre planning consultation with the County Archaeologist, by an appropriately experienced archaeologist to guide the design and

layout of the proposed scheme/development, safeguarding the archaeological heritage in line with Development Management Guidelines.

○ HE 16-14: Record of Protected Structures

a) The identification of structures for inclusion in the Record will be based on criteria set out in the Architectural Heritage Protection Guidelines for Planning Authorities (2011).

b) Extend the Record of Protected Structures in order to provide a comprehensive schedule for the protection of structures of special importance in the County during the lifetime of the Plan as resources allow.

c) Seek the protection of all structures within the County, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. In accordance with this objective, a Record of Protected Structures has been established and is set out in Volume Two Heritage and Amenity, Chapter 1 Record of Protected Structures.

d) Ensure the protection of all structures (or parts of structures) contained in the Record of Protected Structures.

e) Protect the curtilage and attendant grounds of all structures included in the Record of Protected Structures.

f) Ensure that development proposals are appropriate in terms of architectural treatment, character, scale and form to the existing protected structure and not detrimental to the special character and integrity of the protected structure and its setting.

g) Ensure high quality architectural design of all new developments relating to or which may impact on structures (and their settings) included in the Record of Protected Structures.

h) Promote and ensure best conservation practice through the use of specialist conservation professionals and craft persons.

i) In the event of a planning application being granted for development within the curtilage of a protected structure, that the repair of a protected structure is prioritised in the first instance i.e. the proposed works to the protected structure should occur, where appropriate, in the first phase of the development to prevent endangerment, abandonment and dereliction of the structure.

○ HE 16-18: Architectural Conservation Areas

Conserve and enhance the special character of the Architectural Conservation Areas included in this Plan. The special character of an area includes its traditional building stock, material finishes, spaces, streetscape, shopfronts, landscape and setting. This will be achieved by;

(a) Protecting all buildings, structures, groups of structures, sites, landscapes and all other features considered to be intrinsic elements to the special character of the ACA from demolition and non-sympathetic alterations.

(b) Promoting appropriate and sensitive reuse and rehabilitation of buildings and sites within the ACA and securing appropriate infill development.

(c) Ensure new development within or adjacent to an ACA respects the established character of the area and contributes positively in terms of design, scale, setting and material finishes to the ACA.

(d) Protect structures from demolition and non sympathetic alterations.

(e) Promoting high quality architectural design within ACAs.

(f) Seek the repair and re-use of traditional shopfronts and where appropriate, encourage new shopfronts of a high quality architectural design.

(g) Ensure all new signage, lighting advertising and utilities to buildings within ACAs are designed, constructed and located in such a manner they do not detract from the character of the ACA.

(h) Protect and enhance the character and quality of the public realm within ACAs. All projects which involve works within the public realm of an ACA shall undertake a character assessment of the said area which will inform a sensitive and appropriate approach to any proposed project in terms of design and material specifications. All projects shall provide for the use of suitably qualified conservation architects/designers.

(i) Protect and enhance the character of the ACA and the open spaces contained therein. This shall be achieved through the careful and considered strategic management of all signage, lighting, utilities, art works/pieces/paintings, facilities etc to protect the integrity and quality of the structures and spaces within each ACA.

(j) Ensure the protection and reuse of historic street finishes, furniture and features which contribute to the character of the ACA.

- Chapter 18 deals with Zoning and Land use. Section 18.3.41 deals with “Town Centres/Neighbourhood Centres (TC)”. The following objective is relevant-
 - ZU 18-17: Town Centres/ Neighbourhood Centres
 - a) *Promote the development of town centres and neighbourhood centres as the primary locations for retail and other uses that provide goods or services principally to visiting members of the public. The primary retail areas will form the main focus and preferred location for new retail development, appropriate to the scale and function of each centre and in accordance with the Retail Strategy. Residential development will also be encouraged particularly in mixed use developments while the use of upper floors*

of retail and commercial premises in town centres for residential use will in particular be encouraged.

- b) *Recognise that where it is not possible to provide the form and scale of development that is required on a site within the core area, consideration can be given to sites on the edge of the core area based on sequential approach*

Appropriate Uses in Town Centre/Neighbourhood Centres are then detailed as-

Retail, cultural uses, recreation uses, hotel, bed and breakfast, public houses, financial services, professional services, medical and healthcare services, leisure facilities, places of worship, residential, mixed residential, childcare facilities, education facilities, community facilities, civic uses, offices, public transport facilities, car parks, funeral homes.

6.3.2. Volume 3

- Fermoy is also located in the Fermoy Cork Municipal District in the north of the county. Fermoy is categorised as a 'Main Town' to which Volume 3 of the CDP (North Cork) relates. Section 1.4 deals with Fermoy.
- The site is located within the Fermoy Settlement Boundary and is zoned Town Centre/Neighbourhood Centres (Map on Page 29 of Volume 3).
- Section 1.4.13 deals with 'Regeneration Sites' in Fermoy. The Cork County online mapping system and Table 3.1.5 'Regeneration Sites in Fermoy' identifies the southern section of the site as the 'Court House Road Opportunity site - FY-RA-02. This is described as-

Brownfield site located in flood risk area, fronting onto Courthouse Road. Adjoins a number of protected structures (including NIAH structures) and an Architectural Conservation Area. See zoning objective FY-T-03 regarding objectives for this site

- Section 1.4.64 details a number of 'Special Objectives'. The Cork County online mapping system identifies two of these at the site i.e. FY-T-03 and FY-

T-04. These are detailed as 'Town centre' 'Specific Development Objectives' on page 26. It states-

- *FY-T-03- To facilitate the sequential expansion of existing town centre. Development to comprise a balanced and appropriate mix of town centre uses and to provide for adequate connectivity and permeability with other town centres zones. * ^3*
- *FY-T-04- To cater for the sequential expansion of the town centre. Development to comprise a balanced and appropriate mix of town centre uses and to provide for adequate connectivity and permeability with other town centres zones. * ^4*

- Section 1.4.42 states-

While there are opportunities for redevelopment within FY-T-01, the main Town Centre expansion area comprises of sites – FY-T-02, FY-T-03 and FY-T-04. FY-T-02 has frontage onto O'Rahilly Row (Courthouse Road) and is closest to the existing retail core and FY-T-03 also has frontage onto O'Rahilly Row. Both FY-T-02 and FY-T-03 are brownfield sites and their redevelopment provide an opportunity to consolidate and regenerate the town centre and sequentially represent the best opportunities for development

- Section 1.4.43 states-

Site FY-T-04, adjoining and north of FY-T-03, was previously used as an overflow car park for the mart but is essentially greenfield and may be suitable for a range of uses.....

6.4. Guidance Documents

6.4.1. Environmental Impact Assessment

- Guidelines on the information to be contained in Environmental Impact Assessment Reports (EIAR) (EPA 2022).

³ The Asterisk * relates to flood risk as detailed on page 26. The online mapping system indicates the site is located within Flood Zone A and B. ^ indicates TIA and RSA Required also as per page 26.

⁴ See above footnote.

- Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment, Department of Housing, Planning, Community and Local Government (2018)

6.4.2. Retail Planning Guidelines for Planning Authorities April 2012 and the Retail Design Manual- A companion document to the Retail Planning Guidelines.

- Section 2.5.3 states-

“The planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation. In interpreting and implementing these Guidelines, planning authorities and An Bord Pleanála should avoid taking actions which would adversely affect competition in the retail market. In particular, when the issue of trade diversion is being considered in the assessment of a proposed retail development, planning authorities and An Bord Pleanála should assess the likelihood of any adverse impacts on the vitality and viability of the city or town centre as a whole, and not on existing traders”

- Chapter 4 deals with Retailing and Development Management and outlines a number of ‘Key Messages’ including-
 - *The development management process must support applications for retail development which:*
 - *are in line with the role and function of the city or town in the settlement hierarchy of the relevant development plan; and*
 - *accord with the scale and type of retailing identified for that location in the development plan and relevant retail strategy.*
 - *Development proposals not according with the fundamental objective to support the vitality and viability of city and town centre sites must demonstrate compliance with the sequential approach before they can be approved.*
 - *Retail impact assessment and transport impact assessments may be required for significant retail development which due to their scale*

and/or location may impact on the vitality and viability of city and town centres.

- *There should be a general presumption against large out-of-town retail centres in particular those located adjacent or close to existing, new or planned national roads/motorways.....*
- Section 4.4 deals with the 'Sequential Approach to the Location of Retail Development' and details-
 - *.....Where the location of a proposed retail development submitted on a planning application has demonstrated to the satisfaction of the planning authority that it complies with the policies and objectives of a development plan and/or relevant retail strategy to support city and town centre, additional supporting background studies such as a demonstration of compliance with the sequential approach, below, or additional retail impact studies are not required.*
- Section 4.4.1: Policy Principles of the Sequential Approach
- Section 4.9 deals with 'Retail Impact Assessment' and states-

"..... Through the RIA, the applicant must address the following criteria and demonstrate whether or not the proposal would:

 - *support the long-term strategy for city/town centres as established in the retail strategy/development plan, and not materially diminish the prospect of attracting private sector investment into one or more such centres;*
 - *have the potential to increase employment opportunities and promote economic regeneration;*
 - *have the potential to increase competition within the area and thereby attract further consumers to the area;*
 - *respond to consumer demand for its retail offering and not diminish the range of activities and services that an urban centre can support;*
 - *cause an adverse impact on one or more city/town centres, either singly or cumulatively with recent developments or other outstanding*

planning permissions (which have a realistic prospect of implementation) sufficient to undermine the quality of the centre or its wider function in the promotion and encouragement of the arts, culture, leisure, public realm function of the town centre critical to the economic and social life of the community;

- *cause an increase in the number of vacant properties in the primary retail area that is likely to persist in the long term;*
 - *ensure a high standard of access both by public transport, foot and private car so that the proposal is easily accessible by all sections of society; and/or*
 - *link effectively with an existing city/town centre so that there is likely to be commercial synergy.*
- Section 4.10 deals with Transport Impact Assessment including setting thresholds for same.
 - Section 4.11 deals with Assessment of Specific Categories of Retail Development. 4.11.1 deals with 'Large Convenience Goods Stores' and describes these as providing-

“primarily for the weekly convenience goods shopping of households. They require extensive open areas of floorspace together with adjacent car parking as the majority (but not all) their customers undertake their bulk convenience shopping trips by car”

This section states inter alia-

- *Large convenience goods stores should be located in city or town centres or in district centres or on the edge of these centres*
- Annex 1 sets out a Glossary of terms. The following are considered relevant-
 - *Supermarket- Single level, self service store selling mainly food, with a net retail floorspace of less than 2,500 m²*

6.4.3. Transport Infrastructure Ireland's 'Traffic and Transport Assessment Guidelines May 2014'.

6.4.4. Design Manual for Urban Roads and Streets (2013, updated 2019)

6.4.5. The Planning System and Flood Risk Management Guidelines, 2009

6.5. Natural Heritage Designations

- The site adjoins the Blackwater River (Cork/Waterford) SAC (002170) to its eastern boundary.
- The site is c. 900m to the south west of the Blackwater Callows SPA (004094)
- The site adjoins the Blackwater River Callows pNHA (site code 000073) to its eastern boundary.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. One third party appeal has been received from Brock McClure Planning and Development Consultants on behalf of Michael Riordan, Riordan's Super Valu Fermoy, Courthouse Road, Rath-Healy, Co. Cork. The appeal can be summarised as follows-

- Underutilisation of an opportunity site.
 - The two zoning objective which apply to the site require an appropriate mix of town centre uses. The development proposes a large retail unit, one café and one retail unit only. This is inconsistent with the objectives.
 - The proposal does not cater to the full potential of the site.
 - The proposed development will be dominated by a single storey food building with surface car parking.
 - There is a missed opportunity to redevelop this site for its intended mix use zoning objective which could provide an appropriate mix of commercial, cultural, leisure and recreational uses.
 - The development will saturate the existing convenience retail market and will have a detrimental effect on the other retail outlets in the town such as hardware, garden centres and electrical stores. It would

dominate the local areas market and negatively impact existing local businesses.

- Due to its scale and extent the proposal will result in an adverse cumulative impact on the vitality, viability and primacy of the town centre and the demise of local established retailers in the area.
- The CDP has identified zoning objective FY-T-01 on other sites within the town which state that they are the primary location for retail and also the preferred location for are new retail developments.
- Traffic
 - Traffic matters have not been given appropriate consideration or review within the application document.
 - The proposal will be served by a vehicular entrance via Mill Road with a signalised junction on the western extent of the site.
 - Mill road is a two way single carriageway approximately 9.2m in width which runs parallel to the western perimeter of the site and intersects the N72. The N72 is an extremely congested key local traffic route connecting Fermoy with the M8 motorway link, approximately 600m to the east of the site.
 - The proposal ultimately promotes car dependency as it is located at the edge of the town centre and does not link to any of the services of the core town centre. A large retail development at this proposed location will attract a considerable level of additional vehicles to the Court House Road /Mill Road area, which is not suited for the anticipated volume of traffic associated with the proposed development.
 - The Court House Road is the main link road to essential emergency services such as Fermoy Hospital and the Fire Station, by adding an additional large scale retail development in this location would exacerbate traffic congestion resulting in further gridlock in the area and these essential services may be inaccessible.
 - The Council sought clarification on the Traffic Impact Assessment. They raised concerns with the assumptions made about exiting traffic

levels given restrictions on movement due to the Covid Pandemic. As a result subsequent traffic surveys were conducted on Friday 1st and Saturday 02 April. Covid 19 restrictions only fully lifted in April of 2022, and the traffic counts are not a true reflection of actual traffic levels. The accuracy of this data is challenged.

- The existing local road network is unable to cater for the increased traffic volumes proposed.
- Car Parking
 - The proposed development would if permitted attract users from surrounding towns and villages and other neighbourhoods, resulting in more car traffic in the area.
 - By applying the maximum parking standards in the current CDP there would be a need for 200 spaces for the retail aspect of the proposal. 150 are proposed a shortfall of 50 not including the takeaway or staff parking.
 - It cannot be justified by public transport or pedestrian movements as the site is not located within the town centre and many will travel by car.
- Negative Impact and Vacancy
 - The proposal will have a negative impact on existing retail and future retail expansion/investment and on the overall development of the town.
 - It will be detrimental to the existing smaller retail premises that exist in the town which contribute positively to the surrounding area.
 - It will undermine the existing retail in the town which can lead to an increase in vacancy due to a lower demand and underutilisation of other retail units resulting from the increased competitiveness of an additional Large Food store. This contradicts the aims of the Retail Strategy in ensuring an efficient, equitable and sustainable manner is maintained for the retail sector.

- The Retail Impact Assessment (RIA) concluded that there will be no impact on the surrounding retailers and is a gross underestimation of the potential impact of the proposal. The proposal will undermine the existing retail units in the core town centre area which will lead to an increase in vacancy due to a lower demand and underutilisation of other retail units and would make it more difficult to encourage the redevelopment of existing derelict and underutilised town centre sites.
- Over provision of Retail Development in the Area
 - The proposal represents a significant threat to the vitality and viability of the area. There is no retail capacity for an additional retail store, the proposal will impact on local businesses negatively, increase vacancy and increase traffic, congestion and hazards.
 - The proposal would serve a much wider catchment in excess of Fermoy's population, attracting further traffic and congestion.
 - It would entail a significant increase in convenience retail floorspace in Fermoy. There will be insufficient demand for an additional supermarket in Fermoy and the proposal will have a negative impact on existing retail and future retail expansion/investment and on the overall development of the town.
 - There are currently 9 no. large supermarkets in close proximity to the subject site, 5 in Fermoy and an additional 4 in Mitchelstown. Fermoy is also served by a local fruit and vegetable shop, 2 small florists, 3 butchers and a local newsagents. An additional large Supermarket would pose a serious negative and economical effect on these local businesses.
 - It is submitted that the level of retailing available at present in the town of Fermoy is serving local retailing requirements.
- Appropriate Assessment/Natura Impact Statement
 - The location of the subject site, which is bounded by the River Blackwater presents a site that is potentially ecologically sensitive. The adjoining river is an SAC. The subject site and adjoining area would

offer good potential for bats, birds, and otters. There is also potential for possible adverse impacts during the construction phase of the development given the close proximity of the site to the River Blackwater. There is also the potential for sediments/oils to enter the Blackwater.

- The NIS confirms that the risk posed by the project to the River blackwater SAC relates to a reduction in water quality as a result of construction and operation of the proposed development which could adversely impact upon populations of qualifying species and waterbird species support by the River Blackwater European Sites. A reduction in water quality has also been identified as having the potential to undermine the conservation status of the floating river vegetation qualifying habitats of the SAC.
- Other
 - The proposal represents overdevelopment of the area.
 - The proposal does not accord with the policies contained in the CDP and the Retail Planning Guidelines 2012.

