An Bord Pleanála

Inspector's Report
ABP-317082-23 & ABP-317083-23

Development	Flood Relief Scheme
Location	Ballyhale & Kiltorcan, Co. Kilkenny
Planning Authority	Kilkenny County Council
Applicant	Kilkenny County Council
Type of Application	Approval under Section 177AE and Section 216 of the Planning & Development Act, 2000 (as amended).
Project Submissions:	Transport Infrastructure Ireland Inland Fisheries Ireland DAU (National Monuments)
CPO Submissions	Seamus Connolly Andrew Connolly Patrick Prendergast Snr.

Date of Site Inspection:	8th August 2023
Inspector:	**Karla Mc Bride**

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1.0 INTRODUCTION

1.1 Introduction

Kilkenny County Council proposes to implement a flood relief scheme in Ballyhale Village under sections 175 and 177AE of the Planning and Development Act (as amended), and to compulsorily acquire the necessary lands to implement the scheme under Section 216 of the Planning and Development Act 2000 (as amended). The proposed scheme and associated works would be located along the Ballyhale River that discharges to the Little Arrigle River to the NE which in turn forms part of the River Barrow and River Nore SAC.

1.2 Project Background

Kilkenny County Council are seeking approval of a proposed Flood Relief Scheme along a section of the Ballyhale River at Ballyhale Village in Co. Kilkenny. This Project comprises several other elements in addition to the flood protection measures (incl. a new pedestrian bridge & public amenity area). There have been flood events in Ballyhale in recent years which have affected residential and non-residential properties in the surrounding area. The Council states that the proposed development will provide protection for lands and the existing built assets in Ballyhale from future flood events.

1.3 Site Location and Description

The site is located in Ballyhale Village in Co. Kilkenny and the surrounding area comprises a mix of rural, residential, commercial, community and recreational uses. Ballyhale is located c.21km S of Kilkenny and c.26km N of Waterford, and to the E of the M9 Dublin to Waterford motorway and along the R448 regional road. There are several features of archaeological, cultural heritage and amenity interest in the vicinity, including Ballyhale Church and Graveyard on the S side of the village and Ballyhale Park on the N side.

The linear site extends along the Ballyhale River from the S to the N of the village. Ballyhale lies within the catchment of the Little Arrigle River which is a tributary of the River Nore. Ballyhale River, which is also known as Knockwilliam Stream, rises c.2.9km to the S of the village within a forested rural area and it enters the village near the church where it splits into two channels on either side of the church. The W branch flows in an open channel through agricultural land parallel to the boundary wall of the church grounds. The E channel flows along a heavily modified channel to the rear of several dwelling houses and commercial properties which front on the Main Street. The two branches merge to the N of the church upstream of Arrigle Business Park and the river flows through a long culvert under the buildings (c.50m). There are several other small culverts / bridges along the route which provide access to the lands and properties to the W of the river, as well as a number of weirs within the village section. The river eventually crosses under the R448 bridge to the N of the village where it merges with the Little Arrigle River c.850m NE of the village.

The Little Arrigle River forms part of the River Barrow and River Nore SAC which is designated for a wide variety of terrestrial and aquatic habitats and species, and it is possible that the river and environs are used by mobile species from other further afield natural heritage sites.

Maps and photographs in Appendix 1 describe the site in more detail.

1.4 Planning history

Several planning applications for various developments in the surrounding area including residential, commercial and recreational, but none of particular relevance.

2.0 PROPOSED DEVELOPMENT

2.1 Documentation

The ***application documentation*** includes the following:

- Planning Drawings
- Photomontages
- Environmental Impact Assessment Report (EIAR)
- Natura Impact Statement (NIS)

The ***EIAR*** was supported by several Technical Appendices which included:

- Ch.5 Appendix 2: CEMP
- Ch.6 Appendix 1: Bat Survey
- Ch.7 Appendix 1-4: Hydrology / Hydraulics reports & flood maps.
- Ch.9 Appendix 2: Tree Survey
- Ch.10 Appendix 1: Land Impact Assessment

The ***NIS*** was supported by additional Technical Appendices:

- Appendix 1: Baseline environment report

2.2 Development Description

The proposed development comprises a series of flood relief works which would be undertaken to alleviate flooding along a section of the Ballyhale River in order to protect existing residential and non-residential properties. The scheme would comprise the following main elements from S to N: -

- Embankments upstream (S) of the village to prevent overland flooding.
- Flood wall to W perimeter of “Arrigle View” at Chapel Lane.
- A section of new river channel re-connecting all outlets from the Chapel Lane bridge into the W river channel and removing the flow split.

    - This will require excavation of the existing church pedestrian access and replacement via a new pedestrian connection which also serves to form a new bank to the redirected stream.
- Landscaping of E river channel to allow for a low flow channel to reflect reduced flow.
- Flood Defences (wall & embankments) between the W channel and the properties at risk on Main Street.
    - Lands acquired for these flood defences will be landscaped to provide a riverside walkway/park to the W of the church.
- Removal of 1 of 2 existing minor private bridges providing access across the river to a private land parcel.
    - Access to the parcel will be maintained by retrofitting the second bridge to flood defence level.
- Removal of a boundary wall spanning the watercourse.
- Removal of the existing weir & bridge at the Ballyhale Business Park access and replacement of bridge with clear span access, with regrading of channel to improve channel capacity.
- Low flood wall alongside the road opposite Brookfield to prevent out of bank flows emerging onto the road surface.
- Provision of rock ramp to existing weir at Ballyhale Shamrocks access to improve fish pass conditions.
- Channel reprofiling at the existing Main Street bridge to improve bridge inlet conditions.
- Provision of additional conveyance capacity to the Main Street Bridge.
    - The additional conveyance will be provided by an additional bridge opening (box culvert) set at high level to provide capacity for extreme flood events.
- Provision of rock ramp to downstream face of the Main Street Bridge to improve fish pass conditions.
- Provision of a temporary construction compound to N of Village.
- Fencing, accommodation works and all site works & landscaping

2.3 Environmental Impact Assessment Report (EIAR)

The EIAR was prepared using the standard “grouped format structure”. It described the site and surrounding area and explained the background to the Flood Relief Scheme, the benefits arising and the need for the development based on an analysis of existing and predicted levels of fluvial flooding along the Ballyhale River. It stated that the proposed Scheme would comply with EU, national, regional and local environmental and planning policies. It provided a detailed description of the proposed Scheme, identified constraints, and described the selection process and the alternatives considered, including the “do-nothing” scenario.

The main body of the EIAR outlined the study methodologies and assessed the potential impacts on the receiving environment under the required range of headings, and it proposed mitigation measures. It identified residual and cumulative impacts and assessed interactions. It also included details of the qualifications and competencies of the main contributors to the report, stated that no particular difficulties were encountered. The EIAR was informed by several technical appendices including photomontages, a Non-Technical Summary was provided as was a summary of the Mitigation Measures.

The EIAR concluded that the positive environmental impacts relate to human beings by providing protection from future flood events with associated health, economic, community and cultural benefits related to the protection of public and private property. It concluded that adverse environmental impacts will be minimal and mainly relate to short term disturbance during the construction phases. All other identified impacts will be managed by mitigation measures. It further concluded that the proposed development would comply with all relevant environmental and planning policy and objectives; it would not adversely affect amenities (incl. residential, visual & heritage), unduly interfere with biodiversity or give rise to a traffic hazard. It finally concluded that the Scheme would be in accordance with the proper planning and sustainable development of the area and that it would have positive impacts in terms of the alleviation of flooding in Ballyhale.

2.4 Natura Impact Statement

A Stage 1 AA screening exercise was carried out for the proposed Flood Protection Scheme and a Stage 2 Natural Impact Statement was prepared.

Stage 1 AA Screening Report

The AA Screening exercise described the site and the characteristics of the proposed development, it summarised the legislative requirements and described the AA screening methodology. It identified the European sites within of the Zone of Influence, described the likely sources of impact, and concluded that the project had the potential to affect the Conservation Objectives of 5 x European Sites.

The Natura Impact Statement Report

The NIS assessed the likely significant effects on the Conservation Objectives for the following European sites which were screened in after the AA screening exercise.

- River Barrow & River Nore SAC
- River Nore SPA

The NIS described and assessed the elements of the project that could give rise to direct, indirect, and in-combination effects on these European Sites during the construction and operational phases. It outlined a range of mitigation measures (incl. water quality protection measures) and assessed the likelihood of residual effects following mitigation. The NIS was informed by the Stage 1 AA Screening exercise, Ecological surveys, Hydrology & Hydraulic reports and the relevant EIAR Chapters. It concluded that no significant adverse effects are likely on Natura 2000 sites, their qualifying interests or conservation objectives, and that project will not affect the integrity of any European Sites.

3.0 Legislative & Policy Context

3.1 Legislative Context

The EU Habitats Directive (92/43/EEC): This Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Articles 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).

European Communities (Birds and Natural Habitats) Regulations 2011: These Regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements. The Regulations in particular require in Reg 42(21) that where an appropriate assessment has already been carried out by a 'first' public authority for the same project (under a separate code of legislation) then a 'second' public authority considering that project for appropriate assessment under its own code of legislation is required to take account of the appropriate assessment of the first authority.

National nature conservation designations: The Department of Culture, Heritage and the Gaeltacht and the National Parks and Wildlife Service are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHA), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and the latter two form part of the European Natura 2000 Network.

The following European sites are located within the ZoI of the subject site.

- River Barrow & river Nore SAC
- River Nore SPA
- Hugginstown Fen SAC
- Thomastown Quarry SAC
- Lower River Suir SAC

Planning and Development Acts 2000 (as amended):

Section 175 sets out the requirements for the environmental impact assessment of certain development, identified for the purposes of section 176, carried out by or on behalf of local authorities.

Part XAB sets out the requirements for the appropriate assessment of developments which could have an effect on a European site or its conservation objectives.

- 177(AE) sets out the requirements for the appropriate assessment of developments carried out by or on behalf of local authorities.
- Section 177(AE) (1) requires a local authority to prepare, or cause to be prepared, a Natura impact statement in respect of the proposed development.
- Section 177(AE) (2) states that a proposed development in respect of which an appropriate assessment is required shall not be carried out unless the Board has approved it with or without modifications.
- Section 177(AE) (3) states that where a Natura impact assessment has been prepared pursuant to subsection (1), the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment.
- Section 177(V) (3) states that a competent authority shall give consent for a proposed development only after having determined that the proposed development shall not adversely affect the integrity of a European site.
- Section 177AE (6) (a) states that before making a decision in respect of a proposed development the Board shall consider the NIS, any submissions or observations received and any other information relating to:
    - The likely effects on the environment.
    - The likely consequences for the proper planning and sustainable development of the area.
    - The likely significant effects on a European site.

3.2 EU Policy Context

EU Directive on the Assessment and Management of Flood Risks (2007/60/EC): was transposed into Irish law in under SI No.122 of 2010, and it requires Member States to assess watercourses and coastlines at risk from flooding, to map flood extent, assets and humans at risk, and to take adequate measures to reduce this flood risk. Implementation is being co-ordinated with the EU Water Framework Directive and the current River Basin Management Plans by the OPW.

EU Water Framework Directive (2000/60/EC), as amended: established a legislative framework for the protection of all waters (incl. rivers, lakes, estuaries, coastal waters & groundwater) and their dependent wildlife and habitats. It requires Member States to protect and improve water quality in all waters so that they achieve good ecological status by 2015 (extended to 2027). It requires the preparation and regular review of River Basin Management Plans.

EU Strategy on Adaption to Climate Change, 2021: is an integral part of the European Green Deal which seeks to address the impacts of climate change and the need to become climate resilient by 2050 by way of smarter, swifter and more systematic adaptation.

3.3 National Policy Context

National Planning Framework, 2018-2040: sets out a high-level strategic plan for shaping the future growth and development to 2040. It seeks to develop a region-focused strategy to manage growth and environmentally focused planning at a local level. It contains several National Strategic Outcomes (NSOs) which include seeking to achieve compact growth, enhanced regional accessibility (NSO2), empowered rural economies and communities (NSO3), sustainable mobility (NSO4), enhanced amenity and heritage, and a transition to a low-carbon and climate resilient society.

National Development Plan, 2021-2030: underpins the National Planning Framework 2018-2040, and it sets a framework for investment priorities which includes expenditure commitments to secure a wider range of Strategic Investment Priorities. Under Strategic Outcome 8 (Transition to a Low Carbon & Climate Resilient Society) it allocated c.E940 million to Flood Defence and outlined several investment actions relating to flood risk management. The National Adaptation

Framework (Planning for a Climate Resilient Ireland) seeks to address current and future risks associated with climate change.

Climate Action Plan, 2024: seeks to tackle climate breakdown & achieve net zero greenhouse gas emissions by 2050. It identifies several risks because of climate change including rising sea-levels, extreme weather, further pressure on water resources, and increased chance and scale of river and coastal flooding.

Flood Risk Management Climate Change Sectoral Adaptation Plan, 2018: updates the previous plan by taking account of new information on climate change, potential impacts & developments in flood risk management. It identifies 21 actions needed to ensure effective & sustainable management of flood risk into the future.

Flood Risk Management Climate Change Sectoral Adaptation Plan, 2018: updates the previous plan by taking account of new information on climate change, potential impacts & developments in flood risk management. It identifies 21 x actions needed to ensure effective and sustainable management of flood risk into the future.

Strategic Flood risk Assessment Report – Ireland 2040: undertook a Strategic Flood Risk Assessment of the National Policy Objectives (NPO) within the Ireland 2040 Our Plan – National Planning Framework.

River Basin Management Plan 2018 – 2021: set out the actions required to improve water quality and achieve “Good” ecological status in water bodies (rivers, lakes, estuaries & coastal waters) by 2027, including the preparation of a river basin Management Plan under the WFD.

Draft River Basin Management Plan for Ireland 2022-2027: has been published under the WFD and is the third cycle of such plans for Ireland. It seeks to protect, improve and sustainably manage the water environment to achieve good water quality in in rivers, lakes, estuaries & seas.

National Flood Policy, 2004: builds on the Arterial Drainage (Amendment) Act 1995, which permits the OPW to implement localised flood relief schemes to co-ordinate the management of flood risk in Ireland.

The Planning System and Flood Risk Management, 2009: seek to avoid inappropriate development in areas at risk of flooding and avoid new developments increasing flood risk elsewhere. They advocate a sequential approach to risk assessment and a justification test.

National Biodiversity Action Plan, 2024: sets out actions through which a range of government, civil & private sectors will undertake to achieve Ireland's 'Vision for Biodiversity' and follows on from the work of the previous National Biodiversity Action Plans. It lays out a clear framework for Ireland's national approach to biodiversity, ensuring that efforts and achievements of the past are built upon, while looking ahead to what can be achieved over the next five years and beyond.

Architectural Protection Guidelines for Planning Authorities, 2004: provide a practical guide for planning authorities (and others) who must comply with Part IV of the Planning & Development Act on the protection of architectural heritage. Part 1 deals with Places of Public Worship that are Protected Structures (S.5.0). Part 2 contains detailed guidance notes for Conservation (S.7.0), Curtilage & Attendant Grounds (S.13), Non-habitable Protected Structures including Burial Grounds (S.14) and Improving Access (S.18).

3.4 Regional Policy Context

Southern Regional Spatial & Economic Strategy, 2020

The RSES supports the delivery of the programme for change set out in the National Planning Framework and the National Development Plan. It sets out a strategic vision and policy objectives for urban and rural areas, people, the economy, the environment, connectivity, amenities and utilities, and it contains a number of Regional Policy Objectives (RPOs) which deal with the: - preparation of Strategic Flood Risk Assessments; avoidance of inappropriate land use zonings and development in areas at risk of flooding; co-ordination with relevant agencies for the management of flood risk; protection of water quality; and the enhancement of biodiversity and amenities.

3.5 Local Policy Context

Kilkenny County Development Plan 2021-2027

Climate Change

Strategic Aim: to provide a policy framework to facilitate the transition to a low carbon and climate resilient County with an emphasis on reduction in energy demand and greenhouse gas emissions, through a combination of effective mitigation and adaptation responses to climate change.

Infrastructure & environment

Strategic Aim: to ensure a sufficient level of water services within the county for the implementation of the core strategy, provide a framework for the protection of the environment, including ***water quality, the avoidance of flood risk*** and the provision of a high-quality telecommunications infrastructure.

Obj.10B: to implement the measures of the River Basin Management Plan, including continuing to work with communities through the Local Authority Waters Programme to restore and improve water quality in the identified areas of action.

Flood management**:** seek to ensure that new developments do not reduce the effectiveness or integrity of any existing or new flood defence infrastructure, and to facilitate the provision of new, or the reinforcement of existing, flood defences & protection measures where necessary.

Heritage

Strategic Aim: to seek the protection and sustainable management of the arts, culture & heritage: to encourage the collection of knowledge to inform its protection; and to promote access to, awareness of and enjoyment of Heritage, Arts & Culture.

Obj.9A: continue to identify and map habitats and green infrastructure of county importance and raise awareness and understanding of the county's natural heritage and biodiversity identifying green corridors and measures to connect them.

Hedgerows: protect existing trees & hedgerows which are of amenity or biodiversity value and/or contribute to landscape character of the county.

Wetlands: protect, manage & enhance wetlands, and ensure that proposals related to draining or infilling of wetland habitats are assessed.

Built heritage: S.9.3 deals with redevelopment & reuse of structures & features.

Archaeology: S.9.3.1 deals with features, landscapes & underwater archaeology

Underwater archaeology: any development either above or below water, including to riverbanks, within the vicinity of a site of archaeological interest shall not be detrimental to the character of the archaeological site or its setting.

Obj.9C: protect archaeological sites & monuments (incl. setting), underwater archaeology, and archaeological objects, including those that are listed in the Record of Monuments and Places, and in the Urban Archaeological Survey of County Kilkenny or newly discovered sub-surface & underwater archaeological remains.

Recorded Monuments: several in the vicinity of the church.

- CH-1 (RMP KK031-034) Church, Graveyard, Font & Castle.
- CH-2 (RMP KK031-070) Souterrain
- CH-3 (RMP KK031-090) Burnt mound.

Protected Structures & NIAH: ensure the protection of architectural heritage by including all structures considered to be of special interest in the RPS and NIAH.

- The Church is a Protected Structure (C20)
- The Church is listed in the NIAH (12322003)

Climate Adaptation Strategy, 2019-2024

This strategy seeks to inform the policies and objectives of the KCDP. It contains c.96 individual actions under the headings with Flood Resilience identified as one of the main areas of focus.

Ballyhale Local Area Plan (2004)

The Ballyhale Local Area Plan expired in 2010.

4.0 PROJECT SUBMISSIONS

4.1 Prescribed Bodies

***DAU/ National Monuments*:**

- Pre-planning submission recommended the assessment of both terrestrial & underwater archaeological potential by a suitably experienced archaeologist with underwater expertise.
- Previously advised that the site has high archaeological potential, maximum amount of mitigation possible should be carried out in advance, preferably at design stage.
- EIAR Cultural Heritage chapter contains a desktop & site survey, and geotechnical investigations that were monitored by an archaeologist.
- No further archaeological investigations or surveys were undertaken.
- 3 sites of interest / potential were identified & 9 structures of interest.
    - CH-1 (RMP KK031-034) Church, Graveyard, Font & Castle.
    - CH-2 (RMP KK031-070) Souterrain
    - CH-3 (RMP KK031-090) Burnt mound.
- Archaeological assessment must also include a broad range of cultural heritage assets (not just RMP).
- EIAR omits any reference to the historically documented medieval borough that has been recorded as having formerly occupying the area to the W of St. Martin's parish church (RMP KK-031-034001).
- Other non RMP & NIAH features have also not been incorporated.
- Absence of prior archaeological testing to inform the scheme means it remains unknown whether the project will impact on sub-surface skeletal remains associated with the graveyard, or the sub-surface remains of a boundary that predates the early 20thC enclosing wall.
- No Underwater Archaeological Impact Assessment (UAIA) undertaken of the effects on wrecks & underwater objects (incl. weirs & bridges).

- DAU cannot advise as to whether or not the effects on cultural heritage have been adequately identified, or whether the mitigation measures would adequately allow for avoidance, reduction or offsetting of effects.

Recommended FI:

- Recommend the completion of a programme of pe-development underwater archaeological assessment of all in-stream works, testing in areas of proposed ground works and other investigations, by FI.
- The UAIA & AIA should be completed well in advance of construction.
- ***UAIA*** should: - contain a desktop assessment, inventory & mapping of sites, maps to indicate impacts, site investigation, indirect & secondary impacts & no groundworks in absence of an archaeologist; include metal detection survey; and submit a written report to NMS.
- ***AIA*** should be undertaken by a qualified archaeologist & a mitigation strategy agreed in advance of works, and pre-development testing should be undertaken.

Recommended planning condition:

- Attach a condition which requires: - the appointment of a suitably qualified archaeologist to oversee & monitor all the works; an approved Method Statement, the appointment of a suitably qualified osteoarchaeologist for human skeletal remains & metal detection; a communications strategy between the archaeologist & the contractor & professional monitoring off all in-stream works; suspension of construction activity if material is found pending advice, and a report prepared for NMS.

Inland Fisheries Ireland:

- The site is located on the Knockwilliam_010 surface water body, a tributary of the Little Arrigle & ecological status is Moderate & At Risk of not reaching its WFD objectives by 2027.
- Works area is just upstream of the Barrow-Nore SAC which include Salmon & Lamprey as QIs, along with Brown trout & European eel.

- Welcome proposals to remove / mitigate barriers to fish passage, and the NIS/CEMP mitigation measures should be implemented in full.
- Provide IFI with a full site-specific Risk Assessment / Method Statement for the instream or riparian works before works commence, which describes the method / duration of works & mitigation measures.
- Dewatered channels must be electro-fished in advance, liaise with IFI.
- No in-stream works 01/07 & 30/09 or during periods of low flow.
- Protect surface waters from deleterious matter & contaminated water.
- Implement biosecurity measures if invasive species occur.
- Buffer zones should be clearly marked in advance of works with no incursion by machines & temporary drainage should be diverted away.
- Any fuels, oils or other hazardous substances must be stored in bunded containers, and spill kits kept on site for hydrocarbons.
- Consult with Planning for Watercourses for the Urban Environment.
- Appoint a suitably qualified person to monitor mitigation measures.