7.2. Applicant Response

The Applicants response to the appeal has been prepared by RMLA Planning Consultants and can be summarised as follows-

- The grounds of appeal do not raise any new substantive planning issues which have not already been comprehensively addressed through the application.
- Development Plan Compliance. The site is zoned Town Centre/Neighbourhood Centre under the 2022 CDP. Retail and car park are appropriate uses. The site benefits from two site specific objectives FY-T-03 and FY-T-04. The proposed development provides for primarily convenience shopping that will complement the comparison retailers and retail services provided in the Town Centre.

- The Council requested under FI how future phases of development could be facilitated at the subject site. A 'Future Site Development Capacity Study' was prepared by Joseph Doyle Architects. It shows the site may be reconfigured to accommodate a new mixed use multipurpose building(s), in addition to the proposed.
- The scheme is in accordance with the Development Plan and the appellants argument that the proposed development is entirely inconsistent with the abovementioned Objectives is wholly inaccurate.
- At National level policy documents are aiming to tackle vacancy, combat dereliction and breathe new life into our Town Centres. In particular, the Town Centre First Policy⁵ seeks to support local government and communities to adapt to changes in towns, re-envisioning spaces, and building the fabric of towns of the future. Further references are made to this document.
- The introduction of a Tesco Store, on designated Town Centre expansion lands, will support increased viability and vitality but it is only one of a diverse range of activities needed to achieve a resilient Town Centre.
- The proposed scheme will result in the development of an unused site, the perimeter form will provide active elevations with a variety of expression with new pedestrian public spaces and provide for integration with the Former Mart Site once developed.
- Viability- The commitment of Tesco to seek out and develop a Town Centre expansion site needs to be recognised as compared to a greenfield site. A number of reasons to support this are set out.
- The final design rationale for the chosen site was developed in accordance with the Retail Design Manual with the perimeter form providing active elevations with a variety of expressions with new pedestrian friendly public spaces while also screening both the car parking and service yard.
- The site layout creates an attractive and well-detailed public realm, and the arrangement of buildings, car parking and access routes, open spaces and streetscape, is an efficient use of the site shape, sloping topography of the

⁵ Town Centre First, A policy Approach for Irish Towns.

site, and an informed response to the surrounding urban verge form and context.

- The characteristic of the site lends itself to the delivery of a mixed retail development as being the most appropriate and efficient use, and one that links to other existing and future local services, amenities and the residential population.
- Scale and Need for the Development- Claims the scale of the proposal will affect local established retailers in the area and increase vacancy rates due to lower demand and underutilising of other retail units are made without evidence.
- The submitted RIS indicated that convenience retail provision within the Fermoy catchment at present requires additional floorspace and supply is not matching the demand. The appeal goes on to justify the need for the proposal and challenges the claims that there is no retail capacity for an additional retail store and it would result in an over provision of retail development in the area.
- Reference is made to page 15 of the Retail Planning Guidelines which supports competition.
- The proposed development will provide diversity of offer and support viability and vitality.
- Town Centre Vacancy- The Development Plan does not mention vacancy issues within Fermoy. There is specific reference to vacancy rates in other Cork towns. e.g., Kanturk and Charleville which do not have a Tesco store.
- It cannot be implied that increased vacancy rates occur due to convenience retailer developments as the health of the Town Centre and Core Area is much more complex. Some of the key issues around vacancy are most often unrelated to the scale and type of new floorspace but rather the age, floorplate layout, accessibility and planning restrictions (e.g. deliveries) associated with existing stock.
- Vacancy rates can be attributed to units within the Town Core not being able to accommodate all modern retail development due to site constraints such as

plot size, site layout, parking requirements, delivery access etc. In addition, there is often an overprovision of smaller retail units which cannot all be occupied and in accordance with the Town Centre First policy should be looked at for other non-retail uses to build diversity and resilience.

- Traffic Impacts & Car Parking- A comprehensive Traffic Assessment was prepared by SYSTRA and submitted as part of the planning application. It is apparent that the traffic criticisms set out by the Third Party are merely statements without the support of any factual evidence.
- A response prepared by SYSTRA is submitted which deals with the content of Section 6.3 and 6.4 of the Third Party appeal document. It clearly sets out that-
 - Traffic levels used as part of the Transport Assessment were representative of traffic levels typical to the Fermoy Town Area prior to the pandemic
 - Comparative assessments of traffic levels between different years were undertaken;
 - The impact of the proposed development on traffic and transport will be minor, low in probability and long-term
 - Vehicle trip generation associated with the proposed development can be accommodated without detriment to the local or strategic road network;
 - The development has a sustainability suite of measures that reduce car dependency so as home delivery, generous bicycle parking, active travel infrastructure promoting pedestrian activity and a Mobility Management Plan which promotes sustainable travel for staff
 - A positive attribute of the proposed development is the provision of only 160 no, car parking spaces with the maximum car parking requirement being c. 200 spaces. As a maximum parking value is set, the development cannot represent a 'shortfall' of parking,
- Appropriate Assessment and Natura Impact Statement- A response is submitted from Environmental Experts RSK The response details-

- The proposed development is acceptable and the implementation of measures contained in the Construction Environmental Management Plan (CEMP) will ensure that any potential impacts are minimised and will not result in significant adverse impacts to biodiversity receptors and the water quality of the SAC.
 - Attenuation measures are aimed at infiltration into the ground rather than direct to the Blackwater.
 - Through the use of swales the surface water runoff from new hardstanding areas will be collected and directed to an onsite attenuation area, going through a full hydrocarbon and silt interceptor prior to discharge.
 - The implementation of these measures will not lead to a significant impact to the River Blackwater SAC.
 - A number of other detailed measures are set out to reduce the impact on species.
 - The project will not have the potential to result in disturbance that could lead to a change in the distribution of otters within the SAC.
- The proposal is a holistic response to the existing planning framework and pre-planning guidance from Cork County Council.

7.3. Planning Authority Response

The Planning Authority's response to the grounds of appeal dated 02/09/22 and 12/10/22 can be summarised as follows-

- The relevant issues have been covered in the technical reports already forwarded as part of the appeal documentation. There is no further comment to make.

7.4. Observations

One observation has been received from Gillian Cussen of Castlecooke, Kilworth Co. Cork. The observation can generally be summarised as follows-

- There is a disproportionate amount of retail units in the area which will adversely impact small traders and independent shops
- Increased traffic congestion
- Potential damage to the nearby River Blackwater and its habitats during the construction stage.
- The site has developed into a wildlife haven and the development will obliterate this.

7.5. Further Responses

The Applicant's response to the appeal was circulated to the third party for their observations. A further response dated 17/10/22 was received from Brock McClure Planning and Development Consultants on behalf of Michael Riordan. This can be summarised as follows-

- The response sets out a retort to planning, transport and environmental issues.
- The response repeats the assertion that the zoning objectives require an appropriate mix of town centre uses. The proposal does not cater for the potential of the site. It will be a missed opportunity to develop the site as per its intended zoning. Lands with the zoning objective FY-T-01 are considered the primary location for retail uses.
- The response generally repeats the Appellants assertion in relation to vitality, viability, primacy and impacts upon the town centre.
- The Appellants concerns in relation to traffic remain. They have consulted with 'Transport Insights'⁶ to review the applicants response to the appeal. They then challenge the identified peak hours of 16.00 to 17.00 hrs on Fridays and 12.00 to 13.00 hrs on Saturdays which they consider could not be considered proper starting points to assess the local road network given they miss the morning periods and school hours. They also consider the peak hour

⁶ A report from 'Transport Insights' on headed paper with details of experience and competence etc. has not been provided.

on Saturdays may have been missed if the time chosen was the first hour of the survey period.

- Information from the TII traffic counter on the N72 between Fermoy and Ballyholey, Castlehyde are provided to challenge the details of the applicants traffic survey. They suggest the survey omits a greater peak period in the morning and that the survey was carried out when traffic was generally decreasing. This is similarly reflective on Saturdays.
- The Appellant considers this shows the Applicants peak periods are most likely erroneous and can't be used to compare peak traffic levels on the local road network or as basis for modelling junctions.
- The Appellant also challenges the assertion traffic volumes were higher in 2021 than 2022 and details this is at odds with TII traffic counter survey data as detailed. It details that lower ADT values in 2020 and 2021 are due to Covid restrictions and it is unclear why national trends for traffic levels to increase have not been observed.
- The Appellant asserts the submitted Transport Assessment shows the proposal will push key junctions in the vicinity of the site beyond their practical capacity and will have a detrimental effect on traffic flows in the vicinity of Fermoy. They then repeat how peak hour figures which are likely to be erroneous inform the submitted modelling.
- Manufacturing and Industry are the largest employment sectors in Fermoy and therefore is less impacted by Covid. Working from home or remote working is not considered as prevalent in Fermoy.
- The scale of the proposal will attract users from surrounding towns and villages resulting in more car traffic in the area. Page 17 of the Transport Assessment states that the development will lead to overspill car parking. Under provision of car parking will clearly lead to negative impacts on adjacent businesses.
- Concerns in relation to Appropriate Assessment and Natura impact Assessment are again set out.

- The HSE is moving to the primary care centre at Mill island and will have a capacity for up to 200 employees. This will lead to further congestion.

8.0 Assessment

8.1. Introduction

8.1.1. I have examined the application details and all other documentation on file, including the Appeal, Response to the Appeal, Observation and Further Responses. I have inspected the site and viewed it from its public and nearby properties boundaries. I have had regard to relevant local/regional/national policies and ministerial and other guidance where relevant.

8.1.2. I am satisfied the substantive issues for assessment are generally only those arising from the grounds of the third-party Appeal. The issues considered necessary for assessment relate to the following matters-

- Principle of the Development and Land use Zoning
- Regeneration, Site Specific Objectives and Underutilisation of the Site
- Retail Impact
- Transport Related Matters
- Flooding
- Design Amendments
- Appropriate Assessment

8.2. Principle of the Development and Land use Zoning

8.2.1. This application is for a mixed use scheme comprises a large Tesco store, a restaurant with takeaway and one other retail unit. It involves the redevelopment of a largely brownfield and underutilised site located generally in the town centre of Fermoy.

8.2.2. The site and its immediate surrounds to the south and west are zoned '*Town Centre/Neighbourhood Centres*' in the Cork County Development Plan 2022-28 (CDP). Objective ZU 18-17 Volume 1 of the CDP details 'Retail' as the first

'Appropriate Use' in this zoning which also includes a number of other typical commercial related uses.

8.2.3. Objective ZU 18-17 states-

“Promote the development of town centres and neighbourhood centres as the primary locations for retail and other uses that provide goods or services principally to visiting members of the public. The primary retail areas will form the main focus and preferred location for new retail development, appropriate to the scale and function of each centre and in accordance with the Retail Strategy.”

8.2.4. The National Planning Framework sets out National Strategic Outcomes and in particular focuses on 'Compact Growth'. It details compact towns will add value and create more attractive places in which people can live and work. It details Ireland's urban settlements contain many potential development areas, centrally located that are suitable and capable of re-use to provide inter alia jobs and services. National Policy Objective 11 details there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing towns. The general principle of 'Compact Growth' is also espoused in the Regional Spatial & Economic Strategy for the Southern Region (RSES). Furthermore objective RPO 55- Retail, seeks to ensure that retail development is focussed on urban and village centres. The proposed development is consistent with National and Regional policy and objectives in this regard.

8.2.5. The nature of the proposed retail use is an appropriate land use for this site and is therefore acceptable in principle.

8.3. **Regeneration, Site Specific Objectives and Underutilisation of the Site**

8.3.1. The Appellant has raised concerns relating to the appropriateness of the site for the subject development. In particular they consider the proposal fails to provide a mix of uses as required by the site specific zoning objectives and therefore an underutilisation of an opportunity site.

8.3.2. The Applicants strongly challenge this ground on the basis that the site is located on suitably zoned land, is in accordance with the site specific zoning objectives and that they have already addressed the Planning Authorities original concerns on this

matter at FI stage through the submission of a '*Future Site Development Capacity Study*'.

- 8.3.3. Volume 3 of the CDP section 1.4.19 identifies a number of regeneration sites in Fermoy suitable for redevelopment. The southern part of the application site is identified as one such 'Regeneration' site in Table 3.1.5 i.e.- 'Court House Road Opportunity site - FY-RA-02'.
- 8.3.4. Section 1.4.64 details two 'Special Objectives' that apply to lands that include the application site. These are FY-T-03 and FY-T-04. These are detailed as 'Town centre' 'Specific Development Objectives' on page 26. These state-
- *FY-T-03- To facilitate the sequential expansion of existing town centre. Development to comprise a balanced and appropriate mix of town centre uses and to provide for adequate connectivity and permeability with other town centres zones.*
 - *FY-T-04- To cater for the sequential expansion of the town centre. Development to comprise a balanced and appropriate mix of town centre uses and to provide for adequate connectivity and permeability with other town centres zones.*
- 8.3.5. I note concerns raised by the Appellant in relation to lands with a specific Objective FT-T-01 in which they argue these lands are more appropriate for retail development. However section 1.4.42 of the CDP is clear in which it states-
- “While there are opportunities for redevelopment within FY–T-01, the main Town Centre expansion area comprises of sites – FY-T-02, FY-T-03 and FY-T-04.....*
- Both FY-T-02 and FY-T-03 are brownfield sites and their redevelopment provide an opportunity to consolidate and regenerate the town centre and sequentially represent the best opportunities for development*
- 8.3.6. The application proposes a large Tesco retail store, a restaurant/takeaway and a smaller independent style retail unit. Retail uses clearly come within the list of '*Appropriate Uses in Town Centre/Neighbourhood Centres*' as per section 18.3.42 of the CDP. While restaurant and takeaway uses are not specifically stated in this section I am satisfied that such uses come within most reasonably minded persons understanding of uses appropriate to 'Town Centre/Neighbourhood Centres' zoning.

- 8.3.7. The CDP is not however very specific when it states *“Development to comprise a balanced and appropriate mix of town centre uses”* as per the two site specific objectives. The proposed uses are all clearly appropriate but the use of the words ‘balanced’ and ‘appropriate mix’ leaves room for subjectivity and interpretation. This in itself is not unusual, with most Development Plans and such planning policy documents seeking to avoid an overly prescriptive or restrictive policy framework.
- 8.3.8. The Planning Authority raised similar concerns at FI stage albeit under the provisions of the now defunct Fermoy Town Development Plan 2009. They sought indicative proposals for future phases of development specifying how land uses along Mill Road could be facilitated.
- 8.3.9. The Applicants submitted their ‘Future Site Development Capacity Study’ prepared by Joseph Doyle Architects. This identifies a second phase of development following after the proposed application. This involves a ‘Potential Future Development Location & Massing’ proposal along the western boundary of the site at Mill Road and details 4 units. Suggested alternative floor plan proposals are submitted including for 8 first floor apartments. Overall it is submitted that a second phase of development could provide for a further mixed use proposal e.g. commercial, retail, office, local authority, primary health care, residential and event/gallery space etc.
- 8.3.10. The Planning authority assessment considered that this proposal adequately responds to the FI request and affords future development opportunity consistent with the town centre zoning.
- 8.3.11. Having considered all of the above and noting the CDP does not require the application site to be developed in one go, I am satisfied the proposed development would make a good use of a designated regeneration site, is more than reasonably consistent with the two site specific zoning objectives and would not compromise further appropriate development of the application site at a later phase. The proposal does not underutilise the site potential in this context.

8.4. **Retail Impact**

- 8.4.1. The Appellant raise a number of retail impacted related concerns which I intend to consider under this section. The Appeal contends the proposed development is of a size and scale that will lead to increased vacancy levels in the town. The proposal

would overprovide such retail development and would undermine existing retail in the town and thereby contradicts the retail strategy for the town. The appeal and further response consider the proposal will have a negative impact on existing retail, future retail/expansion/investment and the overall development of Fermoy. They argue it would be detrimental to existing smaller retail premises and would lead to an increase in existing building stock vacancy due to lower demand and utilisation of other retail units in the town centre. Overall they contend the proposal would negatively impact upon the vitality and vibrancy of Fermoy.

8.4.2. The Applicant challenge this ground of appeal pointing to consistency with zoning and development plan compliance. They argue the Appellant's have submitted no evidence the proposal will increase vacancy. They highlight the redevelopment of a brownfield opportunity site will help raise the profile of Fermoy commensurate with its designation in the retail hierarchy. They argue the submitted Retail Impact Assessment (RIA) details there is a requirement for additional retail floor space in Fermoy. They refer to section 2.5.3 of the Retail Planning Guidelines (RPGs) which details the planning system should not be used to inhibit competition.

8.4.3. Chapter 4 of the RPGs sets out a number of key messages from the outset including-

“The development management process must support applications for retail development which:

- are in line with the role and function of the city or town in the settlement hierarchy of the relevant development plan; and*
- accord with the scale and type of retailing identified for that location in the development plan and relevant retail strategy.”*

8.4.4. Chapter 9 of the CDP is titled 'Town Centres and Retail'. Section 9.6 deals with the 'Retail Hierarchy for the County'. Table 9-1 identifies Fermoy as a 'Ring Town' in the fifth tier titled- 'Sub-Regional/ Ring Towns/ Large County Towns'. The following is stated-

*“Ring and Larger County Towns which generally perform important sub-county retailing functions and include some of the **major retailing chains,***

particularly convenience. *In general, these have a population in excess of 5,000 or are designated as Ring Towns in consecutive plans.*⁷

8.4.5. Objective TCR 9-8 then seeks to-

“Support the vitality and viability of the Ring and Larger towns and to ensure that such centres provide an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchment areas.”