Transport Infrastructure Ireland:

- No concerns raised.

4.2 Planning Authority response to submissions

***DAU / National Monuments*:**

A detailed response from Byrne Mullins & Associates (Appendix B of response submission) was provided and is summarised below.

- Note FI request (incl. UAIA & AIA) or attachment of conditions.
- Suggested planning conditions are largely consistent with the EIAR mitigation measures, and no opposition to them.
- UAIA & AIA require intrusive works on lands which are in private ownership; Archaeological Licence requires permission from landowner for investigations, some of whom have objected to the CPO; & intrusive works can only be undertaken after the lands have been acquired.

- A pre-panning UAIA would involve intrusive in-stream works which may require an NIS and approval by ABP, and post consent in-stream works would be subject to the overall mitigation measures.
- Project was the subject of a detailed Cultural Heritage Assessment and a robust suite of mitigation measures.

Inland Fisheries Ireland:

- Mitigation Meares are incorporated into the design & will be applied during both phases.
- Requirement for the appointed contractor to produce site specific construction stage method statements for agreement is set out in the planning documentation.
- Note restrictions on in-stream works, and all works will need to monitor the weather to ensure suitable conditions works.
- Storge of materials & fuels etc., water quality protection measures, buffer zones & Project Ecologist are included in the documentation.
- All relevant IFI guidance will be consulted.

Transport Infrastructure Ireland:

- Absence of concerns noted.

4.3 Observers:

No submissions received in relation to the proposed development (317082).

The concerns raised by the Objectors to the CPO (317082) are summarised and addressed in section 6.3 below.

5.0 COMPULSORY PURCHASE ORDER

5.1 Documentation submitted.

The local authority is seeking confirmation of the Kilkenny County Council Compulsory Purchase (Ballyhale Flood Relief Scheme) Order No.1 which was signed and sealed on 25th day of April 2023.

The following documentation was submitted to the Board:

- Compulsory Purchase Order No.1 of 2023 (signed & sealed) x 3.
- CPO Schedule and Deposit Maps (sealed & sealed) x 3.
- CPO Newspaper Notices.
- Sample of two notices served on the owners or reputed owners.
- Registered verification of post.
- Reports of the Director of Services (signed & dated).
- Chief Executive's Order authorising the making of the CPO (signed & dated).
- Other documents (incl. Planning Report).

Part I and II of the CPO Schedule lists 30 x individual plots (incl. subplots) that will be permanently (20) and temporarily (10) affected during construction works. Part III lists 31 x wayleaves that will be compulsorily acquired. Part VI lists 4 x Public and Private Rights of Way that will be compulsorily acquired. No Rights of Way are proposed to be extinguished and no Private Fishing Rights are proposed to be Temporarily Extinguished. Deposit maps illustrate lands to be permanently and temporarily acquired. The lands described in the schedule are lands other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense.

5.2 Case for CPO

- Facilitate the implementation of the Ballyhale Flood Relief Scheme.
- A significant flood event occurred in November 2000.
- Provide flood relief measures along the Ballyhale River to alleviate flooding up to the 1% Annual Exceedance Probability fluvial event.
- Protect residential & non-residential properties & lands from flooding & damage.
- Facilitate improved public realm amenities.
- Comply with European, national, regional & local plans & policy.
- Give effect and facilitate the implementation of the above plans & policies.

5.3 Objections to CPO

A total of 31 x Landowners would be affected by the CPO. Three written objections were received by the Board in relation to the Compulsory Purchase Order and the main concerns are summarised below: -

Name	Location	Plot nos.	Concerns
Andrew Connolly	Adjacent to & W of church.	6.1P 6.1T	Loss of grazing lands & no viable alternative plots available. Future development potential of acquired lands & loss of future development opportunities. Resultant impact on Capital Gains Tax. Wayleave agreement preferable to CPO. LAP designates lands as Open space/amenity & Area of Ecological Interest (various habitats & species) and N section is in an SAC. Proximity to Church & Graveyard (PS), and potential for impacts on human skeletal remains.
Seamus Connolly	S of Church & W of Main Street.	3.1P, 3.2P 3.3P, 3.4P 3.5P, 3.1T 3.2T, 3.3T	As above.
Patrick Prendergast Snr.	Adjacent to Main Street	***23.1P***, 23.2P 23.3P, ***23.1W***	Object to the proposed wayleave (Project & CPO). Loss of future development opportunities (house). Restricted access to lands. Property devaluation.

5.4 Oral Hearing

Having regard to the scale and location of the of the proposed development, the level of detail contained the application (incl. plans, drawings & technical reports), the contents of the Objector's submission which clearly indicated their understanding of the project, and the absence of a specific request to hold an Oral Hearing, it was decided that the holding of an Oral Hearing was not required in this instance. The Objector's submissions were circulated to KCC for comment and their response is summarised below.

5.5 Response to CPO submissions

The concerns raised by the Objector were addressed by the Council in a written submission received by the Board on the 25th day of March 2024, which was not circulated to the Objectors as they did not contain any material amendments to the Scheme. The Council's response submission to the Objectors is summarised below.

Name	Plot nos.	KCC Response
Andrew Connolly	6.1P & 6.1T	Plot 6.1P consists of stream bed/banks & overgrown parcel of land beyond the stream. Plot 6.1P is c.5% of Folio KK37587 (6.52ha). Land records indicate c.3 other connected Folios (c.30.86ha), of which this plot equates to c.0.8%. Resultant low impact relative to size of overall landholding existing condition & location beyond the stream. Land valuations, compensation & Capital Gains Tax are not a planning matter and are a matter for property arbitration. The lands mainly lie within Flood Zones A & B within which development is restricted (2009 Flood Guidelines). IFI Guidance requires a 10m streamside riparian zone to protect the physical integrity of the ecosystem within any new development. Physical access to the site is also restricted. Works involve flood embankments which are essential to the operation of the Scheme which could affect the agricultural potential of the lands as stream flows & flooding will be locally increased. Acquisition allows permanent fencing on the N bank to livestock incursions to the stream & prevent environmental impacts, and the provision of public realm improvements. The 2004 Ballyhale LAP has expired.

		The EIAR provides for a full assessment of protected sites, baseline environmental conditions & impacts from the Scheme. EIAR mitigation measures will protect sensitive receptors. Long term positive impact on ecology predicted as a result of improved waterflows & limiting livestock access to the river. EIAR Ch.10 assesses impacts on cultural heritage (incl. potential skeletal remains) and lists a detailed suite of mitigation measures. Moderate adverse impacts are considered appropriate in light of the significant positive impacts provided by the Scheme.
Seamus Connolly	3.1P, 3.2P 3.3P, 3.4P 3.5P, 3.1T 3.2T, 3.3T	The Plots comprises agricultural land on both sides of Chapel Lane. Plots 3.1P, 3.3P & 3.4P consists of existing public roadbed already occupied by KCC which is being purchased to regularise ownership in line with best practice. Plots 3.5P & 3.2P consist of existing stream bed & banks which will not result in any significant loss of agricultural land. Total permanent land take is c.0.8% of the combined folios. Plot 3.1W relates to a Wayleave with 2 parts (linear section over the stream & a portion of a field where a flood embankment is proposed). Wayleave is required for river inspections, maintenance & repairs. Wayleave over the stream would have negligible impact on agricultural operations. Embankment would have a slight negative impact on operations, but the new access gate to the plot would have a slight positive impact. Land valuations, compensation & Capital Gains Tax are not a planning matter and are a matter for property arbitration. Lands to be acquired are existing roadway or stream bed / banks with no viable development potential. The lands mainly lie within Flood Zones A & B within which development is restricted (2009 Flood Guidelines). Plots 3.1P, 3.3P & 3.4P consist of existing public road, 3.5P allows for permanent livestock fencing & 3.2P facilitates a flood wall along the boundary of “Arrigle View”, and a Wayleave would not suffice. The remaining Plots are already proposed as a Wayleave acquisition rather than purchase. The 2004 Ballyhale LAP has expired. The EIAR provides for a full assessment of protected sites, baseline environmental conditions & impacts from the Scheme. EIAR mitigation measures will protect sensitive receptors. Long term positive impact on ecology predicted as a result of improved waterflows & limiting livestock access to the river.

Patrick Prendergast Snr.	***23.1P***, 23.2P 23.3P, ***23.1W***	Objections relate to access to lands at entrance to GAA grounds. Plot 23.1P relates to existing public roadbed occupied by KCC which is being purchased to regularise ownership in line with best practice. . Plot 23.1W relates to a permanent wayleave over the river required for river inspections & maintenance. The wayleave coincides with the channel & is not developable land. Access is not possible from 3 sides without 3rd party consent, nor from the roadside due to the river (crossing required). A flood wall is proposed along road boundary as part of the Scheme. Any future crossing could be accommodated, and the future development of the site is not precluded by the Scheme & CPO.

6.0 PLANNING ASSESSMENT

This section should be read in conjunction with Section 7.0 (EIA) and Section 8.0 (AA) of this report.

The main issues arising in this case are:

1. Principle of development
2. Visual amenity
3. Residential amenity
4. Traffic & movement
5. Biodiversity & water quality
6. Cultural heritage
7. Drainage & flood risk
8. Other issues

Section 7 deals with Environmental Impact Assessment
Section 8 deals with Appropriate Assessment
Section 9 deals with the Compulsory Purchase Order

6.1 Principle of development

6.1.1 EU, national and regional policy compliance:

The proposed development would be compatible in principle with EU, national and regional land use, planning, environmental and climate change policy as set out in the documents summarised in sections 3.1 to 3.3 above. It would address the issues identified in these documents in relation to climate change and flood risk (incl. the EU Strategy on Adaption to Climate Change, 2021 & the Climate Action Plan, 2024). It would also contribute to achieving the objectives of the EU Water Framework Directive, as amended, in relation the protection and improvement of water quality and the achievement of good ecological status by 2027.

The Scheme would be compatible with the policies and objectives contained in the National Planning Framework and National Development Plan in relation to transitioning to a climate resilient society (incl. Strategic Outcome 8 of the NDP); and the Flood Risk Management Climate Change Sectoral Adaptation Plan, 2018 which identifies the actions needed to ensure effective and sustainable management of flood risk into the future. It could also factor into the sequential approach to flood risk assessments and justification tests for future development proposals in the surrounding area as advocated in the Planning System and Flood Risk Management, 2009.

The Scheme would be compatible with the strategic vision and policy objectives contained the Southern Regional Spatial & Economic Strategy, 2020 in relation to future development of Co. Kilkenny, and the management and reduction of flood risk.

6.1.2 Local policy compliance:

The proposed development would be compatible in principle with the Core Strategy and relevant policy objectives in the Kilkenny County Development Plan, 2021 to 2027, and the Climate Adaptation Strategy, 2019 to 2024 as summarised in section 3.4 above.