8.4.6. As discussed in section 8.2 and 8.3 above the site is located on lands zoned Town Centre and represents appropriate redevelopment of a designated regeneration site and an underutilised lands zoned Town Centre that also has the capacity for further stages of development.

8.4.7. Section 4.4 of the RPG's deals with *“Sequential Approach to the Location of Retail Development”*. This section details that when a planning application has demonstrated it complies with the policies and objectives of a development plan and/or relevant retail strategy to support town centre, additional supporting background studies such as a demonstration of compliance with the sequential approach, or additional retail impact studies are not required.

8.4.8. Notwithstanding this, section 4.4.2 of the RPGs clearly details the order of priority is to locate retail development in the town centre. The application site is located on land zoned Town Centre. In this context I am entirely satisfied the proposal is consistent with the policies and objectives of the development plan and therefore complies with the provisions of chapter 4 of the RPGs and an RIA is not required.

8.4.9. I note section 4.9 of the RPG's states-

“an application for planning permission to develop a new retail development to be particularly large in scale compared to the existing city/town/district centre,the planning authority may request the applicant, by way of a Retail Impact Assessment (RIA) as set out in Annex 5, to demonstrate compliance with the development plan and that there will not be a material and unacceptable adverse impact on the vitality and viability of any existing

⁷ Emphasis added.

centre. This is a matter for careful technical assessment and professional judgement.

The application proposes a single storey retail unit of 3,739 sq.m gfa divided as c. 1,626 sq.m convenience net sales area and c. 775 sq.m comparison net sales area and a separate retail unit of 259 sq.m. This is well below the 3,000 sq.m convenience retail floorspace cap set out in section 2.4.1 of the RPG's.

8.4.10. Section 1.4, paragraph (2) of the RPG's discusses the size of supermarkets. It details the average size of supermarkets in 2009 was 1,701 sq.m. A 'Supermarket' is described in the 'Glossary of Terms' set out in Annex 2 of the Guidelines as

'Single level, self service store selling mainly food, with a net retail floorspace of less than 2,500 M2'.

Shopping Centres are described as

"Predominantly purpose-built centres comprising a mix of large and small units, typically anchored by a large convenience goods stores".

Section 4.11.1 describes "Large Convenience Goods Stores" as

"comprising of supermarkets, superstores and hypermarkets are now an accepted element of retailing in cities and large towns. They provide primarily for the weekly convenience goods shopping of households. They require extensive open areas of floorspace together with adjacent car parking as the majority (but not all) their customers undertake their bulk convenience shopping trips by car.

Large convenience goods stores should be located in city or town centres or in district centres or on the edge of these centres and be of a size which accords with the general floorspace requirements set out in the development plan/retail strategy to support and add variety and vitality to existing shopping areas and also to facilitate access by public transport for shoppers."

I am satisfied the proposed development sits comfortably between these three descriptions and as such the proposal is considered of an appropriate size and scale for Fermoy an identified Ring town in the CDP.

8.4.11. Although not strictly required the Applicants have submitted a Retail Impact Assessment (RIA) prepared by Avison Young and dated December 2021. They

indicate this has been done in the interest of completeness. The RIA has generally been carried in accordance with the provisions of the RPG's and identifies the catchment area, estimates expenditure available in that area, estimates turnover of existing centres within the area, estimates proposed turnover and estimates the quantum of retail spending that may be diverted from existing to the new proposal. It concludes-

“convenience retail provision within the Fermoy catchment at present requires additional floorspace and supply is not matching demand.

The Appeal argue there is insufficient demand for an additional supermarket in Fermoy but offers little by way of substance to support this. The RIA details the proposal would generate a turnover of c. €21 million in 2024 (estimated opening year at time of making the application). Table 12 highlights an estimated surplus/leakage of c. €70 million or 19% within the identified catchment area and the proposal could reduce this to under €21 million and less than 6%. Noting that an RIS was not necessarily required for this application I find the Applicants contention more persuasive in this regard.

8.4.12. In terms of Vitality and Viability the RIS refers to the provisions of the RPG's set out in section 4.9 of the RPG's. The listed criteria are considered more appropriate to determining the threshold at which an RIA will be required rather than if the proposal will have a material and unacceptable adverse impact on the vitality and viability of any existing town centre.

8.4.13. Annex 2 of the RPG's is titled “Assessing the Vitality and Viability of Town Centres” and outlines some information that may be of use in planning for the retail sector, and in assessing development applications. A number of ‘Health Check Indicators’ are detailed including diversity of uses, competitiveness, shopping rents, vacant street level property, accessibility etc.

8.4.14. While the submitted RIA does not focus on these indicators, it is noted the Applicant address vacancy in their response to the grounds of appeal. They challenge the view that increased vacancy rates occur due to convenience retail developments. They discuss practical constraints that can contribute to vacancy including those unrelated to size and scale such as the type of floorspace required, the age of building stock, floor plate layout, accessibility and other planning restrictions such as deliveries etc.

8.4.15. While I acknowledge concerns raised by the Appellants that development such as that proposed will impact established retailers in the area I am not convinced this will necessarily have a material and unacceptable adverse impact on the vitality and viability of the existing town centre, which the application site is clearly located within. There are many synergies and benefits developments such as that proposed can bring to existing town centres including regeneration of a brownfield underutilised site, improving the public realm, local employment, increased footfall to the town centre and promoting/securing competitiveness in the retail sector in Fermoy for the consumer. All of these can impact positively on the vitality and viability of existing town centres.

8.4.16. While I accept the bona fides of this aspect of the appeal, it must be highlighted that the Appellant does identify himself as the proprietor of Riordan's Super Valu in Fermoy which I note is located on the opposite side of the N72 in very close proximity to the application site. In this regard the proposal would be a direct competitor of the Appellant. There is also an existing Lidl located on the N72 just east of the application site. The appeal refers to overprovision of supermarkets in the area with 5 stores in Fermoy and a further 4 in Mitchelstown.

8.4.17. The Board are reminded that section 2.5.3 of the Guidelines discusses "*Competitiveness in the Retail Sector*". It highlights strong competition as essential to reduce retail costs and ensure that savings are passed on to retail customers through lower prices. It states-

'The planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation'.

8.4.18. I expect the proposed development will impact these competitors to some extent, however I am not convinced such an impact would significantly increase the likelihood of any adverse impacts on the vitality and viability of the town centre of Fermoy as a whole having particular regard to the sites Town Centre zoning, site specific objectives and regeneration status. The opportunity would remain for existing traders to respond positively to such competition which on balance provides increased opportunity to improve the vitality and viability of Fermoy town centre as a whole.

8.4.19. In conclusion having considered all of the above I do not share the views of the Appellant as set out in the Appeal and their Further Response. Referring back to the key messages set out on page 10 of the RPG's I am satisfied the proposed development-

- is plan-led and consistent with the compact growth provisions of the NPF, the retail provisions of the RSES and the sites zoning, other site specific objectives and the Retail Strategy of the CDP,
- through its town centre location and zoning, its site specific objectives and part Regeneration site status will enhance the vitality and viability of Fermoy town centre as a whole
- through its size, scale and location will ensure both competitiveness in the retail sector and a strong town centre
- can facilitate increased access to retailing through reduced private carparking provision, large cycle space provision, improvements to the public realm and permeability for walking, online delivery, click & collect and other identified measures. These can contribute to a reduced reliance on the private car and can instead encourage a shift to more sustainable transport modes and
- will deliver a quality urban design outcome significantly improving on the existing built environment.

8.5. Transport Related Matters

8.5.1. Introduction

8.5.2. The Appellant has raised transport related concerns including traffic as they consider the proposal ultimately promotes car dependency, which would exacerbate traffic congestion, impacting upon emergency services in the area in which the local road network cannot cater for the increased volumes. They question the accuracy of data submitted for the traffic survey as part of the Transport Assessment as Covid restrictions had only recently been lifted at that time and a lot of people were still working from home. They also raise concerns off under provision of car parking and consider this demonstrates the unsuitability of the site to accommodate the proposal.

- 8.5.3. In their response to the Appeal, the Applicants challenge these grounds. They submit a new report from 'Systra' referring to the robustness of the traffic data used in the Transport Assessment. They contend it provides a fair representation of traffic typical to Fermoy. The assessments undertaken included an analysis of available historical data with a view to validating 2021 traffic counts and the use of post application data from April 2022. They detail most covid restrictions were lifted in January 2022 with the TII data traffic counters showing car levels returning to such highs as before the pandemic. The submission predicts the impact of the proposed development to be minor, low in probability and long term. They contend the proposal can be accommodated without detriment to the local or strategic road network. A number of measures to encourage sustainable travel are also submitted.
- 8.5.4. In terms of car parking the Systra submission details the provision of 150 parking spaces represents the balance been struck between adequate supply of car parking and over supply as per section 12.12 of the CDP. They also detail supporting measures to encourage the reduction from the maximum 200 spaces including generous bicycle parking provision, home delivery and click and collect services and a special contribution to the Council towards the delivery of active travel measures.
- 8.5.5. In their Further Response the Appellants detail they have consulted with 'Transport Insights' and set out their response to Systra's submission. They highlight concerns relating to the choice of 'peak hour periods' in the Traffic Assessment as they miss the entirety of the AM periods on the days chosen, the period of time primary schools close and the first hour of the survey period on the Saturday chosen as the peak hour. They present a number of graphs based on the TII traffic counter on the N72 and show how the Friday morning peak was missed, how the Friday survey was of a period when traffic was generally decreasing and how the likely Saturday morning peaks were omitted. They consider the peak periods used in the TIA are most likely erroneous and cannot be used to compare peak traffic levels as a basis for modelling junctions on the local network. They also challenge the applicants assertion that traffic volumes were higher during 2021 than 2022 by reference to data from the TII traffic counter on the N72 between Fermoy and Ballyhooley and a counter at the M8. In both these cases average daily traffic (ADT) values are detailed as much lower during 2020 and 2021 due to Covid. They argue it is unclear why traffic in Fermoy would not follow the nationally observed trend of traffic increasing

year on year. The Appellant then discusses the submitted modelling and as the peak hour periods are likely to be erroneous the proposal is likely to be much more detrimental to the local road network and emergency services than has been demonstrated by the Applicant.

8.5.6. **Related Policy Frameworks and Guidance**

8.5.7. It is important to highlight that Section 2.3 of the Retail Planning Guidelines (RPGs) states-

“there is a presumption against out-of-town retail centres which could impact on the viability and vitality of city and town centres and also generate significant additional traffic with potential to impact on the national road network and the performance of junctions and interchanges.”

In this context and as set out in section 8.2 the proposed development is located on lands zoned ‘Town Centre/Neighbourhood Centres’ and is considered an entirely appropriate land use for this site and in principle is in accordance with the RPG’s.

8.5.8. Section 4.10 of the RPG’s also deals with Transport Impact Assessment and states-

“Impacts on the transport networks serving a proposed retail development proposal are very important to determine in the course of considering planning applications. A Traffic and Transport Assessment (TTA) may be required for retail developments over a particular threshold (1,000 M2 gross floorspace for retail/leisure).”

The proposed retail area is 3,739 sq.m for the Tesco, 259 sq.m for the retail unit and 323 sq.m for the restaurant.

8.5.9. Section 12.11.5 of the CDP deals with Traffic/Mobility Management and Road Safety. CDP Objective TM 12.8 ‘Traffic/Mobility Management and Road Safety’ requires the submission of a Traffic and Transport Assessment (TTA) where traffic movements associated with a proposal have the potential to have a material impact on the safety and free flow of traffic on National, Regional or other Local Routes.

8.5.10. Transport Infrastructure Ireland’s Traffic and Transport Assessment Guidelines 2014 details criteria where a TIA is mandatory or recommended if subthreshold. Table 2.1 details that a retail development in excess of 1,000sq.m requires a TIA.

8.5.11. Having considered the above, the sites proximity to the national road network, its likely impact on the local network and its size a Traffic Impact Assessment is required.

8.5.12. **Traffic Impact Assessment**

8.5.13. The applicants have submitted a Transport Assessment (TA) with the application. This has been completed by 'Systra' (Consulting Engineers). The TA seeks to examine the transport implications of the proposal, to evaluate the site accessibility and to ensure it can be integrated into the adjoining transport network. It states its primary aim to ensure that accessibility to the site by foot, cycle and public transport is maximised and that trips by car can be accommodated by the existing road network without detriment to existing uses. It assesses the -

- existing traffic situation
- the proposed development and
- travel characteristics

It includes a Traffic Impact Assessment (TIA)-

- with baseline traffic conditions
- future year scenarios
- contribution to the local network and junction capacity and
- measures to support the development by integrating it into the adjoining network.

8.5.14. The TIA is included in section 5 of the TA. It sets out the methodology used to establish baseline traffic conditions on the local road network. A 'traffic data collection exercise' was undertaken on Friday the 23rd and Saturday the 24th of April 2021 at 6 junctions within Fermoy relative to the application site (Figure 8 of TA). These surveys were carried out from 15.00-2000 on the Friday and 12.00-17:00 hours on the Saturday. The identified peaks were from 16.15-17.15 on the Friday and 12-13.00 on the Saturday and are presented in Figures 9 and 10.

8.5.15. The TIA then presents 'Future Year Scenarios' using TII Growth Factors and determine the 'Contribution of Development Traffic to the Local Network for 2024

(opening year), 2029 and 2039. Then TIA then considers 'Committed Development' i.e. the permitted (now operational) HSE Primary Care Centre to the north of the site. A highly conservative and overestimate traffic scenario is detailed to account for this.

- 8.5.16. The TIA submits modelling of Junction Capacity was carried out using junction assessment software Junctions 8 (ARCADY + PICADY modules) and LinSig v3. A detailed assessment of the results is set out in section 5.7 looking at the impact, with and without, the subject Proposal on Friday and Saturday peak periods, allowing for the overstated impact of the committed development. It concludes that the results reflect a conservative approach to the traffic assessment. Junctions are expected to operate within satisfactory conditions during peak periods and low level congestion may occur locally on the network for short durations which is detailed as typical in town centres such as Fermoy.
- 8.5.17. The Planning Authority raised concerns in relation to the assumptions made by the Applicants in terms of existing traffic levels given the Covid restrictions in place at the time. They sought Further Information (FI) in this regards. In their response to the FI the Applicants refer to a meeting with the Area Engineer on the 04/05/2022 and the submission of a subsequent traffic survey almost a year after the initial survey.
- 8.5.18. The FI response details the initial survey did take place during Covid restrictions but these had been eased on April 12th 2021. An analysis of historical traffic counts found traffic levels were 4% higher in 2021 when compared against 2019 for the Friday and 3% higher for the Saturday. These were considered representative of traffic levels typical to Fermoy prior to Covid.
- 8.5.19. The FI submission included details of the new traffic counts from 15:00-20:00 hours on Friday 1st and 12:00-17:00 hours on Saturday 2nd of April 2022 after the removal of Covid restrictions. The counts were undertaken at the same six junctions as the original survey. The results and comparison with 2021 are presented in Table 2 and 3 of the FI submission. They show an increase across all junctions of 7% in 2022 on Friday and a reduction of 2% on Saturday. They consider the 2021 data used in the Transport Assessment as representative and it appears new modelling was not carried out.
- 8.5.20. The report from the Councils Engineer states the FI submission-

“.....has been re-assessed and comparative counts/studies undertaken. They are satisfied that the traffic assessment is robust and underpins their opinion/conclusions that the proposed development will not negatively impact on congestion times at key junctions in the town. Their key argument is shared journeys and shoppers will combine different shopping destinations and experiences whilst parked up and use existing pedestrian links.”

Based on the FI submission, the council engineer recommended a grant of permission subject to conditions including special contributions for a pedestrian crossing on Mill Road, new cycling Infrastructure and footpaths on Mill road, improvements to the resurfacing of the N72, upgrades to existing traffic light systems at Pearse Square and two new signalised junctions. These are considered to help reduce congestion times in the town.

8.5.21. I note the Appellant’s primary concerns as detailed in the Appeal and their Response to the Applicants submission generally relate to the likelihood for congestion and the adequacy of the peak periods identified. The Applicants don’t submit a justification for why the time periods chosen for the survey were taken. The Appellants assert that omitting the early morning peaks including school runs and missing a busier peak period on a Saturday by an hour, provide erroneous data for modelling and should not be relied upon. They refer to data counts from the TII traffic counter located at the N72 between Fermoy and Ballyhooley⁸ to suggest inaccuracies in the survey results.

8.5.22. I have considered the data from the traffic counter and note average daily traffic (ADT) has increased year on year from 2020-2023 reflecting the bounce back from Covid. I have also reviewed the ‘ADT Trend’ chart from 2014-2023⁹. I am satisfied at the time the application was made towards the end of 2021 the figures at this counter were not too dissimilar to the pre-pandemic period 2017-19.

8.5.23. I also note this counter is located on a national road, c. 4-5km north west of the application site and on the north side of the Blackwater River and in this context

⁸ <https://trafficdata.tii.ie/publicmultinodemap.asp> (accessed 14/09/23)

⁹ https://trafficdata.tii.ie/sitedashboard.asp?sgid=XZOA8M4LR27POHAO3_SRSB&spid=47BB45E0EDBB (accessed 14/09/23)

cannot be relied on to reflect the traffic related conditions on the local road network around the application site at the time the survey was carried out.

- 8.5.24. The information presented by the Applicant is largely based on their actual survey data taken from the immediate local road network around the site. While a pre-Covid Friday morning peak may have presented different figures to those recorded in the survey, I am not convinced avoidance of school related times is necessarily fatal to the findings of the survey and the TIA regardless of lifting of Covid restrictions. In this regard, primary schools are generally open c. 182 days a year i.e. less than half a year, with secondary schools even less. These morning peaks are rarely sustained over the survey periods in towns of the size and scale of Fermoy and it is more plausible that many people shopping in a Tesco would avoid these short term peaks and/or combine their trip for school and shopping purposes. Surveys from those morning peak time periods while useful for many traffic surveys do not in my opinion always present the most accurate or cumulative reflection of the wider impacts of a development, such as that proposed, on the local road network in a town like Fermoy over a wider extent of a day.
- 8.5.25. Equally, I acknowledge a traffic survey an hour earlier than 12.00 – 13.00 on a Saturday could have presented a higher peak than that recorded by the Applicants, however the Appellants have not submitted their own survey results and just rely on readings from the TII traffic counter c. 4km from the site to justify their view.
- 8.5.26. Having considered all of this, I am not convinced the Appellant's have adequately demonstrated the data as presented by the Applicant is erroneous to an extent that for the purpose of modelling is not sufficient. In any event modelling and forecasting are reliant on assumptions¹⁰ and creating the perfect scenario to reflect future trends is always open to question. Notwithstanding this, I note the Appellant's do not question the modelling methodologies used or the specific outcomes returned.

¹⁰ TII Publications PE-PAG-02017 Project Appraisal Guidelines for National Roads Unit 5.3 - Travel Demand Projections section 10.1 states- *"Making future projections over an extended time period is highly uncertain. The accuracy of the central growth scenario projections depends on the explicit projections of population, settlement patterns, employment and job location. In addition, the model incorporates a large number of implicit assumptions about the performance of the transport network and vehicles, the costs of travel, personal tastes and preferences and all of the other factors that actually determine individual decisions about travel behaviour."*

8.5.27. Having considered the TIA as submitted as part of the overall TA, the FI submission and the subsequent Council Engineers report, I am satisfied that the scope, assumptions, modelling, allowances and traffic count used to inform the submitted TIA are a reasonable representation and reflection of the traffic conditions at the time and in previous years in order to allow for an assessment of the potential transport impacts of the proposed development on the local road network in Fermoy. The information submitted in the TIA is detailed, robust and is generally in keeping with Transport Infrastructure Ireland's 'Traffic and Transport Assessment Guidelines May 2014' which includes the modelling software used. The Council have raised no further concerns in this regard and seek Special Contributions (€90,000) through Condition 4 for works near the site, including new signalised junctions, to help reduce congestion. The Applicants have not sought to appeal this condition.

8.5.28. Having considered the sites location, zoning, specific development objectives including that part of the site is identified with a 'regeneration' status and all of the contents of the TA (including chapter 6 of the submitted EIAR and its Appendix), I am satisfied the development as proposed will not lead to significant traffic congestion on the local or nearby national road network to an extent that would be inappropriate for a town like Fermoy warranting refusal and as a result, it will not significantly endanger public safety or create a traffic hazard. I also do not consider the proposed development would significantly or negatively impact upon existing emergency services (Fermoy Fire Station located with an existing entrance on the N72 opposite the site) to an extent that would warrant refusing the proposal.

8.5.29. **Car and Bicycle Parking**

8.5.30. CDP objective TM 12-9 seeks to secure the appropriate delivery of car parking and bicycle spaces and facilities in line with the standards set out in Section 12.24 of the CDP i.e. table 12.6. The objective further details proposals such as that proposed will be subject to maximum parking standards as a limitation to restrict parking provision to achieve greater modal shift. Table 12.6 seeks a maximum of 1 space per 20 sq.m for retail development and 1 space per 5 (net sq.m). The application proposes 3,739 sq.m of floor space in the Tesco, 259 sq.m in the retail unit and 323 sq.m in the restaurant. Therefore there is a maximum requirement of c. 200 car spaces for the retail elements and c. 65 spaces for the restaurant.

- 8.5.31. Section 3.4 of the TA details the application proposes 150 car parking spaces. It also details the development is designed to integrate with established non-motorised links and is well connected to Fermoy town centre increasing its appeal to those who do not use a car or who as part of a linked trip will have parked elsewhere.
- 8.5.32. The Appeals considers the shortfall of c. 50 spaces for retail development as well as the restaurant cannot be justified by public transport or pedestrian movement as the site is not located within the town centre and failure to meet the standard demonstrates the unsuitability of the proposal. In their Further Response to the Appeal, they detail a reduction of 62 spaces is a considerable reduction and overspill of car parking will lead to negative impacts on adjacent businesses.
- 8.5.33. Table 12.9 of the CDP deals with cycle parking and requires 1 space per 100 sq.m GFA i.e. c. 40 and 5 for staff. The application proposes 72 bicycle parking spaces which is in excess of what is required by the CDP.
- 8.5.34. Section 6.6 of the TA proposes a Travel Plan to be implemented to reduce the need for car travel. The Applicants Response to the Appeal also details other measures including home delivery services and click and collect services which will help reduce the demand for parking.
- 8.5.35. I am satisfied the applicants have complied with CDP standards in term of car and bicycle parking provision and the site is located on lands zoned Town Centre. I am not convinced that overspill parking as suggested by the Appellants would lead to negative impacts on adjacent businesses. This is a common arrangement in town centres and would include public on street parking as well as other private car parks in the area. Management of over spill to such private parking spaces is one for the proprietors of such properties.
- 8.5.36. **Conclusion**
- 8.5.37. Having considered all of the above in the context of the Retail Planning Guidelines, the Traffic and Transport Assessment Guidelines and the County Development Plan including the sites zoning objective- 'Town Centre/Neighbourhood Centre' and maximum car parking standards, and subject to appropriate conditions including mobility management and special contributions, I am satisfied the proposed development is located on an entirely appropriate site, would not significantly

contribute to excessive traffic congestion to an extent that can reasonably be considered unjustifiable for such a Town Centre location and proposed use. Furthermore the proposal would not significantly or unduly impact upon emergency services operating within Fermoy and would not lead to a traffic hazard or endanger public safety.

8.6. Flooding

- 8.6.1. The Appellant and Observer have not raised any specific flooding related concerns. Other than a Further Information request the Planning Authority have not raised any major concerns and have permitted the development subject to some flooding related conditions (No's 12, 16, 17, 18, 23).
- 8.6.2. The site is located entirely within Flood Zone A as per the Cork County Development Plan 2022-2028¹¹. The Applicants have submitted a Site Specific Flood Risk Assessment (SSFRA) with the application prepared by Kilgallen & Partners Consulting Engineers.
- 8.6.3. The SSFRA details the site adjoins and is protected by flood defences as part of the Fermoy Flood Defence Scheme which was completed in 2015 by the OPW. The site These defences are described on www.floodinfo.ie as-

'The Fermoy Flood Relief Scheme was initiated in 2002 and it was decided to implement the scheme on a phased basis. The northern phase was constructed between 2009 and 2010. The Fermoy (North) Flood Relief Scheme, that comprises flood defence walls and embankments, demountable flood defence walls, and pumping stations, provides protection against a 100-year flood (1% Annual Exceedance Probability) for about 77 properties from the (Munster) Blackwater River. Construction of the South and West phases was commenced in 2012. The Fermoy (South and West) Flood Relief Scheme, that comprises flood defence walls and embankments, demountable flood defence walls, penstocks, and pumping stations, will provide protection

¹¹ [Plan Forbartha Contae Chorcaí 2022 - Cork County Development Plan 2022 \(arcgis.com\)](#) accessed 25/09/23

against a 100-year flood (1% Annual Exceedance Probability) for about 264 properties from the (Munster) Blackwater River.¹²

- 8.6.4. In accordance with the 'Planning System and Flood Risk Management Guidelines' 2009 the SSFRA identifies the 'retail' proposal as a 'less vulnerable development' and one which requires a justification test in Flood Zone A, as per Table 3.2 of the Guidelines. This is then addressed in section 10 of the SSFRA. Having considered the contents of same, I am satisfied the proposal has been adequately justified in the context of the Flooding Guidelines.
- 8.6.5. The Planning Authority sought Further Information (points 7&8) on a number of matters but most notably relating to the interaction of the proposal with the Fermoy Flood Relief Scheme and the requirement for a consenting process through section 9 of the Arterial Drainage Act. The Applicants submitted a response to the FI which included an updated SSFRA.
- 8.6.6. The Planning Authority having considered the FI submission have applied condition 19 in relation to section 9 of the Arterial Drainage Act. They also considered the revised SSFRA acceptable subject to other conditions relating to the Emergency and Awareness Plan, facilitation of access for flood relief related work and maintenance records of the proposed storm attenuation tank.
- 8.6.7. I have reviewed both SSFRA's and am satisfied they provide a robust assessment of the flooding relating issues in accordance with the provisions of the Flooding Guidelines. They include mitigation measures for residual risk to ensure buildings are designed to be flood resistant, a flood emergency plan and details of emergency access.
- 8.6.8. Subject to similar conditions to those of the Planning Authority, the proposed development is considered acceptable. A condition relating to section 9 of the Arterial Drainage Act is not necessary as this is a separate statutory consenting process.

¹² [Flood Plans - OPW Flood Risk Management \(floodinfo.ie\)](https://www.floodinfo.ie/) accessed 25/09/23

8.7. Design Amendments

- 8.7.1. The Planning Authority have inserted condition 2 to their permission requiring some design amendments changes. These are justified in the initial planning report as minor improvements.
- 8.7.2. The Applicants have not sought to appeal this condition and for this reason it is recommended the changes should be included to some degree as a condition should the Board decide to grant permission. However it is not considered these amendments offer significant improvement that would otherwise warrant refusing the proposal and could be omitted should the Board decide.
- 8.7.3. Condition 29 of the Planning Authority's grant requires a revised landscaping scheme and planting schedule to be submitted for agreement. In this context it is appropriate a similar type condition is attached.

8.8. Appropriate Assessment

8.8.1. Introduction

- a) The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:
- Compliance with Article 6(3) of the EU Habitats Directive
 - Screening the need for appropriate assessment
 - The Natura Impact Statement and associated documents
 - Appropriate assessment of implications of the proposed development on the integrity each European site.
- b) The Appellant identifies the proximity of the site to the River Blackwater and the fact is an identified European Site. They consider the subject site and adjoining area would offer good potential for bats, birds, and otters. They also highlight the potential for possible adverse impacts such as the risk of pollutants during the construction phase of the development given the proximity of the River Blackwater.

- c) The Appeal and further response raise rather general concerns focussing on potential impacts highlighted by the applicants without specifically identifying any weakness in the Applicants submission or the Local Authority's assessment.

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

- a) The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).
- b) The application was accompanied by a Stage 1 Appropriate Assessment Screening Report (AASR) and a Stage 2 Natura Impact Statement (NIS) prepared by Doherty Environmental Consultants Ltd. dated the 14/12/21.
- c) The Boards attention is also drawn to the Applicants Response to the Appeal which includes a report from RSK dated 30/08/22 which generally supports the findings of the submitted AA and EIAR.

8.8.3. **Stage 1 – Screening**

- a) The applicant's Stage 1 AASR was generally prepared in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development based on the Source-Pathway-Receptor framework. The identified sites are-
- the Blackwater River (Cork/Waterford) SAC (002170) and
 - the Blackwater Callows SPA (004094)
- b) The Applicant's AA SR concludes that-

“..... the potential for likely significant effects to European Sites cannot be ruled out at the Screening stage and that an Appropriate Assessment of the project is required. Based on this conclusion a NIS has been prepared to inform the competent authority during its Appropriate Assessment of the project and its potential to result in adverse effects to the integrity of the Blackwater River SAC and the Blackwater Callows SPA, alone or in combination with other plans or projects.”

- c) The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- d) Having reviewed the documents, submissions and all other information on file, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

8.8.4. The Proposed Development and Receiving Environment

- a) The applicant provides a description of the project on pages 6 to 9 of the AASR screening report. In summary, the development comprises-
 - a single storey retail unit of 3,739 sq.m gross floor area
 - 1 café/restaurant with takeaway of c. 323 sq.m gross floor area
 - 1 no retail unit c. 259 sq.m gross floor area
 - 150 no. car parking spaces and 72 no. cycle parking spaces
 - Connection to public water services and
 - On-site attenuation

The application documentation also includes an Outline Construction Environmental Management Plan which was updated at Further Information Stage.

- b) The development site is described in pages 9 to 12 of the AASR. It is described as categorised in accordance with level 3 habitats described in Fossitt’s Guide to Habitats in Ireland (2000) i.e.- comprising of

- Buildings and artificial surfaces
 - Recolonising bare ground
 - Hedgerow
 - and treeline
- c) Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites during both construction and or operational stages-
- Surface water, silt and other related pollutants
 - Wastewater disposal
 - Habitat loss/ fragmentation
 - Habitat disturbance /species disturbance (construction and or operational)

8.8.5. European Sites

- a) Given the location of the site, and the nature and scale of the proposed development, I consider the following designated European sites as set out in Table 1 to be within the zone of influence of the application site-

Table 1-

European Site	List of Qualifying interest /Special Conservation Interest	Distance from proposed development (m)	Connections (source, pathway receptor)	Considered further in screening Y/N
Blackwater River (Cork/Waterford) SAC (002170)	<ul style="list-style-type: none"> • 1029 Freshwater Pearl Mussel <i>Margaritifera margaritifera</i> • 1092 White-clawed Crayfish <i>Austroptamobius pallipes</i> • 1095 Sea Lamprey <i>Petromyzon marinus</i> 	c. 10m to the east	Hydrological connectivity- presence of drainage ditch and proximity to the River Blackwater i.e. SAC	Y

	<ul style="list-style-type: none"> • 1096 Brook Lamprey Lampetra planeri • 1099 River Lamprey Lampetra fluviatilis • 1103 Twaite Shad <i>Alosa fallax</i> • 1106 Atlantic Salmon <i>Salmo salar</i> (only in fresh water) • 1130 Estuaries • 1140 Mudflats and sandflats not covered by seawater at low tide • 1220 Perennial vegetation of stony banks • 1310 <i>Salicornia</i> and other annuals colonizing mud and sand • 1330 Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) • 1355 Otter <i>Lutra lutra</i> • 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) • 1421 Killarney Fern <i>Trichomanes speciosum</i> • 3260 Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation • 91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles 			
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	<ul style="list-style-type: none"> • 91E0 *Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnion incanae</i>, Salicion • <i>albae</i>) • 91J0 *<i>Taxus baccata</i> woods of the British Isles 			
Blackwater Callows SPA (004094)	<ul style="list-style-type: none"> • A038 Whooper Swan <i>Cygnus cygnus</i> • A050 Wigeon <i>Anas penelope</i> • A052 Teal <i>Anas crecca</i> • A156 Black-tailed Godwit <i>Limosa limosa</i> 	c. 850m to the north east	Hydrological connectivity and proximity to River Blackwater draining directly to the SPA. The submitted AASR details some wetland birds are known to occur to the north of the site and are likely to be part of those identified as protected within the SPA. Noise disturbance cannot be ruled out at screening stage.	Y

b) Conservation Objectives-

- 002170 SAC- Available to view at- https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002170.pdf
- 004094 SPA- Available to view at- https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004094.pdf

- c) I have considered other European Sites in the wider area. I am satisfied that other European sites proximate to the appeal site can be 'screened out' on the basis that significant impacts on such European sites could be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct hydrological or other pathway to those sites from the appeal site.

8.8.6. Identification of likely effects

- a) The project is not directly connected to or necessary to the management of any European site. The proposed development is therefore, examined in relation to any possible interaction with the identified European sites to assess whether it may give rise to significant effects on in view of the conservation objectives for those sites.
- b) I have reviewed the conservation objectives series for both European Sites as applicable and section 6.0 -6.3 and 7.0 of the submitted AASR. These identify the particular Qualifying Interests within the identified European Sites and how the proposed development has the potential to significantly impact upon.
- c) Based on the source-pathway-receptor model and taking account of the characteristics of the proposed development in terms of its nature, location and the scale of works, the sites proximity to European sites and having regard to the NIS carried out for the County Development Plan and implications for this site, the following issues are considered for examination in terms of likely effects-
- Potential for impacts upon surface water quality e.g. silt, sediment and pollutants
 - Potential for disturbance impacts on wetland birds
 - Potential for impact from Invasive Species.
 - Cumulative impact including with other plans and projects in the area

8.8.6.1. Blackwater River (Cork/Waterford) SAC (002170) Impacts

- Direct Impacts-
 - *Construction Stage-*
 - The site is not located within the SAC.