The scheme would be compatible with the Development Plan's policies and objectives in relation to the management of flood risk. The lands lie within Flood Zone A and the need for the Scheme is supported by a suite of technical reports that are contained in Volume 3 of the EIAR (incl. Hydrology & Hydraulics reports and Baseline & Option Flood Maps).

The scheme would also be compatible with and/or enable the implementation of Development Plan climate change, flood avoidance, flood risk management and water quality improvement policies and objectives which are summarised in section 3.4 above. The various policies and objectives (incl. OB.10) seek to work with the relevant agencies to provide a framework for the protection of the environment, to ensure compliance with the Water Framework and relevant guidance and implement the measures of the River Basin Management Plan to ensure the protection and/or improvement of water quality status.

In relation to other Development Plan policies and objectives (incl. residential amenity, roads & traffic, the environment, biodiversity, wetlands, archaeology, tourism & cultural heritage), the extent to which the practical elements of the scheme would interact with these policies and objectives will be addressed below.

6.1.3 Need for the scheme:

The Council states that the need for the flood relief scheme is based on its: - acknowledgment of past flood events and associated adverse impacts on adjacent property and lands and an analysis of future flood risk along the Ballyhale River. I am therefore satisfied that the Council has demonstrated the need and justification for the Flood Relief Scheme.

6.1.4 Conclusion:

Having regard to the foregoing, I am satisfied that the proposed development would comply with all relevant EU, national, regional and local planning policies and objectives for the area, and that the need for the project has been clearly demonstrated. The proposed Flood Relief Scheme would therefore be acceptable in principle, and compatible with the proper planning and sustainable development of the area.

6.2 Visual amenity:

Site context:

The linear riparian site is located along the Ballyhale River and the surrounding area comprises a mix of agricultural, religious, residential, commercial, recreational and amenity uses. The river flows from S to N. The S section comprises agricultural lands and the Church, the Mid section is mainly characterised by urban uses to the W and agricultural lands to the W, and the N section flows through a residential area and public park. The course of the river splits in front of the Church and reunites further N in the vicinity of a Business Park where it flows parallel to the rear of the properties along Main Street. There are several culverts and bridges along its course which provide access to the lands and properties to the W. The Church buildings and Graveyard are designated National / Recorded Monuments and Protected Structures which are listed in the NIAH. There are several mature trees and hedgerows in the vicinity, mainly in the S and N sections and to the immediate W of the Church. The Little Arrigle River forms part of the River Barrow and River Nore SAC to the N. The site is not covered by any other sensitive landscape designations or protected views.

Project elements:

A detailed description of the main project elements is provided in Section 2.2 above. One temporary construction compound would be located in the N section. The flood relief works would comprise the following main elements that have the potential to affect visual amenity: -

- Embankments upstream & S of the village to prevent overland flooding.
- Flood wall to W perimeter of “Arrigle View” along Chapel Lane (S).
- A section of new river channel re-connecting all outlets from the Chapel Lane bridge (N) into the W river channel and removing the flow split.
- Removal of a portion of the Church Walkway & replacement pedestrian bridge off Chaple Lane (N).
- Flood Defences (wall & embankments) between the channel and the properties at risk on Main Street (W).
- Removal of the existing weir & bridge at the Ballyhale Business Park access and replacement of bridge with clear span access.

- Low flood wall alongside the road opposite the Brookfield estate to N.
- Channel reprofiling at the existing Main Street bridge to N.
- Riverside Walk to the W of the Church & N of Chapel Lane.
- Landscaping, fencing & vegetation removal.

Environmental Impact Assessment Report:

EIAR chapter 9 dealt with Landscape and Volume 3 contains a LVIA and Photomontages of before and after the installation of the flood relief works at key locations (11 x views from several local sensitive receptors), and a Tree Survey. It concluded that there would be Moderate to Significant visual impacts during the Construction phase, and that the effects during the operational phase would be: -

- Moderate - Slight visual impacts on the existing agricultural lands to the S of the Village evolving to Neutral or Beneficial as the landscaping matures.
- Slight to Significant adverse visual impacts on the area around the Church and environs evolving to Neutral-Beneficial as the landscaping matures.
- Slight to Moderate visual impacts on the area around Main Street and N of the Village, evolving to Neutral as the landscaping matures.

Assessment:

None of the submissions raised concerns in relation to the visual impact of the proposed development during either the construction or operational phases of the Flood Relief Scheme.

The Proposed Scheme would alter the visual appearance of the Ballyhale River as it flows through agricultural land, past the Church, and to the rear and fore of the properties along Main Street. The mainly linear works along the river would be visible from a number of locally sensitive locations in the Village and the surrounding area. This would include views across the agricultural lands to the S of the Village from the S section of Main Street, views to and from the historic Church and Graveyard at Chapel Lane, and views from along the N section of Main Street. The overall impact on views and visual amenity would range from negligible to moderate depending on the location and the extent of tree and vegetation clearance. Having regard to the

small-scale and low-lying linear nature of the proposed works (incl. replacement bridges & flood walls), and taking account of the landscaping proposals, I am satisfied that the impact on views from sensitive locations would not be significant or long term. Any short-term visual impacts would gradually reduce as the landscaping matures.

The proposed development would not comprise any direct works to any existing built heritage features (incl. Church & Graveyard) with no adverse impacts on the character or visual setting of any heritage features in the vicinity. The proposed removal and replacement of the existing pedestrian bridge off Chapel Lane to the church grounds, new Riverside Walk and associated vegetation clearance would result in a visual change to the receiving landscape. However, the impact on visual amenity and the character and setting of the heritage features would not be significantly adverse, and I am satisfied that any impacts would gradually reduce over time as the landscaping matures. Furthermore, the Riverside Walk would make a positive contribution to the amenities of the area. Note that issues raised in relation to potential indirect impacts on heritage features will be assessed in section 6.6 below and in the Chapter 8.0 EIA (Cultural Heritage).

Given that the main purpose of the scheme is to protect public and private property from the adverse effects of flood events, I am satisfied that a reasonable balance has been struck between the flood protection measures and the visual amenities of the area.

Conclusion:

Having regard to the foregoing, I am satisfied that the proposed development would not have a significant adverse impact on the visual amenities of the surrounding area in the long term. Any moderate adverse visual impacts in the short term would gradually reduce as the landscaping matures, and the new Riverside Walk would have a positive impact on the visual amenities of the area, including the character and setting of the Church and Graveyard.

6.3 Residential amenity

Site context:

Refer to sections 1.3 above for a detailed description of the site and environs. More specifically, the Mid and N sections of the riparian site are located within a predominantly residential and commercial area, and the Ballyhale River runs parallel to the rear and fore of a several residential areas along Main Street. This includes a terrace of houses to the immediate E of the Church and graveyard, which are also located parallel to the E section of the river after it splits into two channels.

Project elements:

Refer to sections 2.2 above for a detailed description of the project. The main elements of the scheme that have the potential to affect residential amenity comprise: -

- Installation of flood walls, embankments, rock armour & bridges.
- Channel reprofiling & vegetation removal.
- Associated excavation, demolition & construction works.
- Temporary construction compound in the N.
- Construction vehicle access off the Main Street to work areas.

Environmental Impact Assessment Report:

EIAR chapters 9, 11, 12, 13, 14 & 15 contain sections that dealt with potential impacts on residential amenity (incl. Landscape, Population & Human Health, Air Quality, Noise & Vibration, Material Assets & Traffic & Transport). Volume 3 contain Photomontages and a CEMP. The EIAR concluded that there would be short term temporary adverse impacts during the construction phase with no perceptible impacts during the operational phase.

Assessment:

None of the submissions raised concerns in relation to the impact of the proposed development on the residential amenity of properties the vicinity during either the construction or operational phases of the scheme.

Construction works:

There is potential for adverse impacts on the amenities of nearby residential properties during the construction phase of the various project elements (incl. noise, vibration, dust, traffic disruption & general disturbance) during the construction phase of the scheme. The entire construction phase would take between c.20 months to complete, and the construction works would be phased to commence with site preparation followed by the main flood relief works. Waste arising from the work would be managed by measures contained in the EIAR which would be transposed into a CEMP and in accordance with any waste licences and permits, if required.

Site access would be mainly off the R448, with no heavy construction traffic routed along Chapel Lane, except for essential deliveries. Although there would be some minor disruption to traffic movements and journey times, any adverse impacts would be temporary and not significant. Vehicular and pedestrian access to the road network would be maintained.

The demolition, excavation and construction work along with the operation of plant and machinery have the potential to cause adversely affect residential amenity in the surrounding area. Normal working hours would run from Monday to Saturday, although this could be further controlled by way of the standard working hours condition. Although the impacts would be temporary and short term over the various phases of the c.20 month works programme, they could also be significant, although I note that the phased activities would not take place simultaneously. I am satisfied that the implementation of the EIAR mitigation measures and adherence to best construction practices would serve to manage any adverse impacts on residential amenity during the construction phase (incl. noise, vibration, dust, traffic disruption & general disturbance).

As previously stated, the main purpose of the scheme is to protect public and private property from the adverse effects of recurring flood events and predicted fluvial flooding. The construction works would undoubtedly have localised adverse impacts on residential amenity in the surrounding areas at various stages. However, I am satisfied that all potential adverse impacts have been identified and that they would be monitored, managed and minimised by the mitigation measures. The scheme

would not have a significant long term adverse impacts on residential amenity and it would have positive benefits for the local community in terms of protecting property from inundation by flood waters.

Other issues related to traffic safety and surface water drainage is addressed below in Section 6.4 (Traffic & Movement), Section 6.7 (Drainage & Flood Risk), and EIA Section 8.0.

Operational phase:

The proposed flood relief works would not adversely affect the residential amenities of properties in the vicinity during the operational phase by way of overlooking, loss of privacy or noise disturbance because of the low-lying linear layout and design of the flood defence walls and embankment which would not be visually obtrusive. Although drainage maintenance works will be periodically required during the operational phase (incl. inspections) the works would not have an adverse impact on residential amenity. The flood defence walls and embankments will be visible from the public domain, however I am satisfied that a reasonable balance has been struck between the need to provide flood protection measures and the visual and residential amenities of the area. The proposed surface water drainage arrangements would ensure that the scheme would not give rise to flooding or pose a flood risk to any nearby residential properties in the area. Overall, the public realm elements of the scheme (incl. a riverside walk & public park) would make a positive contribution to the riverside amenity, and they would help mitigate any localised moderately adverse impacts on residential and visual amenity. I am satisfied that the scheme would not have a significant long-term adverse impact on residential amenity in the surrounding area.

Decommissioning phase:

Given the nature of the scheme, there are no plans to decommission the project.

Conclusion:

Having regard to the foregoing, I am satisfied that the mitigation measures would manage any adverse impacts on residential amenity during the construction phase (incl. noise, vibration, dust, traffic disruption & general disturbance). The proposed

development would not have a significant long term adverse impact on amenity during the operational phase. Furthermore, the scheme would have positive benefits in relation to protecting residential and commercial property from inundation and improving public amenities by way of the riverside walk. I am satisfied that a reasonable balance has been struck between the provision of flood protection measures and the protection of residential amenity.