- *Operational Stage-*
 - The site is not located within the SAC and is sufficiently distant considering the nature of use proposed.
- Indirect Impacts (noting the hydrological connectivity from the drainage ditch on the northern boundary of the site)-
 - *Construction Stage-*
 - Potential for increased runoff and/or contaminated discharge to drainage ditches from machinery including site spillages including oils, fluids, silt, sediment and site works run off to the ditches etc, indirect water quality impacts may arise impacting benthic fauna and epifauna a resource for Atlantic salmon and White-clawed Crayfish and potentially other fish birds and mammals.
 - Nature of works to the site including vibration from heavy equipment indirect water quality impacts may arise.
 - Wastewater discharge to be collected in sealed containers and disposed of off-site by a licensed operator to appropriate treatment plant for discharge.
 - There is potential for unidentified on-site contamination given existing made ground and historical land uses. Risk to surface waters.
 - Four non-native invasive plant species identified within the site. Proximity to the SAC could undermine existing bankside and riparian habitat.
 - *Operational Stage-*
 - Due to the proximity of a drainage ditch and the River Blackwater there is potential pathways for water quality impacts from pollutants including oils/fuels from customer, delivery, maintenance and service vehicles etc.
 - Spread of identified Invasive Species by human and maintenance activities if not treated.

8.8.6.2. **Blackwater Callows SPA (004094)**

- Direct Impacts-
 - *Construction Stage-*
 - The site is not located within the SPA and is sufficiently distant to avoid direct impacts
 - *Operational Stage-*
 - The site is not located within the SPA and is sufficiently distant considered the nature of use proposed.
- Indirect Impacts to Blackwater Callows SPA
 - Construction Stage-
 - Noise disturbance to protected wetland bird species identified using the mill race to the north of the site
 - Potential spread of identified Invasive Species could undermine existing bankside and riparian habitat in SPA.
 - Operational Stage-
 - Spread of identified Invasive Species by human and maintenance activity at the site possible.

8.8.6.3. **In-combination Impacts**

- a) The applicants AASR identifies activities the potential for pollutants discharged from the site to combine with other approved projects in the surrounding area or other land uses such as fertilisation to result in negative impacts. It also identifies also potential for cumulative noise disturbance impacts
- b) I have reviewed other planning applications in the immediate area. Other than that permitted under ABP-303233-18 which appears complete I have not identified any other large scale applications that could contribute to significant in-combination effects with the proposed development on the identified European Sites.

8.8.7. **Mitigation Measures**

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

8.8.8. Screening Determination Conclusion

a) The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project and having regard to the submitted AASR, it has been concluded that the project individually (or in combination with other plans or projects) could potentially have significant effects on the following European Sites-

- the Blackwater River (Cork/Waterford) SAC (002170) and
- the Blackwater Callows SPA (004094)

in view of these site's Conservation Objectives, and a Stage 2 Appropriate Assessment to include mitigation measures is therefore required. The Applicants have submitted a NIS with the application.

8.8.9. Stage 2 – Appropriate Assessment

a) Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded that the proposed development individually or in-combination with other plans or projects will not have a significant effect on the following European sites-

- the Blackwater River (Cork/Waterford) SAC (002170) and
- the Blackwater Callows SPA (004094)

8.8.10. The Natura Impact Statement (NIS)

a) The application includes a NIS dated 14th of December 2021, prepared by Doherty environmental Consultants Ltd, which examines and assesses likely effects of the proposed development on the European Sites listed above.

b) Section 1.3 and 3.1.1 of the NIS details it was informed by a number of scientific studies and investigations including-

- Ecological field surveys,
- hydrological field surveys and
- Geotechnical field surveys including trial pits, bore holes and CBR testing

The methods used for these investigations are described in full in Chapters 8-12 of the EIAR submitted with the application including-

- Hydrology- baseline water quality established through publicly available data
- Biodiversity- including habitats, bird, bat, mammal surveys
- Waste Management- preparation of a site-specific Construction and Demolition Waste Management Plan
- Noise & Vibration- review of relevant standards and guidelines
- Air Quality and Climate in the context of extensive European, national and local policy, and assessment of Climate Change Mitigation and Adaption.

c) The NIS concludes that-

“Following the examination completed for this Natura Impact Statement the risk posed by the project to the River Blackwater SAC relates to a reduction in water quality as a result of construction and operation of the proposed development which could adversely impact upon populations of qualifying species and waterbird species support by the River Blackwater European Sites. A reduction in water quality has also been identified as having the potential to undermine the conservation status of the floating river vegetation qualifying habitats of the SAC. In order to avoid such adverse effects to water quality a range of mitigation measures will be implemented during the construction phase and will be incorporated into the design of the project for the operation phase. These mitigation measures are based on a best practice approach for safeguarding surface water quality and have been evaluated as being effective at avoiding significant effects to the water quality status of surface watercourses. The incorporation of the proposed mitigation measures to protect the receiving environment are considered sufficient to prevent any adverse impacts on the integrity of the Blackwater River (Cork/Waterford) SAC. Based upon the information provided in this NIS, it is the considered view of the authors of this NIS that it can be concluded by the competent authority that the project will not, alone or in- combination

with other plans or projects, result in significant adverse effects to the integrity and conservation status of European Sites in view of their Conservation Objectives and on the basis of best scientific evidence and there is no reasonable scientific doubt as to that conclusion.”¹³

- d) I have reviewed the documents on file. I am satisfied that they provide adequate information in respect of the baseline conditions relevant to the site and proposal. Potential impacts have been identified and the information provided allows for a reasonable assessment of any adverse effects of the development, on the conservation objectives of the identified European sites alone, or in combination with other plans and projects.

8.8.11. Appropriate Assessment of implications of the proposed development

8.8.11.1. Introduction

- a) The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites having regard to the best scientific knowledge in the field. Having considered the submitted NIS I am satisfied all aspects of the project which could result in significant effects have been adequately considered and mitigation measures designed to avoid or reduce such adverse effects have been evaluated and reasonably proposed.
- b) The following guidance has also been considered in the context of the submitted NIS and this assessment.
- OPR Practice Note PN01 (2021), Appropriate Assessment Screening for Development Management
 - DoEHLG (2009). Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service, Dublin.

¹³ The submitted NIS considers the implications to the listed SPA. The omission of a specific reference to SPA in the conclusion is considered a likely oversight.

- EC (2002) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC
- EC (2018) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC]
- www.npws.ie

8.8.11.2. **European Sites**

- a) The following sites are subject to Appropriate Assessment:
- the Blackwater River (Cork/Waterford) SAC (002170) and
 - the Blackwater Callows SPA (004094)
- b) Table 1 of this assessment details my examination of the Natura 2000 data forms as relevant and the Conservation Objectives supporting documents for these sites (See section 8.2.5).
- c) A description of the sites and their Conservation and Qualifying Interests/Special Conservation Interests are set out in section 3.2 and 3.3 of the NIS and summarised. A detailed analysis of the relevant attributes and targets for these sites and assessment of same is then set out in Table 4.4 on Page 38 of the NIS.

8.8.11.3. **Main Aspects**

- a) Having considered all of the above and noting the contents of section 4.0 of the NIS, I am satisfied the main aspects of the proposed development that could adversely affect the conservation objectives of the two identified European sites i.e. the SAC and SPA are-
1. Impacts of contaminated surface water discharges from the site during construction and operation e.g. silt-laden runoff, hydrocarbons, cement based products, existing but unknown on-site contamination and car parking leakages etc. This impact could have adverse implications for the following protected species and habitats and summarised as follows-

- Atlantic Salmon and Lamprey species- settlement impacting spawning redds, prey source reduction, quality and availability of rearing habitat reduction, visibility impairment to source food and suspension impacting by abrasion and clogging of gills potentially causing infection. See section 4.1.1 of the NIS.
- Freshwater Pearl Mussel- These are very sensitive to any changes or perturbations to their habitat requirements, River Blackwater already has unfavourable conservation status, impacted by clogging of gills, settlement over mussel beds within riverbeds prevents penetration of oxygen to juveniles, eutrophication reducing oxygen and chemical alterations- see section 4.1.2 of NIS

White-clawed Crayfish- water quality is an attribute defining favourable conservation. See section 4.1.3 of NIS.

- Otter- reduction in abundance of prey- see section 4.1.4
 - Water courses of plain to montane levels (Vegetation of Flowing Waters)- changes to hydrological and morphological conditions and impacts to water quality- see section 4.1.5.
 - Wetland Bird Species- deposition of polluting contaminants impacting overall water quality in turn impacting foraging resource of such birds- see section 4.1.6.
2. Impacts of noise and disturbance during construction from plant machinery, vehicular movements within and to and from the site are detailed to have some impact. However due to the separation distance to the Mill Race noise is not predicted to undermine the conservation objective of wetland bird species- see section 4.2.
 3. Non-native Invasive Species- These have been recorded on site and include Himalayan Balsam. These have the potential to change the vegetation community supported within the SAC and SPA.

8.8.11.4. Mitigation Measures

- a) Section 6 of the NIS details proposed mitigation measures to avoid any significant impacts SAC and SPA, which could potentially arise from the proposed development in the absence of such measures.
- b) The measures proposed are detailed as-
1. Measures to Protect Surface Water Quality during construction. These measures can be reviewed on pages 46 to 50 of the NIS and for example include-
 - i. An Outline Construction Management Plan (CEMP) submitted with application (and FI) which details measures to ensure safe storage and handling of potentially contaminating pollutants
 - ii. Management and maintenance of vehicles and refuelling etc
 - iii. Measures in accordance with guidance for pollution prevention from Inland Fisheries Ireland 2016.
 - iv. Spoil to be removed from site as excavated and where required to be stored on site shall be done at least 50m from northern boundary of site.
 - v. Dust suppression to be implemented during dry weather.
 2. Measures to avoid the Spread of Non Native Invasive Species (Pages 50-51)
 - i. An Invasive Species Management Plan is provided in Appendix 1 of the NIS.
 - ii. Routine monitoring of measures by an independent Environmental Clerk of Works throughout the construction phase.
 3. Measures to Protect Surface Water Quality during operation (Page 51).
 - i. A 'Surface Water Management System' has been designed. All surface water generated from impermeable surfaces within the site shall be directed to an attenuation system and then discharged at greenfield run off rates.

- ii. Prior to discharge all surface water will pass through a hydrocarbon and silt interceptor.

8.8.11.5. **In-combination Effects**

- a) Section 4.4 of the submitted NIS details the potential for in-combination effects on the SAC and SPA in relation to pollution to and from existing land use activities, the risk to Blackwaters status which is classified at Good Status but at risk (as per the Water Framework Directive See section 3.1.2 page 17) and a number of detailed other projects i.e. a review of permitted planning applications in the 5 years preceding December 2001.
- b) Having considered the above effects I share the view of the NIS which highlights the potential impacts to the 'Good Status' water classification of the Blackwater which is also considers it at risk. Cumulative impacts to Salmon and Pearl Mussels are detailed by virtue of their sensitivity to decline in water quality. The NIS considers in the absence of mitigation measures contaminated surface waters could combine with other discharges forming a cumulative impact to water quality.
- c) The Board are advised since the preparation of the submitted NIS, ABP have received a 'Local Authority Development' application under reference number ABP-313763-22 i.e. Proposed Fermoy Weir remedial works and fish bypass on the River Blackwater. The application boundary is identified c. 150m to the west of the subject application. As the Fermoy Weir application has not yet been determined it is not appropriate to consider it at this time. However if the application is determined prior to determination of the subject appeal the Board should consider the potential for in-combination effects especially noting the proximity of the proposal and its potential implications upon the identified SAC and SPA.
- d) Having considered the above and noting the NIS detailed need for mitigation measures I am satisfied that no significant adverse cumulative effects will arise to the detriment of the SAC and SPA.

8.8.11.6. **Integrity Test**

- a) Having considered the submitted AASR and NIS and following this Appropriate Assessment including consideration of the proposed mitigation measures, I am able to ascertain with confidence that the proposed development would not adversely affect the integrity of the identified European sites in view of the Conservation Objectives for each site.
- b) This conclusion has been based on a reasonable assessment of the implications of the proposal alone and in combination with other plans and projects

8.8.12. Conclusion

- a) The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the Blackwater River (Cork/Waterford) SAC (002170) and the Blackwater Callows SPA (004094).
- b) Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site No's 002170 and 004094, or any other European site, in view of those site's Conservation Objectives.
- c) This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

9.0 Environmental Impact Assessment

9.1. Introduction

- 9.1.1. This section of the report comprises an Environmental Impact Assessment of the proposed development. Both the 2014 amended EIA Directive (Directive 2014/52/EU)

and the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 are applicable.

9.1.2. Schedule 5 of the Planning and Development Regulations 2001 (as amended) (PDR's), sets out classes of development type for which a mandatory Environmental Impact Assessment Report (EIAR) is required. Part 2, Class 10 sets thresholds for certain Infrastructure Projects. Paragraph (b) (iv) details-

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

(In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)”

9.1.3. The applicant submits the proposed development is on a site exceeding 2 hectares (i.e. 2.607 hectares) includes for a mixed use development within a town in which the predominant land use is retail or commercial and therefore an EIAR is required and has been submitted with the application.

9.1.4. I have carried out an examination of the information presented by the applicant, including the EIAR, and the submissions made during the course of the application including FI and appeal. A summary of the submissions made by the planning authority, prescribed bodies, appellant and observer has been set out at Section 4.0 and 7.0 of this report.

9.1.5. The EIAR consists of three sections grouped as follows-

- Non-Technical Summary
- Main Environmental Assessment Report
- Environmental Impact Assessment Report Appendices.

9.1.6. The Planning Authority raised concerns at Further Information (FI) stage (Point 9) over matters relating to filling of the site which require EIA in their own right by reference to Schedule 5 (11) (b) of the Regulations i.e. installations for disposal of waste exceeding 25,000 tonnes and associated environmental impacts.

9.1.7. In their response to the FI (Appendix VII) the Applicants submitted an updated EIAR Chapter 7- Lands, Soil, Geology and Hydrology and an Outline Construction

Environmental Management Plan. The FI response also submits a report from Systra on the traffic and transport impacts from the levels of filling required.

- 9.1.8. The third party appeal does not raise any specific concerns relating to the EIAR. Notwithstanding this all EIAR issues will be addressed below under the relevant headings, and as appropriate in the reasoned conclusion and recommendation, including conditions.
- 9.1.9. I am satisfied that the EIAR and the relevant FI response have been prepared by competent experts to ensure its completeness and quality, and that the information contained in the EIAR, the supplementary information and further information adequately identify and describe the direct, indirect and cumulative effects of the proposed development on the environment and complies with article 94 of the Planning and Development Regulations 2000, as amended and the provisions of Article 5 of the EIA Directive 2014. The qualifications and expertise of the persons involved in the preparation of the EIAR are set out in Table 1.2 on page '1-13' of the EIAR and at the start of each chapter as well as the FI submission.
- 9.1.10. The Board are advised that the EIAR was prepared and submitted with the planning application at a time when the Fermoy Town Development Plan 2009-15 was operative and the EIAR contains many references to it. The Fermoy Plan has subsequently been replaced by the Cork County Development Plan 2022-28 and it is the provisions of the now operative County Plan where relevant that will be considered in this assessment.

9.2. **Consideration of Alternatives**

- 9.2.1. Article 5(1)(d) of the 2014 EIA Directive requires-

“a description of the reasonable alternatives studied by the developer, which are relevant to the development and its specific characteristics, and an indication of the main reasons for selecting the chosen option, taking into account the effects of the development on the environment.”

- 9.2.2. Annex (IV) of the Directive (Information for the EIAR) provides more detail on 'reasonable alternatives'-

2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

9.2.3. Chapter 4 of the submitted EIAR is titled 'Examination of Alternatives'. The reasonable alternatives examined can be summarised as follows-

- Do Nothing- the site would remain undeveloped any potential positive impacts from construction and operation would not arise. The site would not be consistent with national, regional and local policy including County Development Plan CDP ¹⁴ to provide Town Centre Uses
- Alternative Locations- The proposal is consistent with site specific objectives and the zoning objective for the site. In this regard it was not considered necessary to consider alternative locations.
- Alternative Uses- Similar to alternative locations the site lends itself to the delivery of a mixed retail development as the most appropriate and efficient use. Alternative uses were not considered in detail.
- Alternative layouts and designs- The layout and design involved an iterative process including site context, environmental factors and development management standards. Preapplication meetings with the Planning Authority are detailed as are three layout and design options before a Final Design Option was reached. It is considered that the layout of the scheme as proposed is an optimal solution for the lands and the design ensures that the development potential of an important underutilised parcel of land on a national primary road is maximised. I also not potential further phases of development within the site as set out in the FI submission *Future Site Development Capacity Study*'.

9.2.4. I have considered the third-party concerns regarding underutilisation of the site and provision of an appropriate mix of uses. However, having regard to the above

¹⁴ The EIAR was prepared and submitted while the Fermoy Town Development Plan 2009-15 as extended was operable. In this context I am satisfied reference to the current CDP is appropriate.

alternatives as per chapter 4 of the EIAR, I am satisfied that the EIA Directive requirements in relation to the consideration of alternatives have been satisfied.

9.3. Consideration of risks associated with major accidents and/or disasters

9.3.1. Article 3(2) of the 2014 EIA Directive includes a requirement to identify, describe and assess in an appropriate manner *“the expected effects derived from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned”* within the EIA.

9.3.2. Chapter 17 of the EIAR is titled ‘Risk Management’. It sets out the methodology used which includes reference to a number of relevant guidance documents. In particular it refers to ‘*A Framework for Major Emergency Management Guidance Document 1: A Guide to Risk Assessment in Major Emergency Management*’ (DEHLG, 2010) and uses it to sets out the following Tables-

- 17.1 National Classification of Likelihood (page 17-4)
- 17.2 National Classification of Impact
- 17.3 A Risk Matrix

Then in separate Table (Page 17-9 of the EIAR) but also identified as Table 17.1 a range of 9 mayor accidents/ disasters are categorised with details of likelihood, impact, risk rating and mitigations set out. Table 17.4.2 provides a visual representation of the risk ratings with only 2 risks identified as ‘likely’. These detail ‘limited’ impact or consequence. These risks are

- injury and damage to property due to extreme weather events and
- construction staff, operational staff and visitors contracting a pandemic flu.

9.3.3. Chapter 17 concludes subject to *“implementation of mitigation measures there are no identified potential major accidents and/or disasters that are likely to result in significant negative impacts and/or environmental effects deriving from the proposed developments vulnerability to such accidents and/or disasters.”*

9.3.4. Having considered the contents of chapter 17 of the EIAR and having regard to the location and zoning of the site, the nature of the site and surrounding uses, and the

nature and scale of the proposed development, I am satisfied that effects deriving from major accidents and/or disasters are not likely.

9.4. Likely Significant Direct and Indirect Effects

9.4.1. The likely significant direct and indirect effects of the development are considered under the headings below which follow the order of the factors set out in Article 3 of the EIA Directive 2014/52/EU as follows-

- a) population and human health
- b) biodiversity with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC
- c) land, soil, water, air and climate
- d) material assets, cultural heritage and the landscape and
- e) the interaction between those factors

The EIAR does address the above factors but not in the order as set out above.

9.4.2. Population and Human Health

- a) Chapter 5 of the EIAR deals with Population and human health. It sets out the Methodology used which involved the compilation, examination and analysis of relevant baseline population and socio-economic data. It examines to impacts from national, regional and local levels.
- b) Section 5.6 describes the likely direct and indirect impacts that the proposal may have during construction and operation. It focuses on land use, demographics, socio-economic and employment, social infrastructure and human health.
- c) During the construction stage the impacts identified are considered-
 - a minor negative visual impact
 - a marginal, temporary and imperceptible increase in population
 - a temporary positive direct effect generating economic activity and employment, significant indirect economic activity at a local and county wide level

- a temporary and neutral or slightly positive effect on social and community infrastructure
- a potential for adverse impact on local air quality. Subject to mitigation effects not considered to be significant
- a potential temporary adverse impact arising from noise, vibration and construction traffic. Control measures will ensure the impact is minimised.

d) During the operation stage the impacts identified are considered-

- A permanent, significant and positive effect in terms of achieving planning objectives, the visual amenity of the site in terms of regeneration and vitality and vibrancy of the town centre.
- A slightly positive impact in terms of balancing age profile within the local area. Long term in duration and moderate in significance.
- A positive and moderate increase in employment and economic activity
- Effects on social and community infrastructure are considered to be long term, slight and positive
- The noise impact from is calculated to be less than 2.5dB which is negligible and not significant.
- Emissions from the proposed development are compliant with all national and EU ambient air quality limit values and will not result in a significant impact.
- The proposal encourages active travel including walking and cycling. Impacts are considered positive, moderate and short to medium term.

e) I note many of the impacts identified are considered in greater detail in other chapters of the EIAR e.g. Landscape and Visual Impact, Noise and Vibration, Air Quality & Climate and Traffic & Transportation. These will be addressed further and as necessary under the factors set out in Article 3 of the EIA Directive 2014/52/EU (see section 9.5.1).

f) Mitigation measures for the impacts during the construction stage are detailed in the submitted Outline Construction Environmental Management Plan (OCEMP) and a Construction and Demolition Waste management Plan

(CDWMP). This will ensure all impacts are minimised. It is note that many of the impacts identified do not require specific mitigation measures.

- g) The impacts during the operation stage are considered to be positive and no mitigation measures are proposed. I note a Site Specific Flood Emergency Plan is proposed as part of the Water section mitigation measures which is considered appropriate to Population and Human Health.
- h) The EIAR details no residual impacts are expected and overall the proposal should only have positive impacts on population and human health.
- i) The EIAR acknowledges that cumulative individual environmental factors can interact with population and human health such as air quality, noise, vibration and traffic during construction and operation. The cumulative impact of these and extant permissions are considered and no significant adverse impacts are identified that cannot be managed through mitigation measures such as those set out in the OCEMP.
- j) Having regard to the foregoing, I am satisfied that impacts predicted to arise in relation to population and human health would be minimal and can be managed and mitigated by the measures which form part of the proposed scheme, specified mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of population and human health.

9.4.3. Biodiversity with particular attention to Species and Habitats protected under Directive 92/43/EEC and Directive 2009/147/EC

- a) Chapter 9 of the EIAR considers the effects of the development on biodiversity with a detailed methodology and evaluations set out including a desk study, site investigations with habitat, bird, bat and mammal surveys, an evaluation of the biodiversity baseline, the receiving environment, designated conservations areas, characteristic of the proposal and Impacts from an identification of impacts of the proposed development.
- b) Potential for impacts to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC have been assessed a part of the

submitted Appropriate Assessment Screening Report (AASR) and the Natura Impact Assessment (NIS). Please refer to section 8.8 in this regard. The EIAR details the Blackwater Callows SPA overlaps with the Blackwater Callows pNHA and the latter designation status is proposed for the same conservation interest as the SAC and SPA. Therefore the submitted AASR and NIS also provide a full examination of the potential impact of the construction stage phase of the project on the pNHA.

c) During the construction stage the following identified impacts are considered-

- A loss of recognising bare ground habitat. This will have a high magnitude impact but the habitat is considered of low nature conservation value. The impact is of minor negative significance
- Provision of landscaping will have a positive impact
- Potential for discharge of surface water potential negative impact (see section 8.8)
- Potential for indirect adverse impacts to otters (see section 8.8)
- Minimal impact to low conservation concern bats through loss of 260m of hedgerow
- Potential impacts on birds through removal of hedgerow, loss of nest habitat, existing nest disturbance, noise impacts. Minor negative impact considered due to low sensitivity of site for birds.
- Potential for adverse impacts to protected birds (see section 8.8)
- Potential for spread of invasive species, negative adverse impact.

d) During the operation stage the potential for the following identified impact is considered-

- adverse impacts from contaminated surface water discharge to the River Blackwater and designated European Sites (see section 8.8)
- impacts of lighting upon bats

e) I note many of the impacts identified are considered in greater detail in other chapters of the EIAR e.g., Noise and Vibration, and Hydrology. These will be

addressed further and as necessary under the factors set out in Article 3 of the EIA Directive 2014/52/EU (see section 9.5.1).

f) Mitigation measures for the impacts during the construction stage are detailed as-

- Habitat disturbance confined strictly to the direct land take of the proposed scheme. Construction machinery will be restricted to site roads and footprint of the scheme.
- Vegetation to be cleared onsite outside nesting bird season. If this is not possible a survey will be carried out by an ecologist prior to commencement of development and if nests found clearance will not happen until nests are abandoned or as necessary through consultation with the NPWS and receipt of a necessary licence.
- Noise and disturbance measures will be implemented
- Measures to avoid pollution to watercourses detailed elsewhere in EIAR the submitted NIS and the OCEMP.
- A non-native invasive plant species management plan is included.

g) Mitigation measures for the impacts during the operation stage are detailed as-

- Landscaping and habitat replacement
- Lighting design
- Surface water management design including onsite attenuation , interceptors, discharge at greenfield runoff rates and SUDs tree pits.

h) The EIAR details the following residual impacts are expected-

- Construction stage- the eradication of invasive plant species infestations. This will have a positive impact for biodiversity.
- Operational stage- none significant

and overall the proposal should only have positive impacts on population and human health.

- i) The EIAR acknowledges that cumulative individual environmental factors can interact with Biodiversity such as the commencement of other development and extant permissions leading to cumulative loading of noise and disturbance, loading to surface waters. Impacts to European sites can be addressed through mitigation measures proposed with the NIS. Subject to all the mitigation measures proposed there is no potential for significant cumulative impacts during construction. During operation lighting is designed so as not to contribute or create cumulative light pollution and the surface water management system will ensure no discharge to cause cumulative water pollution.
- k) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding biodiversity and European Sites (See section 8.8) would be avoided, managed and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of biodiversity, including species and habitats protected under the Habitats Directive and the Birds Directive.

9.4.4. **Land, soil, water, air and climate**

9.4.4.1. **Land and Soil**

- a) For the purpose of this section the Board are referred to the updated Chapter 7 of the EIAR and the Systra Report submitted in repose to point No. 9 at Further Information stage. The Planning Authority had initially raised concerns in relation to the extent of filling on site which may require EIA in its own right by reference to Schedule 5 (11) (b) of the Regulations i.e. installations for disposal of waste exceeding 25,000 tonnes and associated environmental impacts which included construction related traffic movements.
- b) Updated Chapter 7 of the EIAR considers the effects of the development on Land, Soil and Geology. The methodology comprises analysis of information available from the GSI and on-site investigations in February and March of 2021 which included 14 trial pits to a depth of 3.7m bgl and 4 boreholes to a

depth of 7.5m bgl¹⁵. 12 CBR tests were also carried out in April 2021. These methodologies also drew reference to previous investigations on the site in 2008 which comprised of 14 boreholes, 36 trial pits and a number of other listed tests details of which are included in Appendix 7 of the EIAR.

- c) A summary of observed ground conditions is set out in Appendix 7, section 5.2 of the Delta Simmons Geotechnical Assessment Report which details the *'top of bedrock not proven in maximum depth of excavation/drilling'* i.e. c. 7.5m bgl.' This is supplemented by the 'Groundcheck- Ground Investigation Report' which identifies the 'Ground Condition Summary' in Table 1, exploratory test holes and CBR Tests locations in Figure 2 and photographs and logs of boreholes and trial pit in its Appendix A.
- d) The EIAR examines the existing baseline environment and concludes that matters relating to Land, Soil and Geology are considered to have low importance or sensitivity ranking with topsoil and subsoils only expected to be impacted.
- e) The EIAR identifies that the potential construction phase impacts include-
- site clearing, initial excavations and segregation of specific material (e.g. top soil and contaminated soil), ground levelling and ground stabilisation. No bedrock is expected to be excavated as supported by the ground investigations discussed above.
 - Changes to ground level of 2-3m in places through
 - removal of 2,799m³ from the site
 - importation of 22,123 m³ fill material. ¹⁶
 - Additional fill from local quarries e.g. coarse aggregate, crushed rock or gravel/cobble boulders and finer partial engineering fill or clay. Use of such materials will benefit permeability, infiltration and groundwater storage. All available fill material that can be reused will be reused.
 - Soil contaminated through pollutant leaks and spillages.

¹⁵ Appendix 7 of EIAR Delta-Simons- Geo Environmental Assessment.

¹⁶ As per Systra Report (FI response appendix VII)

- Unintended soil and subsoil compaction
 - Surface sealing affecting groundwater discharge
 - Dust migration
- f) The EIAR details that the operation phase will not involve further significant disturbance to the land and soil.
- g) Mitigation measures for the impacts during the construction stage are detailed and can be summarised as-
- Careful design of cut and fill operations on site, i.e. keep to a minimum
 - Minimise export of waste, maximise reuse of material on site and minimise importation of fill
 - Import non-hazardous and inert material, to include monitoring controls
 - Choice of material to maximise benefit such as permeability
 - Good management of equipment and plant
 - High standard of site management etc
 - Designated routs for tracking heavy plant across the site
 - Minimise areas of concrete sealing
 - Dust suppression

I note the application also submits an Outline Construction Environmental Management Plan (OCEMP) (updated at FI stage) and a Construction and Demolition Waste management Plan (CDWMP) which I am satisfied provides mitigation as appropriate for the potential impacts raised.

- h) The EIAR details the following residual impacts are expected-
- Slight impact to soil and subsoils with benefits through permeability
 - Generally low imperceptible.
- i) The EIAR acknowledges that cumulative individual environmental factors can interact with Land and Soil such as the commencement of other development and extant permissions. Subject to the mitigation measures proposed the potential for impacts is not considered significant.

- j) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding land and soil would be avoided, managed, and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of land and soil.

9.4.4.2. **Water (including Hydrology and hydrogeology)**

- a) For the purpose of this section the Board are referred to Chapter 8 of the EIAR and the updated Chapter 7 of the EIAR submitted at Further Information stage.
- b) The methodology used comprises a desktop based studies of publicly available data to establish water quality and the contents of the studies, review of the site specific flood risk assessment (SSFRA) submitted with the application and onsite investigations discussed under the previous section (9.5.4.1) in which the site is detailed to overlay a 'Locally Important Aquifer' which is moderately productive only in local zones'. As shallow groundwaters were encountered on the site between 0.76 and 2.9m bgl, the EIAR anticipates site specific ground water vulnerability to be high.
- c) The site is located just south of the River Blackwater (c. 100m) which as discussed in section 8.8 benefits from Natura 200 designated status. The EIAR discusses a possible 'head race canal' 30m north of the site and no constructed surface water drains within the site. It is anticipated groundwaters beneath the site are hydraulically connected to the Blackwater.
- d) During the construction stage the impacts identified are considered-
- Sediment loading to watercourses
 - Pollutant contamination
 - Soil sealing impacting permeability and groundwater recharge
 - Encountering groundwater
- e) During the operation stage the impacts identified are considered-

- Stormwater runoff contamination
 - Increased stormwater runoff
 - Flood Risk
 - Foul sewerage contamination
- f) Mitigation measures for the impacts during the construction stage are detailed and can be generally summarised as-
- Construction phase best practise
 - Construction Environmental Management Plan
 - Surface water and Sediment Management Plan
 - Silt fencing
 - Dewatering for shallow groundwater encroachment
 - No concrete to be poured into excavations where groundwater is encountered.
 - Site supervision and management
 - A pollution Incident Response Plan will be prepared
- g) Mitigation measures for the impacts during the operation stage are detailed and can be generally summarised as-
- Discharge of foul waters to Irish water network subject to statutory consents
 - Implementation of storm water proposals in accordance with the 'Greater Dublin Strategic Drainage Study' (GDSDS) incorporating onsite storm water attenuation, permeable paving, rain water harvesting.
 - Installation of oil separators.
 - Final details to be agreed with local authority prior to construction.
 - A freeboard of 300mm, minimum floor level of 25.28 OD and a Flood Resistance Level of 25.28 OD including one way flow control on drainage systems.

- A Site Specific Flood Emergency Plan
- h) The EIAR details the following residual impacts are expected-
- Construction stage- the successful implementation of mitigation measures will ensure potential hazards are managed and risk of negative environmental impacts are very low. The proposal has the potential have a neutral to positive impact on water quality.
 - Operational stage proposed drainage and attenuation features including SUDs have the potential to have a neutral to positive impact on water quality and the sites response to rainfall.
- i) The EIAR acknowledges that cumulative individual environmental factors can interact with Water such as the commencement of other development and extant permissions. The proposal will lead to surface sealing which could enhance and contribute to flood events downstream but is addressed through mitigation such as attenuation and SUDs. Cumulative loading of to foul sewers is not considered significant given the nature of the proposal and any such impact is negligible. The EIAR outlines that the mitigation measures, including the SUDS in accordance with the GDSDS, will prevent any impact on the receiving groundwater and surface water environment. These should not have any impact on compliance with the EU Water Framework Directive and associated legislative requirements. The EIAR concludes that, following the incorporation of mitigation measures there would be no significant residual impacts on Waters. I also consider impacts to European sites can be addressed through mitigation measures also proposed with the NIS. Subject to all the mitigation measures proposed there is no potential for significant cumulative impacts during construction and operation.
- j) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding water would be avoided, managed, and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of Water.