6.4 Traffic and Movement

Site context:
Refer to sections 1.3 above for a detailed description of the site and environs. More specifically, HGV vehicular access to the temporary work compound to the N of the Village would be via the R448, and access to the project elements would be via the R448 and L8256 (Chapel Lane). However, HGV traffic would not be routed along Chapel Lane, except for essential services.

Project description:
Refer to section 2.2 above for a detailed description of the project. More specifically the scheme would not comprise any significant infrastructural road works. However, construction delivery vehicles (incl. HGVs) have the potential to cause a disturbance by adversely affecting road capacity and traffic movements.

Environmental Impact Assessment Report:

EIAR chapter 15 dealt with Traffic Impacts and Volume 3 contains a CEMP. The Traffic Analysis described the existing road, pedestrian and cycling network. The information was used to describe baseline conditions and to determine the additional traffic loading resulting from the construction works. The EIAR concluded short-term slight to moderate adverse traffic impacts during construction, with no adverse impacts predicted in the long-term operational phase.

Assessment:

None of the submissions raised concerns in relation to the impact of the proposed development on traffic movement or safety during the construction or operational phases of the scheme.

Construction works:

There is potential for adverse impacts on traffic movement along the surrounding road network during the construction phase of the various project elements. This would be mainly related to the movement of HGV delivery vehicles to and from the site compound on the N side of the Village, and the transfer of materials to the work areas (incl. access, disruption, safety & general disturbance) over the lifespan pf the works. The construction works would take place over a c.20-month period and construction vehicles would utilise the R448 and the wider road network (incl. the M9 & surrounding national & regional roads). The volume of additional traffic generated by construction works would be relative to the level of activity at each location associated with the particular works (incl. deliveries, removal of materials & staff vehicles), but it is not expected to exceed 4 x HGV vehicle movements per hour during peak construction.

The construction phase works will undoubtedly give rise to traffic disruption and possible diversions, and general disturbance in the area. The additional HGV traffic would give rise to a negative short term temporary impact on the road network which would not be significant given the small scale of the additional traffic movements and the short duration of the proposed works. Lower construction traffic movements are expected during the remainder of the construction phase. Slight negative traffic impacts are predicted on the wider road network along with a slight increase in traffic congestion at the junction of the R448 and L8256 (Chapel Lane) and some localised inconvenience during the construction phase.

The EIAR contains a series of traffic mitigation measures to manage the additional traffic movements (incl. signposting, dedicated access points, storage areas, deliveries outside of peak hours, & road cleaning). A Construction Traffic Management Plan should be prepared prior to the works commencing as part of the CEMP, to help manage and minimise any adverse traffic impacts within the area

during the construction phase. This could be addressed by way of a planning condition. Any traffic management measures contained in the EIAR and CEMP should be complied with, and best construction practices should be adhered to. This also ensure that construction related traffic would not give rise to a traffic hazard or endanger the safety of other road users.

Operational Phase:
The Flood Relief Scheme would not have any significant adverse traffic impacts on the local road network during the operational phase.

Conclusions:
Having regard to the foregoing, I am satisfied that the proposed development would not give rise any permanent adverse traffic impacts during the construction phase (incl. traffic disruption & diversions and general disturbance). The proposed development would not have a significant long term adverse impact on traffic and movement during the operational phase. I am satisfied that a reasonable balance has been struck between the provision of flood relief measures and the management of traffic impacts during the relatively short construction phase.

6.5 Biodiversity & water quality

Site context:
Refer to sections 1.3 above for a general description of the site and environs. More specifically, the linear scheme would occupy a rural and urban riverside location that comprises a mix of habitats (incl. grasslands, woodland, riparian & watercourse) which in turn support a variety of terrestrial and aquatic plant and animal life. The river may provide support habitat for several species of migratory fish in their various life-cycle stages (incl. Salmon & Lampreys) along with freshwater macroinvertebrates (incl. White-tailed crayfish), and it may also provide suitable foraging habitat for birds, bats and otter. Although the site lies within a designated Freshwater pearl mussel sensitive area there no records of this species within this section of the Ballyhale or Little Arrigle rivers.

Project description:

Refer to sections 2.2 above for a detailed description of the proposed flood relief works. More specifically, the works would comprise several elements that have the potential to affect biodiversity and water quality, including the following: -

- Site preparation works (incl. excavations)
- Partial demolition of existing pedestrian bridge off Chapel Lane.
- Construction of new flood defence walls & embankments.
- Construction of river crossings (incl. off Chapel Lane & Main Street).
- Vegetation clearance & instream works (incl. culverts & weirs).

Environmental Impact Assessment Report:

EIAR chapters 6, 7 & 8 dealt with potential impacts on Biodiversity, the Water Environment, and Land & Soils. The Technical Appendices contained Hydrology & Hydraulic Reports, Flood Maps and a Tree Survey. The NIS identified the European sites with potential links to the project site, and Appendix 1 described the baseline environment. The EIAR was informed by a variety of desk top studies and site surveys (incl. habitats, mammals, birds, bats, fish, macroinvertebrates, water quality & invasive species). The EIAR concluded that although the works would result in minor habitat loss and fragmentation in the short term (incl. woodland & riparian), there would be no significant adverse impacts on biodiversity or water quality during the construction or operational phases, post mitigation (incl. water quality protection measures, timing & seasonality of works and adherence of guidance for in-stream works). It concluded that the works, which would include the redirection of flows to the W channel at the Church and the removal of barriers to fish movement, would result in a net gain for biodiversity in the long term, due to increase waterflows.

Assessment:

Inland Fisheries Ireland (IFI) had no objections to the proposed development. It noted that the works area is just upstream of the Barrow-Nore SAC which includes Salmon & Lamprey as QIs, along with Brown trout & European eel, and it welcomed proposals to remove barriers to fish passage. It recommended that the NIS & CEMP

mitigation measures be implemented in full, and that all relevant IFI Guidelines be adhered including for any in-stream works (refer to section 5.1 above).

Water quality:

The Ballyhale River rises to the SE of the Village in a rural area, and it flows N and mainly to the W of the Village to discharge to the Little Arrigle River to the NE, which in turn flows into the River Nore to the N. The Little Arrigle forms part of the River Barrow and River Nore SAC, and the Nore and Barrow rivers form a confluence downstream of Waterford City before discharging to the coast via Waterford Harbour. The underlying bedrock is classified as a Regionally Important Aquifer-Fissured Bedrock although there are no Drinking Water Protection Areas in the vicinity. The WFD status of the Little Arrigle River is classified as Moderate and At Risk, and the River Nore is also classified as Moderate. The construction phase works have the potential to adversely affect water quality (incl. contaminated run-off [sediments & chemicals], changes to stream patterns, and changes to runoff & flow patterns). However, the various design elements (incl. removal of weirs & artificial flow split) and EIAR mitigation measures (incl. silt management & pollution prevention) would ensure the protection of water quality within Ballyhale River and in the downstream Little Arrigle and Nore rivers. The Hydrology & Hydraulics reports did not predict any significant disturbance to riverbed sediments or adverse impacts on hydraulic conditions, notwithstanding the anticipated increase in flow rates in the W channel. The proposed Scheme will provide protection up to the 1% AEP flood event which will have a positive impact on the surrounding area, and the instream works will improve water flows and conditions for fish movement.

Protected sites

The NE section of the proposed development would overlap with the Little Arrigle River which forms part of the River Barrow and River Nore SAC which is designated for a wide variety of habitats & species, and the River Nore is also a designed SPA for Kingfisher. The site and environs may also be of importance to mobile species from several further afield sites. Issues related to potential adverse effects on European sites are addressed in Section 8.0 of this report (Appropriate Assessment). There are several nationally designated sites (p/NHAs) in the wider

area which would not be affected by the proposed works for several reasons, including the absence of an aquatic connection and the extent of the separation distance.

Habitats

The Ballyhale River and its linear environs comprise several terrestrial and aquatic habitats including Grassland, Woodland & Hedgerows, Buildings & Artificial surfaces, Disturbed ground, Dry meadows, Wet grassland and Watercourses. The construction phase works could have an adverse impact on some of these habitats in terms of localised fragmentation and loss. However, having regard to the relatively small scale of the proposed works I am satisfied the impacts would be short term and temporary and that the riverbanks and environs would gradually habituate and recolonise after the works are complete. No significant adverse impacts would occur during the operational phase.

Species:

Fisheries:

The construction works could result in the permanent loss of linear riparian habitats and their constituent macroinvertebrate species within sections of the river where the flood walls and embankments would be located. These areas may contain suitable spawning, feeding, sheltering, and resting habitat for several species of migratory fish in their various life cycle stages (incl. Salmon, Lampreys, Brown trout & Eel). However, given the small scale, contained, and localised nature of the works, and the relatively short duration of the in-stream works, I am satisfied that fish species would not be impacted to any significant extent. The removal of weirs along the river would have a positive impact on migratory fish and fish passage, as would the improvement in flow rates.

The construction works could also give rise to the release of fine sediments into the watercourse along with general disturbance (incl. noise & vibration). This could have localised adverse impacts on water quality, aquatic macroinvertebrates and fish (incl. their food sources & prey species). The EIAR contains a comprehensive range of construction phase mitigation measures which would protect water quality and

minimise construction phase impacts on aquatic biodiversity (incl. timing & seasonality of works, contained in-stream work areas, measures to the prevent release of sediments & contaminants, and control of accidental spills) which are considered acceptable. The construction works should also comply with relevant legislation and guidance (incl. IFI Guidelines) for in-stream works, and river water quality monitoring should be undertaken throughout the construction phase. Appropriate noise and vibration mitigation should be undertaken to reduce any impacts on aquatic species (incl. soft start & ramping up of machinery). This could be addressed by way of a planning condition.

Having regard to the small spatial scale of the works relative to the overall size of the river, along with the relatively short-term duration of the in-stream works, and subject to the full implementation of the mitigation measures, adherence to best construction practice, and compliance with all relevant legislation and guidelines to minimise pollution and siltation, and the attachment of conditions to address fisheries concerns (incl. noise & vibration), the scheme would not have a significant adverse impact on fisheries during the construction or operational phases.

Macroinvertebrates:

The site is located within a designated Freshwater pearl mussel sensitive area, although there are no records of this species being present in this section of the Ballyhale and Little Arrigle rivers. White-tailed crayfish has been recorded in the vicinity of the proposed works. The mitigation and related measures outlined above in relation to fisheries would serve to protect water quality and macroinvertebrates from harm, with no significant adverse impacts on these species anticipated.

Birds and bats:

The Ballyhale and Little Arrigle rivers and their environs provide a habitat for several breeding, resting and foraging bird species along with foraging opportunities for bats (incl. Common & Soprano Pipistrelle, Leisler's, Natterers' & Daubenton's bats). The desk surveys did not record the presence of any birds of conservation importance (incl. NPWS & NBDC). Bat counts were relatively low and mainly included Common & Soprano Pipistrelle and Leisler's bats. However, Main Street Bridge to the N of the Village may have the potential to provide a suitable resting and roosting habitat and

the proposed flood relief works have the potential to disturb any bats that may be present under the bridge. A pre-construction bat survey of the bridge should be undertaken, and in the event that any roosts are discovered with the potential to be affected by the works, a NPWS Derogation Licence should be sought for their safe removal and relocation. This could be addressed by way of a planning condition.

The construction phase works would undoubtedly cause a general and localised disturbance to birds and bats (incl. demolition, excavation & construction works), with a resultant short-term localised disturbance to species in the surrounding area, along with temporary displacement and loss of foraging opportunities. However, having regard to the small spatial scale and linear nature of the works along which their relatively short-term duration, I am satisfied that there would be no significant adverse impacts in terms of support habitat loss, species displacement, collision risk or mortality. The birds and bat species would gradually habituate to the presence of the new flood defence walls and embankments in the long term.

There would be no significant long term adverse impacts on bird and bat species subject to the full implementation of the mitigation measures, adherence to best construction practice, and compliance with all relevant legislation and guidelines to minimise pollution, and the attachment of conditions (incl. pre-construction bat surveys and the management of construction noise & vibration), I am satisfied that the scheme would not have a significant adverse impact on birds and bats.

Otter:

The riparian site and environs provide a suitable commuting route for Annex IV Otter which is also a QI for the River Barrow and River Nore SAC. Although signs of otter activity were recorded in the surrounding area in the desk surveys (incl. NPWS & NBDC), no holts or couches were identified along the riverbank during the site surveys. The proposed works have the potential to affect this species either directly by way of disturbance or interference with commuting routes, or indirectly by way of a reduction in prey availability as a result of a diminution in water quality with resultant impacts on macroinvertebrates and fish. Having regard to the small spatial scale of the works relative to the overall size of the river, along with the relatively short-term duration of the works (c.20 months), I am satisfied that there would be no

significant adverse impacts on commuting routes. Furthermore, the construction phase mitigation measures would protect water quality and thus the availability of prey species in the food chain. However, I recommend that a pre-construction otter survey should be undertaken, and in the event that any holts are discovered, an NPWS Derogation Licence should be sought for their safe removal and relocation. This could be addressed by way of a planning condition.

Protected plant species:

None of the species listed in the Flora Protection Order (2015) were recorded in the desk studies or field surveys, although Bog Orchid may be present in the wider area.

Other animal species:

Several other species are expected to be present based on the availability of suitable habitat (incl. Common frog & Common lizard). The EIAR mitigation measures would provide protection during the construction works with adverse impacts anticipated.

Invasive plant species:

An Invasive species management plan should be required along with a biodiversity condition to ensure that no new species are introduced to the area.

Conclusions:

Having regard to the foregoing, I am satisfied that the mitigation measures and recommended conditions would manage any adverse impacts on biodiversity and water quality during the construction phase, along with adherence to best construction practice and compliance with all relevant guidelines. The flood relief works would not have a significant long term adverse impact on biodiversity or water quality during the operational phase. I am therefore satisfied that a reasonable balance has been struck between the provision of flood relief measures and the management of predicted impacts on biodiversity and water quality within and along this section of the Ballyhale River.

6.6 Cultural Heritage

Site context:

Refer to sections 1.3 above for a general description of the site and environs. More specifically, the proposed linear flood relief scheme would occupy a riverside location in Ballyhale Village, the original settlement of which dates to the Bronze Age. There are several structures and features of heritage importance in the vicinity including National/Recorded Monuments, Protected Structure and NIAH listings, which mainly relate to the Church and Graveyard and their environs which date back to Medieval and Norman times. There are several other Protected Structures, NIAH listings and heritage features along Main Street.

Project description:

Refer to sections 2.2 above for a detailed description of the project. More specifically, the proposed works would comprise several elements that have the potential to affect archaeology and cultural heritage. This includes the excavation and trenching works required to install the flood defence walls and embankments, replacement of the pedestrian bridge to the Church grounds off Chapel Lane, and the creation of a Riverside Walk to the W of the Church and Graveyard.

Environmental Impact Assessment Report:

EIAR chapter 10 dealt with Archaeology and Cultural Heritage impacts, and Architectural Heritage. The receiving environment is described in terms of the historical development of Ballyhale Village and its archaeological and architectural heritage. The EIAR was informed by several archaeological investigations including a Paper Survey (incl. previous site investigations), Field Inspection and Geotechnical Site Investigations. It assessed potential impacts and proposed construction phase mitigation measures, and it refers to several features of interest (incl. the Church grounds) and acknowledged the possible presence of previously unrecorded underwater artefacts within the riverbed. The proposed works would not directly affect any built heritage features, and although the pedestrian bridge from Chapel Street to the Church and Graveyard would be replaced. The EIAR concluded that the

proposed development could give rise to significant permanent adverse impacts on below ground and underwater archaeology during construction, with no significant adverse impacts on architectural heritage during construction, following mitigation There would be no long-term impacts on cultural heritage in the operational phase. The Council's Heritage Report that was submitted in response to the Prescribed Bodies submissions did not alter these conclusions.

Assessment:

The DAU raised concerns in relation to the impact of the proposed development on below ground and riverbed archaeology, and architectural and cultural heritage in the surrounding area, including the Church and Graveyard. The DAU concerns are summarised in section 5.1 above. They mainly relate to the adequacy of the site surveys and subsequent assessment of the archaeological potential of the riverbed, church grounds and environs. They note that the site and environs may contain previously unknown submerged / underwater archaeological artefacts, the remains of a medieval borough in the vicinity of the Church, along with burials outside of the boundary wall. DAU recommended that pre-development archaeological testing of riverbed and ground works should be undertaken by way of Further Information, and that an impact assessment report be prepared in advance of any works (incl. AIA & UAIA). Alternatively, a planning condition should be attached to require archaeological monitoring of the works programme, all excavated material should be assessed for artefact bearing potential and a report prepared for NMS. T

The Council's response to the concerns raised by the DAU is summarised in section 5.2 above and it was accompanied by a Consultant's Heritage Report. It stated that the project was the subject of a detailed Cultural Heritage assessment in the EIAR with a robust suite of mitigation measures which are largely consistent with the conditions suggested by the DAU. It also described the land ownership and environmental constraints in relation to carrying out and UAIA (incl. consent for investigations & the intrusive nature of in-stream investigations).

I note that the DAU submission referred to the EIAR's lack of consideration RMP KK-031-34001 in respect of medieval remains at the Church, however I note that Table 10.2 of EIAR chapter 10 (10-17) lists this feature.

***Archaeology*:**

I note that the archaeological importance of the Church grounds, environs and surrounding area, and the potential for underwater archaeology within the riverbed, and it is possible that the riverbed and surrounding lands at the church may also contain as yet undiscovered artefacts. The proposed site preparation, excavation and construction works have the potential to result in the permanent loss of archaeological materials along and within the river, which would give rise to a significant adverse impact on cultural heritage. Taking account of the concerns raised by DAU and the Council's response to them, I am of the view that Further Information in relation to a pre-consent UAIA and AIA is not required. I am satisfied that the concerns raised in relation to underwater and terrestrial archaeology have been identified in the EIAR and mainly addressed by the proposed mitigation measures. Any outstanding concerns can be adequately addressed by way of a planning condition which would require archaeological pre-testing before works commence, monitoring, metal detection, preservation by record, and the submission of a report to the DAU / National Monuments Service.

It is also possible that human skeletal remains may be buried outside of the Graveyard boundary and within the area that will be transformed into the Riverside Walk, and this area should also be subject to detailed and sensitive archaeological investigations. Taking account of the concerns raised by DAU and the Council's response to them, I recommend that appropriate measures should be put in place to ensure that any discovery of human skeletal remains is correctly managed and that a protocol is put in place for their re-interment.

Cultural Heritage:

The character and setting of the Church, Graveyard and associated structures which are variously designated as National / Recorded Monuments, Protected Structures and NIAH listings would not be directly adversely affected by the proposed development. The existing bridge off Chapel Street to the Church and Graveyard

would be replaced by a new structure that would provide access to the proposed Riverside Walk. This element of the project would not have an adverse visual impact the character and setting of the heritage features, and the new bridge would enhance the public realm by affording safe access to, and clear views along Ballyhale River. However, it is possible that the bridge occupies the position of a much older river crossing and any underwater or riverbed works in the vicinity of the bridge should be subject to archaeological testing. There are several other Protected Structures and features of heritage interest located in the surrounding area, including along the Main Street, however, having regard to the scale and layout of the project and the separation distances, I am satisfied that the scheme would not adversely affect the character and setting of any other heritage features in the wider area.

Operational phase:

The flood protection scheme would not have any significant adverse during the operational phase.

Conclusions:

Having regard to the foregoing, although the proposed development could have a permanent adverse impact on underwater and below ground archaeology, I am satisfied that the mitigation measures and recommended conditions would help manage the impacts on archaeological heritage during the construction phase. The proposed development would not have a significant long term adverse impact on cultural heritage during the operational phase. I am satisfied that a reasonable balance has been struck between the provision of flood protection measures and the treatment of cultural heritage during the construction and operational phases.

6.7 Drainage and Flood Risk

Site context:

Refer to sections 1.3 above for a general description of the site and environs. More specifically, the proposed linear scheme would occupy a riverside location that is characterised by a mix of agricultural, residential, commercial, recreational and amenity uses along the Ballyhale river. The river rises to the SE in a forested area

and flows through agricultural lands before splitting into two channels in front of the Church to reunite to the far N of the Church, and flowing N through the urban area to join the Little Arrigle River to the NE. The Little Arrigle forms part of the River Nore and River Barrow SAC.

Project description:

Refer to sections 2.2 above for a detailed description of the scheme. More specifically, the proposed development would mainly comprise the installation of new flood relief works (incl. walls & embankments) along the Ballyhale River along with associated drainage arrangement. The Council states that the need for the Scheme is based on its analysis of existing flood events and future flood risk (incl. CFRAMs) and the need to provide flood relief measures along the Ballyhale River to alleviate flooding up to the 1% Annual Exceedance Probability fluvial event.

Environmental Impact Assessment Report:

EIAR chapters 1, 4, 5 & 7 dealt with the need for the scheme, the alternatives considered, the design of the main flood relief elements & construction strategy, and the water environment. Volume 3 contains a CEMP, Hydrology & Hydraulic Reports and Baseline & Options Flood Maps. The EIAR carried out desktop studies and field surveys and the referenced previous OPW flood risk studies undertaken as part of CFRAMS and the EPA Monitoring River Programme. The EIAR concluded that the proposed scheme will have a net significant positive impact.

Assessment:

Inland Fisheries Ireland raised concerns in relation to potential impacts on river hydrology, habitats and fisheries, and noted that some of the works which include the removal of in-stream obstacles, would have a positive impact on fish passage.

Construction phase:

There is potential for flood events to occur during the construction phase, however given the small scale and extent of the flood relief works, any adverse impacts on flood levels are likely to be imperceptible during this phase. Nonetheless, all excavation and construction work, including the management of surface and ground water should be carried out in accordance with best construction practices. All

drainage concerns should be addressed in the CEMP and associated surface water and drainage management arrangements. The proposed flood relief works, and drainage arrangements should comply with all relevant regulations, requirements and guidelines (incl. IFI Guidelines for in-stream works).