9.4.4.3. Air

- a) Chapter 12 of the EIAR considers the effects of the development on air. The methodology used is detailed in the context of extensive European, National and local policy and standards as detailed in Appendix 12.1 of the EIAR.
- b) In terms of the construction phase generated dust and particulate matter (PM) is assessed in accordance with the Institute of Air Quality Management (IAQM) construction dust guidance 2016. For the operation stage reference is drawn to LA 105 of the Design Manual for Roads and Bridges (DMRB) published by Highways England in 2019 which sets out the requirements for assessing and reporting the effects of highway projects on air quality. The EIAR details Transport Infrastructure Irelands guidance is based on this.
- c) During the construction stage the following identified impacts are considered-
 - Dust emissions from earthworks, construction and trackout activities as set out in Table 12.7 of the EIAR, with sensitivity of the surrounding area described in Table 12.8. The risk is shown in Table 12.9 and ranges from low to medium.
- d) During the operation stage the following identified impacts are considered-
 - Pollution concentration predicted at three receptor locations (see Appendix 12.4) with Table 12.3 setting out predicted NO₂ and PM₁₀ levels with magnitude ranging from negligible to small.
- e) Mitigation measures for the impacts during the construction stage are detailed and can generally be summarised as-
 - Exhaust emissions from plant and vehicles controlled construction logistics plan
 - Fugitive dust emission to be managed through agreement of Dust Emissions Plan, stakeholders communication plan, site management including preparation and maintenance, monitoring, best practise operations of plant, vehicles equipment etc. and specific measures detailed for earthworks, construction and trackout.

- A number of these measures are considered typical best practise that will be provided for under the Construction and Environmental Management Plan.
- f) Mitigation measures for the impacts during the operation stage are detailed as-
- Preparation of a travel plan to encourage sustainable transport, provision for alternative fuels e.g. electric vehicle charge points and use of renewable energy such as photovoltaics.
- g) The EIAR details the following residual impacts are expected-
- Construction stage- subject to mitigation measures residual impacts not significant
 - Operational stage- none significant
- h) The EIAR acknowledges that cumulative individual environmental factors can interact with Air such as the commencement of other development and extant permissions leading to cumulative loading of pollutants to the Air. Subject to all the mitigation measures proposed and requirements for other developments to adhere to their own construction related plans and best practise there is no potential for significant cumulative impacts during construction. Operational impacts are not likely or significant.
- i) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding Air would be avoided, managed and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of Air.

9.4.4.4. **Climate**

- a) Chapters 12 of the EIAR also considers the effects of the development on Climate. It highlights two distinct areas of Climate Change Mitigation (CCM) and Climate Change Adaptation (CCA). CCM focuses greenhouse gas (GHG) emissions from construction and final operations. CCA focuses on potential

impacts to the construction and operation phases of the development from future changes to climatic conditions.

- b) The methodology used details reference to LA 114 Climate Design Manual for Roads and Bridge (DMRB) published by Highways England. This document sets out the requirements for assessing and reporting the effects of climate on highways (climate change resilience and adaptation), and the effect on climate of greenhouse gas from construction, operation and maintenance projects.
- c) During the construction stage the following identified impacts are considered-
- GHG emissions will be generated from various activities including manufacturing of materials and transport to and from the site for various reasons.
 - Over a 1.5 year construction lifecycle giving an estimated annual construction phase emission of 2,783.13tCO₂eq or 0.008% of Ireland's 2030 target.
 - Increased temperatures could benefit winter construction periods and have a negative impact in summer months, potential impacts to water supplies.
 - Potential for increased flooding (factored into SSFRA)
- d) During the operation stage the following identified impacts are considered-
- GHG emissions from mains electricity to heat, cool and power buildings. An estimate is provided of 1,300 MWhr/yr.
 - The proposal is detailed to increase CO₂ emissions by 0.0013% of Ireland's 2030 targets.
 - Increased temperatures could decrease heating demands but increase cooling demands
 - Potential for increased flooding (factored into SSFRA).
- e) Mitigation measures for the impacts during the construction stage are detailed and can generally be summarised as-

- f) Mitigation measures for the impacts during the operation stage are detailed and can generally be summarised as-
- Encourage sustainable modes of transport and provision for alternative fuels
 - Implementation of CEMP
- g) The EIAR details residual impacts during construction and operation are not expected to be significant with suitable mitigation in place.-
- h) The EIAR acknowledges that cumulative individual environmental factors can interact with Climate such as the commencement of other development and extant permissions are unlikely to have significant impacts.
- i) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding Climate are not significant and would be avoided, managed and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of Climate

9.4.5. Material assets, cultural heritage and the landscape

9.4.5.1. Material Assets

- a) Chapter 16 of the EIAR considers the effects of the development on Material Assets- Site Services. The EIAR identifies services as electricity, gas and telecommunications. The methodology used included an online investigation of services.
- b) Electricity, gas and telecommunication services are indicated at the perimeter of the site as detailed in Figures 16.1-16.3 of the EIAR.
- c) During the construction stage the following identified impacts are considered-
- General construction activities such as excavations for pipework drainage and proving of utilities.
 - Removal of waste and fill from the site.

- Damage to existing services including black outs to wider area and negative effects on construction programme including delays
 - Risk to human health from contacting existing services
- d) During the operation stage the following identified impacts are considered-
- Near zero energy building, electrical demand should be reduced
 - New substation provides additional resilience to electrical network
- e) Mitigation measures for the impacts during the construction stage are detailed and can generally be summarised as-
- Temporary channels and mitre drains will be used to direct storm water. Channels will be lined to prevent erosion. Silt traps used to reduce sediment runoff.
- f) Mitigation measures for the impacts during the operation stage are detailed and can generally be summarised as-
- Oil interceptors, permeable paving, landscaped areas and an attenuation tank
- g) The EIAR details the following residual impacts are expected-
- Construction stage- considered temporary and insignificant
 - Operational stage- none significant identified
- h) This Section of the EIAR does not consider impacts to existing wastewater and water supply infrastructure. Given the requirement for statutory connections in this regard, the scale and nature of the development proposed, I do not consider any impacts during construction to be significant and/or adverse or to have significant residual impacts..
- i) The EIAR acknowledges that interactions will be carried out with all relevant stakeholders during construction and operational phases. It refers to the open nature of the site and potential cumulative impacts on local catchments. It considers impacts to be negligible.
- j) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding Material Assets would be avoided, managed and mitigated by the

measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of Material Assets.

9.4.5.2. Cultural Heritage

- a) Chapter 15 of the EIAR considers the effects of the development on Cultural Heritage including Archaeological and Architectural. The methodology used included a paper survey of all archaeological, historical and cartographic sources as detailed in section 15.2.1. A field inspection of the site was also carried out.
- b) Section 15.3.10 identifies one recorded monument – a corn mill just north of the site, the zone of notification of which extends into the sites northern boundary, 51 protected structures within 250m of the site of which 35 are identified on the NIAH. It details that the site has already been subject to a large degree of disturbance and ground reduction and there is already likely to have been an impact upon any archaeological remains that may have been present. No additional structures or architectural heritage were identified in or within the immediate vicinity.
- c) During the construction stage the following identified impacts are considered-
 - It remains possible that fragmented archaeological features may survive on the site. Impacts could range from moderate negative to significant negative.
 - The removal of the low (partially modified) stone wall along Mill Road will have a slight negative impact
- d) During the operation stage the following identified impacts are considered-
 - No negative impacts expected. The sites current derelict character and subsequent redevelopment is considered an indirect moderate positive impact noting the sites proximity and presence to the Fermoy ACA.
- e) Mitigation measures for the impacts during the construction stage are detailed and can generally be summarised as-

- A programme of archaeological monitoring will be carried out
 - The fabric of the stone wall will be incorporated into the new boundary treatment with a photographic record of the original wall retained.
- f) No mitigation measures are deemed necessary in the EIAR for the operation stage.
- g) The EIAR details the following residual impacts are expected-
- Construction stage- none predicted
 - Operational stage- none predicted
- h) The EIAR acknowledges that interactions will be carried out with all relevant stakeholders during construction and operational phases. It refers to the open nature of the site and potential cumulative impacts on local catchments. It considers impacts to be negligible.
- i) The Planning Authority requested the applicants to submit proposals at FI stage to retain the existing 'J. Barry & Sons Ltd.' embossed signage into the proposed development reflecting the sites former use. The applicants submitted revised proposals retaining the sign and relocating it as per FI Drawing No. 200 to the south east corner of the site near and almost perpendicular to the N72. The Planning Authority permitted the proposal subject to condition 32 which requires a method statement and further details in relation to the interface of the proposed development with historic boundaries to protected structures along Lisneaux Terrace. I have reviewed the FI submission including photographs (FI Drawing No. 007) of existing boundaries. FI Drawing No. proposes the removal and replacement of the exiting rear boundary from No. 3 Lisneaux Terrace to its northern most point at the rear of N.. 4 and the adjoining laneway (existing boundary appears to be palisade style fencing). The submitted photographs suggest much of this boundary is off simple block construction. Nevertheless it clearly forms part of the protected curtilage and benefits from protection.

The relocation of this signage and replacement of the existing rear boundary wall and fencing within the curtilage of protected structures could in my opinion present an adverse risk to Cultural Heritage. A condition similar to that

of the Council would adequately mitigate any such negative impacts and would provide a positive residual impact.

- j) This section of the EIAR appears to incorrectly identify the exact location of Limestone Kerbing located on O' Rahilly Row/Patrick Street to the southern boundary which is recorded on the RPS as 02277 and therefore the potential impacts of the development on this during construction and operation. This kerbing appears to run for a significant extent along the footpath to the southern side of the application site including areas outside of the application site. There is potential for damage to these during construction and the operation stages such as from inappropriate parking. The Planning Authority have imposed condition 33 seeking protection during works to prevent damage. It also details the kerbing can be left in situ or re-laid at their original location. Damage or loss of this protected structures would in my opinion have a significant negative impact on Cultural Heritage. A condition similar to that of the Council would adequately mitigate any such negative impacts and would provide a positive residual impact.
- k) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding Cultural Heritage would be avoided, managed and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of Cultural Heritage.

9.4.5.3. **Landscape**

- a) Chapter 14 of the EIAR considers the effects of the development on Landscape and Visual Impact Assessment. The methodology is based on the recommendations set out in 'Guidelines for Landscape and Visual Impact Assessment' (2013) published by the Landscape Institute and the Institute of Environmental Management and Assessment. A more specific methodology is then set out in section 14.3.2 of the EIAR and a focus on landscape and visual impact sensitivities discussed in sections 14.4 to include designated scenic views and prospects and landscape character set out in statutory and

draft plans. Seven viewshed reference point photomontages compared to existing are set out in Appendix 14 of the EIAR.

b) During the construction stage the following identified impacts are considered most pertinent-

- Timber hoarding to the site screening it from most views
- Loss of existing hedgerow

c) During the operation stage the following identified impacts are considered most pertinent-

- Replace existing disused brownfield site
- Add to the economic and urban fabric
- Courthouse Road streetscape would benefit from new street front café/restaurant, retail store and landscaped area.
- Landscaping throughout the site

d) Mitigation measures for the impacts during the construction stage are detailed and can generally be summarised as-

- Erection of timber hoarding, to be painted and maintained for duration of construction.
- Storage of construction machinery and equipment in designated locations within the site.

e) Mitigation measures for the impacts during the operation stage are detailed and can generally be summarised as-

- Existing mature trees around the site to be retained.
- Tree planting to Courthouse Road
- Proposed landscaping.

f) The EIAR details the residual impacts will be an enhanced landscape with visual effects.

g) The EIAR acknowledges that interactions with other environmental factors such as cultural heritage, archaeology, architectural heritage and designated

conservation areas. No adverse effects are expected on protected structures or the River Blackwater SAC and pNHA.

- h) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding Landscape would be avoided, managed and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of Landscape.

9.4.6. **Others Environmental Factors- Noise & Vibration, Traffic & Transportation, Waste Management and Microclimate**

- a) Although not specifically listed in Article 3 of the EIA Directive 2014/52/EU matters covered in this heading are considered pertinent under many of the environmental factors listed in Article 3 and discussed above. The submitted EIAR sets out individual sections on these topics. The likely significant direct and indirect effects are considered below.

9.4.6.1. **Noise & Vibration**

- a) Chapter 11 of the EIAR deals with Noise & Vibration. The methodology used included a review of relevant standards and guidelines as detailed in section 11.3 and Appendix 11 of the EIAR. The nearest noise sensitive locations (NSL) are identified as residential dwellings primarily to the west of the site. i.e. Lisneaux Terrace. Three 'Noise Measurement locations' (NML) are identified in Figure 11.1 identified for the purpose of a baseline noise survey. This was carried out from 16:51 hrs on April 26th 2021 to 10.48 hrs on 27th of April 2021. Results are then set out in section 11.4.5 of the EIAR.
- b) During the construction stage the following identified impacts are considered-
- Noise from construction related activities including plant, equipment and traffic with significant impacts expected closer to nearest NSL.
 - Vibration impacts to nearest receptors not expected to be significant.
- c) During the operation stage the following potential impacts are considered-

- Noise from building service plant and other equipment etc.
- Noise from store deliveries
- Increased traffic to the site
- Increased car parking at the site

d) Mitigation measures for the impacts during the construction stage are detailed and can generally be summarised as-

- Compliance with best practise control measures for noise and vibration BS5228+A1:2014
- Use of hoarding a minimum of 2.4m high
- Hours of construction to be limited with provision for some derogation to be agreed.
- Monitoring
- Site maintenance of access road to mitigate vibration from lorries
- Selection of plant with low noise and vibration generation
- Erection of barriers
- Locate noisy plant away from NSL and use of vibration isolated support structures.
- Establish communications between contractor local authority and residents
- Appoint site representative responsible for noise and vibration matters.

e) Mitigation measures for the impacts during the operation stage are detailed and can generally be summarised as-

- Plant designed and specified so that noise emissions do not exceed detailed criteria at the external faced of existing and/ or proposed new NSLs.
- Possible installation of attenuators to supply/extract fans, acoustic barriers and acoustic louvres

f) The EIAR details the following residual impacts are expected-

- Construction stage- appointed contractor required to comply with the Safety, Health and Welfare at Work Regulations and appropriate noise mitigation measures- impact on human health. Short term nature of works means the potential impact to off-site receptors not significant.
 - Operational stage- noise emissions controlled to comply with recommended WHO Guidelines.
- g) The EIAR acknowledges that interactions during construction and operational phases with other environmental factors such as roads and traffic and the potential developments which may commence at the same time or during the proposed works. The EIAR contends the location of any other such site leads to a general low risk of cumulative noise emissions resulting in exceedance of relevant criteria. In terms of operations there is minimal risk of cumulative noise emissions exceeding relevant criteria.
- h) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding Noise & Vibration would be avoided, managed and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of Noise & Vibration.

9.4.6.2. **Traffic & Transportation**

- a) Chapter 6 of the EIAR deals with Traffic & Transportation. The methodology used included a reference to relevant guidance and standards as set out in section 6.3.2 of the EIAR. A Transport Assessment with Traffic Impact Assessment has also been submitted and considered under section 8.5 of this report.
- b) For the purpose of this section the Board are also referred to Systra Report which was submitted in response to point No. 9 at Further Information stage. The Planning Authority had initially raised concerns in relation to the extent of filling and the extent of HGV traffic on the local road network. The updated Systra report identifies a 'transcribing error' in section 6.6.1.1 of the EIAR and subsequently updated by the FI submission.

c) During the construction stage the following identified impacts are considered-

- Construction, staff and other related trip generation to the site with earthworks stage estimated at three months considered most onerous for HGV movement. Approx 5,538 HGV movements over three month period with 92 expected per day.
- HGV optimisation through backloading is estimated to reduce movements to 4,916 over three months and 82 per day with 41 arrivals and departures.

d) During the operation stage the following potential impacts are considered-

- Increased traffic to the site. The TRICS database has been used to estimate weekday and weekend movement during peak hours of 16:00-17:00 and 12:00-13:00 respectively. Assumed peak hour trips generated by the development are set out in Table 6.3.

e) Mitigation measures for the impacts during the construction stage are detailed and can generally be summarised as-

- An Outline Construction Environmental Management Plan (CEMP) has been submitted with a number of mitigation measures detailed.
- A Construction Management Plan will be included with proposals relating to traffic to be agreed with the Council prior to commencement of development to include specific traffic management provisions.

f) Mitigation measures for the impacts during the operation stage are detailed and can generally be summarised as-

- Public realm along the N72 will be significantly improved for existing and future users.
- Provision of walking and cycling infrastructure
- Car parking less than maximum standard.
- Develop and implement a Travel Plan.

g) The EIAR details the following residual impacts are expected-

- Construction- Impact of development on traffic congestion at junctions, variable during construction period and likely below the TII threshold of 5% in traffic sensitive or congested areas.
 - Operation- Based on submitted modelling the impact of the proposal is envisaged to be minor, low in probability and long term.
- h) The EIAR acknowledges that interactions during construction and operational phases with other environmental factors such as noise & vibration and air quality. It considers the potential developments which may commence at the same time or during the proposed works as well as the HSE Primary Care Centre under development at the time of the application. This is now operational. The EIAR contends that notwithstanding the conservative approach taken the junction at the proposed entrance is shown to operate within capacity in all scenarios with an acceptable level of queuing.
- i) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding Traffic & Transportation would be avoided, managed and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of Traffic & Transportation having particular regard to the sites zoning, specific site objectives, regeneration status and location within Fermoy.

9.4.6.3. **Waste Management**

- a) Chapter 10 of the EIAR deals with Waste Management. The methodology generally includes a desk top study of policy and legislation around waste management in Ireland, describing the typical waste material generated during construction and demolition. A site specific Construction and Demolition Waste Management Plan (CDWMP). And a separate Operational Waste Management Plan (OWMP) have been prepared. Both plans are included in Appendix 10 of the EIAR.
- b) During the construction stage the following identified impacts are considered-

- A range of non-hazardous and hazardous waste materials will be generated.
 - Temporary storage on site pending collection
 - Correct classification and segregation of waste necessary ensuring safe storage and collection of contaminated materials so as not to impact on and off site.
- c) During the operation stage the following potential impacts are considered-
- The nature of the proposal ensures waste generation is unavoidable
 - Dedicated waste storage areas
 - Potential for incorrect waste storage or unlicensed waste contractors
- d) Mitigation measures for the impacts during the construction stage are detailed and can generally be summarised as-
- Preparation of a Construction and Demolition Waste Management Plan (CDWMP) and adherence to same will ensure effective waste management and take into consideration the waste hierarchy of waste material. A number of specific mitigation measures are detailed within the plan.
- e) Mitigation measures for the impacts during the operation stage are detailed and can generally be summarised as-
- Preparation of an Operational Waste Management Plan (OWMP)
 - Waste segregated into appropriate receptacles and stored in appropriate bins located in the waste storage area detailed in OWMP.
 - A number of other specific mitigation measures are detailed within the plan
- f) The EIAR details the following residual impacts are expected-
- Construction stage- implementation of mitigation measures will ensure a high rate of reuse, recovery and recycling is achieved minimising the volume of waste requiring disposal to landfill.

- Operation Stage- A high rate of reuse, recycling and recovery will be achieved.
- g) The EIAR acknowledges that interactions during construction and operational phases with other environmental factors such as Land, Soil, Geology, Water, biodiversity and Noise. It also considers potential developments which may commence at the same time or during the proposed works. The EIAR contends in such an event there is sufficient capacity in the local waste collection and disposal network to ensure all waste is removed and disposed appropriately. In terms of the operation stage there are no anticipated significant cumulative impacts expected as a result of the proposed development.
- h) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding Waste Management would generally be avoided, managed and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of Waste Management.

9.4.6.4. **Microclimate**

- a) Chapter 13 of the EIAR deals with Microclimate with focus on Daylight, Sunlight & Overshadowing and Wind. The methodology used includes reference to guidance documents including BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' 2011.¹⁷ Initial calculations for Daylight & Sunlight and Overshadowing are shown in Appendix 13 of the EIAR. For Wind reference is made to relevant guidance and also the low rise nature of the proposal. It considers a determination of the baseline wind classification of the site using openly available data from the nearest Met Eireann weather station appropriate in this context.
- b) During the construction stage the following identified impacts are considered-
- Likely effects would vary throughout the various stages of construction.

¹⁷ This has been updated by a 2022 edition.

- Effects will increase as the superstructure is built and then clad.
 - Impacts from tall cranes likely but generally imperceptible due to temporary nature.
 - The low rise nature of the scheme lends itself to evasion of higher altitude wind speeds.
- c) During the operation stage the following potential impacts are considered-
- No impact on Daylight to existing site facing residential windows
 - No existing windows face within 90 degrees of due south and therefore impacts are expected to be negligible.
 - In terms of overshadowing no change to the baseline conditions.
 - It is unlikely the building height, design, spacing and layouts will contribute to accelerated wind speeds.
- d) Mitigation measures for the impacts during the construction stage are detailed and can generally be summarised as-
- Scaffolding, hoarding and cranes will only be used for as long as necessary.
 - All relevant health and safety measures and controls during periods of elevated wind will be followed and implemented including scaffolding, craneage and MEWP's (Mobile elevating work platforms) as well as securing all loose and lightweight materials and working at a height.
- e) Mitigation measures for the impacts during the operation stage are detailed and can generally be summarised as-
- None, massing design considered optimal.
- f) The EIAR details the following residual impacts are expected-
- Construction stage- none
 - Operational stage- none
- g) The EIAR considers there are no planned or proposed developments within the vicinity which would create cumulative impacts.

h) Having regard to the foregoing, I am satisfied that impacts predicted to arise regarding Microclimate would be avoided, managed and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of Microclimate.

9.4.7. **The interaction between those factors**

a) Chapter 18 of the EIAR deals with Interactions and Potential Cumulative Impacts of all the environmental factors discussed in the preceding chapters. The most notable potential interactions of factors are discussed in each section above and can generally be summarised as follows-

- Population and Human Health – Interactions with air and climate, noise and vibration water, traffic and transportation, landscape and visual impact, archaeological, architectural and cultural heritage are identified. Subject to mitigation no significant adverse impacts effects are considered likely.
- Biodiversity – Interactions with Land, Soil and Water and noise are identified. Subject to mitigation (as per section 8.8 above) no significant adverse impacts effects are considered likely.
- Land and Soil- Interactions with Biodiversity, Water and Noise are identified. Subject to mitigation no significant adverse impacts effects are considered likely.
- Water- Interactions with Biodiversity is identified. Interactions with material assets such as water, wastewater, drainage infrastructure are also likely. Subject to mitigation no significant adverse impacts effects are likely.
- Air and Climate- Interactions with Population and Human Health and Traffic and Transportation are identified. These interactions are considered to be imperceptible.

- Material assets- Interactions with Human Health, Air and Climate, Land & Soil and Traffic & Transportation are identified. Subject to mitigation no significant adverse impacts effects are likely.
 - Landscape- Interactions with Population and Human Health, Air & Climate, Biodiversity, cultural heritage, archaeology and architectural heritage are identified and considered relevant. Subject to mitigation no significant adverse impacts effects are likely.
 - Noise & Vibration- Interactions with Traffic and Transportation are identified. I also consider interactions with Population and Human Health to be relevant. Subject to mitigation no significant adverse impacts effects are likely.
 - Traffic and Transportation- Interactions with Population and Human Health, Biodiversity Noise & Vibration, Air and Climate, Cultural Heritage and Waste Management are all considered relevant. Subject to mitigation no significant adverse impacts effects are likely.
- b) Having regard to the foregoing, I am satisfied that impacts relating to interactions, cumulative and combined effects would be avoided, managed, and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, combined or cumulative interactions.

9.4.8. **Mitigation and Monitoring Measures**

- a) All of the proposed mitigation and monitoring measures for each environmental factor at construction and operational stages are outlined individually in each Chapter of the EIAR and generally summarised in each section of this assessment.

9.4.9. **Reasoned Conclusion**

- a) Having regard to the examination of environmental information contained above, and in particular to the EIAR and supplementary information provided by the developer, and the submissions from the planning authority, the

Appellant and the Observer in the course of the application, it is considered that the main significant direct and indirect effects of the proposed development on the environment including mitigation measures, are as follows-

- Construction stage effects on-
 - 'Population and Human Health' and 'Air' and 'Climate' as a result of dust, noise, traffic, and waste emissions. These effects would be mitigated through a Construction Environmental Management Plan, a Construction and Demolition Waste Management Plan, and the application of other best practice construction management measures, which would not result in any unacceptable residual effects.
 - 'Biodiversity with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC' and 'Water' as a result of adverse pollutants from contaminated sources, leaks and spills, silt and sediment, noise disturbance etc. These effects would be mitigated through the measures set out in the submitted NIS, the Construction Environmental Management Plan, the Construction and Demolition Waste Management Plan, and the application of other best practice construction management measures, which would not result in any unacceptable residual effects.
 - 'Built Heritage' of the area most notably Protected Structure RPS No. 02277- Limestone Kerbing located on O' Rahilly Row/Patrick Street to the southern side of the site boundary. Through appropriate conditions I am satisfied any adverse or negative effects would be mitigated and would result in any only neutral or positive residual effects.
- Operational stage effects on the local landscape including the visual impact upon nearby Protected Structures, the Fermoy Architectural Conservation Area and the character of the area. These effects would be mitigated through design measures, proposed landscaping and

appropriate conditions, which would not result in any unacceptable residual effects.

- b) I am, therefore, satisfied that the proposed development would not have any unacceptable direct or indirect effects on the environment that cannot be appropriately mitigated.

10.0 Recommendation

10.1. I recommended that permission be granted for the following reasons and considerations and subject to conditions as set out below.

11.0 Reasons and Considerations

11.1.1. Having regard to-

- the following provisions of the Cork County Development Plan 2022-2028 –
 - The ‘*Town Centre/Neighbourhood Centres*’ zoning objective, where retail and restaurant/cafes are considered appropriate uses for the site
 - Objective ZU 18-17 which seeks to ‘*promote development of town centres and neighbourhood centres as the primary locations for retail and other uses that provide goods or services principally to visiting members of the public*’
 - The identified regeneration status ‘FY-RA-02’ for much of this brownfield and underutilised site
 - Specific Objectives FY-T-03 and FY-T-04 which seek to facilitate and cater for the sequential expansion *of existing town centres to comprise a balanced and appropriate mix of town centre uses and to provide for adequate connectivity and permeability with other town centres zones,*
- the provisions of the-

- National Planning Framework 2018 which promotes the principle of Compact Growth as a National Strategic Outcome and National Policy Objective 11 which details there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing towns, and
- Regional Spatial & Economic Strategy for the Southern Region 2020 in which Regional Policy Objective 55 seeks to ensure that retail development is focussed on urban and village centres
- and the provisions of the '*Future Site Development Capacity Study*' as submitted at Further Information stage-

it is considered that the development as proposed is an acceptable use in principle for the site, represents an appropriate mix of use for the sites zoning objective, is consistent with Objective ZU 18-17 and Specific Objectives FY-T-03 and FY-T-04 would represent appropriate redevelopment of a designated regeneration site FY-RA-02 and is therefore consistent with the provisions of the County Development Plan 2022-28.

Furthermore the proposed development is considered consistent with the provisions of the Retail Planning Guidelines for Planning Authorities April 2012 where the order of priority is to locate retail development in town centres. In this regard the County Development Plan identifies the Retail Hierarchy for the County with Fermoy as a 'Ring Town' where such towns can include some of the *major retailing chains, particularly convenience*. Objective TCR 9-8 seeks to support the vitality and viability of the Ring towns and to ensure an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchment areas. The proposed development is consistent with these retail provisions.

Subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or the property in the vicinity, would not lead to unacceptable traffic congestion for a town like Fermoy, would not endanger public safety and would not have unacceptable impacts upon the environment including designated European

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

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 22nd day of December, 2021 and by the further plans and particulars received on the 20th day of May, 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of development, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. All mitigation measures set out in the Natura Impact Statement, the Environmental Impact Assessment Report and the Site Specific Flood Risk Assessment and associated documentation submitted with the application and by way of the submitted Further Information shall be implemented in full, except as may otherwise be required in order to comply with the conditions attached to this permission.

Reason: In the interest of clarity, the protection of European Sites, the protection of the environment and in the interest of public safety during the construction and operational phases of the development

3. The proposed development shall be amended as follows:
 - (a) The main front elevation of the proposed development facing Court House Road shall be refined by the removal of the proposed Fibre Cement Cladding - Swisspearl Range identified as 1A and 1D on the submitted drawings and replacement with Limestone Cladding identified as 1C.

- (b) The height of the external limestone cladding on the proposed café and proposed retail unit are to be of the same height.
- (c) The location of the Louvres for plant areas shall be re-located from Main South Facing Elevation facing Court House Road to the side eastern elevation.
- (d) All externally located steps to facilitate escape routes are to be re-located internally.
- (e) Recessed escape doors located on Southern facing / Court House Rd elevation shall be flush with main line of elevation.
- (f) Details and location of disabled compliant people friendly external seating throughout shall be provided

Revised drawings and details showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential amenity and clarity

4. Details of the materials, colours and textures of all the external finishes including surface materials to the proposed development shall be as submitted with the application, unless otherwise agreed in writing with the Planning Authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

5. A Method Statement shall be prepared by a suitably qualified professional with specialised conservation expertise detailing the following-
 - The full extent of works to the historic boundaries between the application site and protected structures on Lisneaux Terrace, including a justification for replacement over repair where required
 - protection/removal reinstatement of the stone kerbing along the N72 (RPS No. 02277) and

- relocation of the historic 'J. Barry & Sons Ltd' signage

The Method Statement shall include recordings on site by means of architectural drawings, coloured photographs or as otherwise required by the Planning Authority. It shall detail protection, removal, storage and reinstatement measures were considered necessary. It shall include supervision of the works by a qualified professional with specialised conservation expertise. The Method Statement including justification for replacement where necessary shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any works on site.

Reason: To secure the authentic preservation of the protected structure and a feature of cultural significance and to ensure that the proposed works are carried out in accordance with best conservation practice.

6. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall:

- a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and
- c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site

7. Public lighting of heritage type design shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the communal open spaces, details of which shall be submitted to, and agreed in

writing with, the Planning Authority prior to commencement of development/installation of lighting. The lighting scheme shall incorporate EIAR mitigation measure for biodiversity. Such lighting shall be provided prior to commencement of operations.

Reason: In the interests of amenity, public safety, and nature conservation.

8. All service cables associated with the proposed development (such as electrical and telecommunications) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. Any existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

9. A minimum of 10% of all car parking spaces should be provided with functioning electric vehicle charging stations/ points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of electric vehicle charging points/stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the Planning Authority prior to the commencement of operations of the development.

Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.

10. Prior to the commencement of operations of the development, a finalised Mobility Management Plan and Travel Plan shall be submitted to and agreed in writing with the planning authority. This plan shall include modal shift targets and shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by staff and customers. The mobility strategy shall be prepared and implemented in perpetuity by the operators of the development.

Reason: In the interest of encouraging the use of sustainable modes of transport.

11. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, external areas, open spaces, landscaping, roads, paths, parking areas, public lighting, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority before the commercial units are made available for occupation.

Reason: To provide for the future maintenance of this development in the interest of proper planning and orderly development.

12. (a) Drainage arrangements including the attenuation and disposal of surface water, and the provision of Sustainable Urban Drainage Systems, shall comply with the requirements of the Planning Authority for such works and services.

(b) The management company shall install, operate and maintain an adequate flood warning system including preparing and regularly updating a Flood Awareness Plan and a Flood Emergency plan.

All details shall be agreed in writing with the Planning Authority prior to commencement of development.

Reason: In the interest of public health and surface water management.

13. The developer shall enter into water and waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

14. All plant, including extract ventilation systems, shall be sited in a manner so as not to cause nuisance at sensitive locations due to emissions. All mechanical plant and ventilation inlets and outlets shall be sound insulated

and or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interests of visual and residential amenity.

15. A comprehensive boundary treatment, landscaping scheme and planting schedule shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-

- a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development
- b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
- c) details of proposed street furniture, including bollards, lighting fixtures and seating etc.
- d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

16. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each unit shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

17. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan

(RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management.

18. The construction of the development shall be managed in accordance with an updated Construction 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 with measures to reflect mitigation described in the submitted EIAR and NIS for the application, in addition to the following:

- a. Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- b. Location of access points to the site for any construction related activity;
- c. Location of areas for construction site offices and staff facilities;
- d. Details of site security fencing and hoardings;
- e. Details of on-site car parking facilities for site workers during the course of construction;
- f. Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- g. Measures to obviate queuing of construction traffic on the adjoining road network;

- h. Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network and for the cleaning of the same;
- i. Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- j. Details of appropriate mitigation and monitoring measures for noise, dust and vibration, and monitoring of such levels;
- k. Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- l. Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- m. Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- n. A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

19. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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.

Reason: In order to safeguard the amenities of property in the vicinity.

20. (a) Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) No other signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site and adjoining lands under the control of the applicant unless authorised by a further grant of planning permission.

(b) The windows to the proposed units shall not be obscured by adhesive material or otherwise, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

21. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works and shall comply with all relevant aspects of DMURS.

Reason: In the interest of amenity and of traffic and pedestrian safety.

22. The opening hours for all commercial units shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any operations in each respective unit.

Reason: In the interests of residential amenity

23. Prior to commencement of development, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the Planning Authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

24. 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.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

25. The developer shall pay a financial contribution to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of works proposed to be carried out, for the provision of new pedestrian crossing on Mill Road, cycling lane infrastructure and footpaths on Mill Road and the upgrades to the existing traffic light systems at Pearse Square which benefits the proposed development. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the

Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.

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.

Adrian Ormsby
Planning Inspector

02nd of October 2023