Operational phase:

There is potential for hard flood defences, if not properly designed, to cause a permanent disturbance to a river channel, floodplain and flood regime, by altering channel morphology, with resultant changes in flow capacity and water depth (incl. localised riverbed & riverbank erosion).

The immediately surrounding area mainly lies within lands that are prone to flooding and which have experienced flood events. The adjoining lands to the S and W are mainly in agricultural use whilst the lands to the N are occupied by a mix of agricultural lands to the W and residential and commercial uses to the E. The purpose of the Flood Relief Scheme is to protect adjacent lands from existing and predicted floods arising from a combination of existing and future fluvial events along the Ballyhale River. The proposed Scheme, which would comprise new localised flood walls and embankments, along with the removal of weirs, blockages, and vegetation, will protect the adjoining lands from future flood events. Although the works will result in increased flow rates in the W channel which could increase the risk of overflow, the installation of the embankments will ensure the protection of adjacent lands from inundation. I am therefore satisfied that the flood relief works would not contribute to increased flood levels in the surrounding area.

The Hydrology and Hydraulic Reports assessed the effects of the scheme on circulation patterns in the waterbody under normal conditions and extreme flood events (incl. 100-year fluvial flood event). The results show an increase in velocity magnitude along sections of the river which could give rise to overflows onto adjoining lands, however the impacts would be insignificant following the installation of the flood walls and embankments. Any impacts on the riverbed would not be significant when compared with baseline velocity magnitudes, and the models did not identify any perceptible changes in the river channel. I am satisfied that resultant impacts on erosion and sediment transport in the river would not be significant.

In relation to the assessment of in-combination impacts in relation to other flood relief projects in the wider area and the possibility of future upstream flooding as a result of the works, I note that the proposed arrangements would ensure that flooding would not occur upstream or downstream of the works, with no increase flood risk in the locality. The submitted reports confirm that the project would maintain existing flow paths (except for the removal of the channel split around the Church), and that it would not give rise to any additional discharge volumes or sources of pollution within the network, notwithstanding the increased flow rates in the W channel.

As previously stated, the main purpose of the scheme is to protect public and private property from the adverse effects of existing and predicted fluvial flooding, and not to exacerbate flooding, either upstream or downstream of the works. I am also satisfied that the Scheme would be in accordance with the proper planning and sustainable development of the area.

Conclusions:

Having regard to the foregoing, I am satisfied that the various elements of the Flood Relief Scheme would have positive benefits in relation to the protection of public and private property. I am satisfied that a reasonable balance has been struck between the risks posed by future fluvial flooding and the provision of flood relief measures.

6.8 Other issues

Separate consents: The application references the relevant consents, licences authorisations and permits that may be required in addition to the consent for the proposed development from An Bord Pleanála (incl. National Monuments & NPWS Derogation Licences, OPW Section 50 Consent, and EPA Waste Permits).

Decommissioning: I note that the Flood Relief Scheme will be a key strategic asset in the protection of Ballyhale and environs from flooding, and that it will not be decommissioned in the foreseeable future.

7.0 ENVIRONMENTAL IMPACT ASSESSMENT

7.1 Introduction

This section of the report deals with the potential environmental impacts of the proposed development during the construction and operational phases of the Flood Relief Scheme.

This section should be read in conjunction with Section 6.0 (Planning Assessment) and Section 8.0 (Appropriate Assessment of this report.

7.2 Compliance legislative requirements

Directive 2011/92/EU was amended by Directive 2014/52/EU. Kilkenny County Council has submitted an Environmental Impact Assessment Report (EIAR) for the proposed Flood Relief Scheme. The project is listed as a type of development (Infrastructure Projects) in Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended). Section 10 (f) (ii) of Part 2 refers to canalisation and flood relief works, where the length of river channel on which works are proposed would be greater than 2km. The proposed development, which falls short of the 2km threshold, it is considered to be sub-threshold.

The EIAR is presented in a 'grouped format' comprising the following: -

- Non-Technical Summary
- Main Statement
- Technical Appendices
- Photomontages

It is submitted by the applicant that the EIAR has also been prepared in accordance with the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 that came into effect on 1st September 2018, and which the Board will be aware, transposed Directive 2014/52/EU into Irish planning law. As is required under Article 3(1) of the EIA Directive 2011/92/EU amended by Directive 2014/52/EU, the EIAR identifies, describes and assesses in an appropriate

manner, the direct and indirect significant effects of the project on the following environmental factors: (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 it equally considers the interaction between the factors referred to in points (a) to (d).

I am satisfied that the EIAR has been prepared by competent experts to ensure its completeness and quality, and that the information contained in the EIAR and supplementary information provided by the applicant adequately identifies and describes the direct, indirect and cumulative effects of the proposed development on the environment and complies with the requirements of Directive 2011/92/EU as amended by Directive 2014/52/EU.

I am satisfied that the information contained in the EIAR complies with article 94 of the Planning and Development Regulations 2000, as amended, and the provisions of Article 5 of the EIA Directive 2014.

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. A summary of the results of the submissions made by the prescribed bodies has been set out in Section 4.1 of this report.

The EIAR describes the proposed development, including information on the receiving environment, the site, and the project size and design. A description of the main alternatives studied by the applicant is provided and the reasons for the preferred choice. The impact of the proposed development was assessed under all the relevant headings with respect to population and human health; noise, air and climate; biodiversity; landscape; land, geology and soils; hydrology and hydrogeology; roads and traffic; material assets and cultural heritage; interactions of impacts; and the suggested mitigation measures are clearly set out within each chapter and also summarised in Chapter 17.

The content and scope of the EIAR complies with Planning Regulations. No likely long term significant adverse impacts were identified following mitigation.

7.3 Consideration of Reasonable Alternatives

The consideration of reasonable alternatives was addressed in EIAR Chapter 4 which considered the “Do-Nothing” alternative 4 x Options: -

- **A**: Hard defences & conveyance improvements (enhance flow capacity).
- **B**: Hard defences & overflow diversion channel to the Little Arrigle River.
- **C**: Hard defences & overflow diversion channel to the Ballyhale River.
- **D**: Hard defences & overflow diversion pipe to Ballyhale River.

The Options were evaluated against a range of physical and environmental constraints including social, economic, environmental, and technical criterion. Option **A** was selected as the Preferred Option as it met the Council’s objective of protecting the environment and property from the existing effects of fluvial flooding, which could be technically adapted to accommodate future flood events.

7.4 Likely Significant Effects

Section 6.0 of this report identifies, describes and assesses the main planning and environmental issues arising from the proposed development and it should be considered in conjunction with the following environmental impact assessment (EIA).

The EIA identifies and summarises the likely significant effects of the proposed development on the environment with respect to several key receptors in the receiving environment. It identifies the main mitigation measures and any residual impacts following the implementation of these measures together with the planning conditions recommended in section 6.0 of this report, and it reaches a conclusion with respect to each of the receptors. It assesses cumulative impacts, identifies interactions between the receptors, and considers the risks associated with major accidents and/or disasters. The EIA reaches a Reasoned Conclusion.

or ease of reference the EIA is presented in a tabular format with respect to:

- Population and Human Health
- Air and Climate
- Landscape
- Biodiversity
- Land soil and water
- Material assets
- Cultural heritage

Population and human health	
EIAR chapters 9, 11, 12, 13, 14 & 15 and associated Technical Appendices dealt with: - Landscape, Population & Human Health, Air Quality, Noise & Vibration, Material Assets and Traffic & Transport. Volume 3 contained a CEMP & Photomontages. The EIAR described the receiving environment and identified potential impacts on human beings, human health, local amenities and health & safety. The EIAR did not predict any significant adverse impacts on human beings, population or human health as a result of dust emissions, changes to air quality, noise & vibration, visual intrusion, traffic movements during the construction & operational phases, subject to implementation of mitigation measures which mainly relate to the management of the construction phase works and associated traffic movements. The EIAR noted that positive impacts would result from the flood protection measures.	
Submissions	***Concerns raised***
None received.	None raised.
Potential impacts	***Assessment & mitigation measures***
Potential for the following direct & indirect impacts on human beings during the construction and operational phases of the proposed flood defence scheme. ***Residential amenity:*** potential for localised impacts on residential amenity during the construction phase.	The surrounding lands are mainly characterised by a mix of agricultural, community, residential, commercial, recreational & amenity uses. Refer to section 6.3 of this report for detailed analysis of residential impacts which concluded that there would be minor disturbance during the construction phase (incl. noise, vibration, dust & traffic disruption), but no significant adverse effects on amenity by way overshadowing, overlooking, loss of privacy, visual intrusion, traffic generation or general disturbance during the operational phase.

Visual: potential localised visual impacts on residential, heritage, community uses & businesses during the operational phase.	Refer to section 6.2 of this report for a detailed analysis of visual impacts which concluded that there would be no significant adverse effects. Views of the proposed flood defence walls & embankments and river crossings from the public domain (incl. Chapel Lane & Main Street) would not be significant. On balance, the scheme would not be visually obtrusive or overbearing having regard to its linear nature, and the scale, height & design of the main elements.
Noise & vibration**:** potential for localised noise & vibration impacts on residential amenities, community uses & businesses from construction activities (incl. demolition, excavation, construction & traffic movements).	Refer to section 6.3 & 6.4 of this report for detailed analysis of construction noise impacts which concluded that there would be no significant adverse effects. Noise emissions during the construction phase would not significantly exceed the prevailing day time ambient noise levels at the nearest sensitive receptors. This would be subject to compliance with the EIAR mitigation measures (incl. noise monitoring), compliance with best construction practices and adherence to the final CEMP. The Scheme would not have any significant long-term effects during the operational phase.
Dust: potential for dust & air quality impacts during construction phase.	Refer to section 6.3 & 6.4 of this report for detailed analysis of construction dust impacts which concluded that there would be no significant adverse effects. This would be subject to compliance with the EIAR mitigation measures, compliance with best construction

	practices and adherence to the final CEMP. The scheme would not have any significant long-term effects during the operational phase.
Traffic: Construction traffic volumes have potential for localised air quality impacts, traffic disruption & road safety impacts.	Refer to section 6.3 & 6.4 of this report for a detailed analysis of movement & traffic impacts which concluded that there would be no significant adverse effects. The national, regional and local road network has sufficient capacity to assimilate any additional traffic volumes associated with the construction phase, and construction vehicles. HGV vehicles would be directed to the Construction Compound to the N of the Village, and they would not normally enter Ballyhale Village or Chapel Lane. This would be subject to compliance with EIAR mitigation measures (incl. traffic management), compliance with best construction practices and adherence to the final CEMP. The Scheme would not have any long-term adverse effects during the operational phase. The scheme would have a positive local impact on population and human health.
Health & safety: Potential for adverse impacts on health & safety from on-site accidents and traffic accidents during the construction phase.	On-site accident concerns would be addressed by way of compliance with all relevant health and safety legislation.

Residual Effects: There will be some increase in noise, dust & traffic emissions during the construction phase, however predicted levels would mainly lie within guidance limit values and would be subject to on-going monitoring. Residual impacts are not predicted to be significant subject to the implementation of mitigation measures & any suggested conditions.
Cumulative Impacts: Minor construction phase impacts may occur in-combination with the implementation of planning permissions for developments in the surrounding area which are mainly small scale in nature and extent. No significant cumulative impacts predicted during the operational phase.
Conclusion: No written submissions were made in relation to population & human health. I have considered a variety of issues and a range of potential direct & indirect impacts, and I am satisfied that the issues have been identified and appropriately addressed in terms of the application and that no significant adverse effect is likely to arise.

Air and Climate	
EIAR chapters 12 & 15 and associated Technical Appendices dealt with traffic & transportation and air quality. The EIAR described the receiving environment and identified potential impacts on air quality. It did not deal with potential impacts on climate other than to state that the project would be flexible to future climate changes. The EIAR did not predict any significant adverse impacts on air quality as a result of dust, emissions or traffic movements during the construction and operational phases, subject to implementation of mitigation measures.	
Submissions	***Concerns raised***
None received.	None raised.
Potential impacts	***Assessment & mitigation measures***
Potential for the following direct & indirect impacts on Air & Climate during the construction and operational phases of the proposed flood defence scheme.	Refer to section 6.3 & 6.4 of this report for a detailed analysis of construction phase dust & odour impacts, and traffic & movement impacts which concluded that there would be no significant adverse effects.
Dust & odours: Potential short term localised impacts on air quality resulting from dust emissions (incl. construction works & traffic) and possible minor odour emissions from localised in-stream works.	Refer to section 6.3 & 6.4 of this report for a detailed analysis of construction phase dust & odour impacts which concluded that there would be no significant adverse effects. This would be subject to compliance with the EIAR mitigation measures and compliance with best construction practices and adherence to the final CEMP. The scheme would not have any significant long-term effects during the operational phase.
Traffic emissions: Potential localised impacts on air quality (incl.	Refer to section 6.3 & 6.4 of this report for a detailed analysis of movement & traffic impacts. The national, regional and local road

particulate matter, NO_x & NO_2) resulting from increased traffic volumes during construction phase.	network has sufficient capacity to assimilate additional traffic volumes associated with the construction phase. The proposed development would not have any significant effects on air quality during the construction phase. This would be subject to compliance with the EIAR mitigation measures, compliance with best construction practices and adherence to the final CEMP which should contain a Traffic Management Plan. The scheme would not have any significant long-term effects during the operational phase.
Climate: Potential for impacts on the achievement of flood protection objectives (EU, National, Regional & Local).	The proposed scheme would serve to protect public and property from the existing and predicted adverse effects of fluvial flooding.
Residual Effects: There will be some increase in dust, odours & traffic related emissions during the construction phase however predicted levels would mainly lie with guidance limit values. Residual impacts are not predicted to be significant subject to the implementation of mitigation measures & any suggested conditions.	
Cumulative Impacts: Minor construction impacts may occur in-combination with the implementation of planning permissions for developments in the surrounding area which are mainly small scale in nature. No significant cumulative impacts predicted during the operational phase.	
Conclusion: No written submissions were made in relation to air & climate. I have considered a variety of issues and a range of potential direct & indirect impacts, and I am satisfied that the issues have been identified and appropriately addressed in terms of the application and that no significant adverse effect is likely to arise.	

Landscape and Visual	
EIAR chapter 9 and associated Photomontages assessed landscape and visual effects. Baseline conditions and landscape character were described, and several viewpoints were selected in the surrounding urban and riparian landscape (incl. Chapel Lane & Church, Main Street & local road network). The EIAR did not predict any significant adverse impacts on landscape or views during the construction & operational phases.	
Submissions	***Concerns raised***
None received.	None raised.
Potential impacts	***Assessment & mitigation measures***
There is potential for the following visual impacts on the landscape during the construction and operational phases of the flood defence scheme. ***Sensitive receptors***: potential for adverse visual impacts on sensitive receptors (incl. the Church & Graveyard, Chapel Lane & Main Street).	Refer to section 6.2 & 6.6 of this report for a detailed analysis of visual impacts which concluded that there would be no significant adverse visual effects o the surrounding area. Views of the proposed flood defence walls, embankments & river crossings from the public domain at Chapel Lane, the Church & Graveyard, and from the N section of Main Street would not have a significantly adverse impact on visual amenity. On balance, the flood relief scheme would not be visually obtrusive or overbearing having regard to its linear nature, and the scale, height & design of the main elements. The proposed Riverside Walk to the W of the Church & Graveyard would make a positive contribution to the visual amenities of the area.

National / Recorded Monuments, Protected Structures & heritage features: potential for adverse visual impacts during the operational phase.	There would be no adverse visual impacts on the character or setting of any N/RMs, Protected or NIAH Structures located within the church grounds (incl. the Church, adjacent structures & Graveyard), having regard to the linear nature of the scheme and to the scale, height & design of the main elements. The installation of new footbridge and creation of a Riverside Walk to the W of the church grounds would not adversely affect the character and setting of these structures, and the works would enhance the amenity value of the public realm. No other heritage features in the surrounding would be adversely affected having regard to the separation distance with the linear low-lying scheme.
Residential amenity: Potential for minor localised visual impacts on nearby houses during the operational phase.	Refer to section 6.3 of this report for a detailed analysis of visual impacts on residential amenity, which concluded that there would be some disturbance during the construction phase but no significant adverse effects on visual amenity overall.
Residual Effects: Impacts predicted to be minor.	
Cumulative Impacts: None predicted.	
Conclusion: No written submissions were made in relation to landscape & visual impacts. I have considered a variety of issues and a range of potential direct & indirect impacts, and I am satisfied that the issues have been identified and appropriately addressed in terms of the application and that no significant adverse effect is likely to arise.	

Biodiversity	
EIAR chapters 6, 7 & 8 and associated Technical Appendices dealt with: - biodiversity; water & water quality; and land & soils. Desk top studies & field surveys were undertaken, Volume 3 contains Hydrology & Hydraulic reports and Flood Maps, and an AA Screening & NIS report was prepared. The EIAR described the receiving environment as comprising the watercourse and its riparian embankments along the Ballyhale River which flows through agricultural lands & wooded areas (S), an urban area (Middle), and parkland & woods (N). The Ballyhale River flows into the Little Arrigle River into the NE which forms part of the River Barrow & River Nore SAC. The EIAR notes that the area may be of value to mobile species in the vicinity and from other further afield sensitive sites (incl. otter, birds & fish). The EIAR noted the loss of riparian habitats but did not predict any other significant adverse impacts on biodiversity during the construction and operational phases, subject to the implementation of mitigation measures to protect water quality and sensitive habitats and species from loss and disturbance.	
Submissions	***Concerns raised***
IFI	• Water quality • Fish (disturbance & movement)
Potential impacts	***Assessment & mitigation measures***
The flood relief works would be located within Ballyhale River that flows into the Little Arrigle River which forms a confluence with the River Nore SAC & SPA to the N, and both rivers form part of the River Barrow & River Nore SAC. The NE section of the project area would overlap with this SAC. The lands mainly comprise a mix of riparian, wetland, grassland, amenity & urban habitats. Several species of mammal (incl. otter)	Refer to section 5.5 of this report for detailed analysis of potential impacts on biodiversity (incl. habitats & species) which concluded that there would be no significant adverse impacts (following mitigation).

utilise the area which is also foraged by several species of birds and bats, and the underside of Main Street Bridge to the N could provide suitable roosting opportunities for bats. Several species of fish may migrate along the river (incl. Salmon, & Lampreys). There is potential for the following impacts on Biodiversity during the construction & operational phases.	
European sites: Direct & indirect connections to sensitive sites.	The NE corner of the proposed scheme would overlap with a European site (River Barrow & River Nore SAC) and it would be upstream of the River Nore SPA. The area could also be of value to mobile species from other further afield sites and there may be an aquatic or mobile connection to European sites to the wider area. Refer to Section 8.0 of this report (AA) which concluded that there would be no adverse effects on any European sites, their Conservation objectives or Qualifying Interest habitats or during the construction or operational phases.
Habitats: Potential for permanent localised loss of and/or alteration to habitats (incl. small woodlands, riparian, aquatic & grasslands).	The installation of the flood relief works, and associated works would result in the loss of some riparian & woodland habitat.

	The installation of the flood defence walls & embankments in the riverbed would result in the permanent loss of a small portion of riverbed habitat. Although the loss of this habitat would be permanent, the impact would be localised with no significant adverse impacts at national level. Any resultant adverse impacts on SAC QI fish species as a result of disturbance to support habitat would be minor and negligible. The Hydrology & Hydraulic reports concluded that the flood relief works would not have a discernible impact on flow patterns or give rise to erosion of the riverbed. Although the removal of in-stream obstacle would increase flow rates locally, the IFI noted that this would have a positive impact on fish passage. Subject to the implementation of EIAR mitigation measures, and adherence to best construction practice, the long-term impact would not be significant during the operational phase. Having regard to the linear nature of the scheme and the small scale of the works, any impacts would be minor relative to the overall scale and extent of the river. Several other adjacent habitats (incl. riparian & woodland) would be lost or altered but given their lack of sensitivity, the long-term impact would not be significant, and the surrounding habitats would eventually recover.

Flora: Potential for permanent localised loss of species during construction phase.	Construction of the flood relief scheme and associated works would result in the localised loss of several non-designated plant species but given their lack of sensitivity, the overall impact would not be significant.
Fauna: Potential for disturbance to several terrestrial animal species (incl. otter, birds & bats) during the construction & operational phases.	Several species of animal would be disturbed during the construction phase (incl. otter & birds, bats) as a result of the site clearance and construction works, including the removal of riverbed habitats and constituent species (Inc. Macroinvertebrates). However, the small scale of the works would ensure that no permanent adverse impacts would occur. This would be subject to the implementation of EIAR / CEMP mitigation measures and compliance with best construction practice. An NPWS Derogation licences will be required for the removal of any otter holts and bat roosts. There is evidence of commuting ***Otter*** along the Little Arrigle although no holts were recorded. A pre-construction survey should be undertaken and an NPWS Derogation licence will be required for the removal of any holts. Notwithstanding the disturbance during the construction phase, otter will eventually return and habituate in the operational phase, with no long-term adverse impacts anticipated. Several species of ***bird*** frequent the environs of Ballyhale & Little Arrigle rivers, and vegetation clearance should take place outside of the bird

	nesting season. Buffers should be provided around any Kingfisher nests. Most species will eventually return and habituate to activity in the long term during the operational phase, with no adverse impacts anticipated. Foraging and commuting ***bats*** could be adversely affected by the removal of riverbank vegetation, riverbed habitats and their constituent macroinvertebrate prey species. A pre-construction survey should be undertaken and an NPWS Derogation licence will be required for the removal of any roosts. Artificial lighting should be minimised during the construction phase. Most bat species will eventually return and habituate to activity in the long term during the operational phase, with no adverse impacts anticipated.
Aquatic species: Potential for loss, disturbance or damage to fish & their prey species during the construction phase resulting from in-stream works (incl. flood defence wall & associated works); deterioration in water quality (incl. sedimentation, spillages & runoff); construction noise; and barriers to fish migration.	The Ballyhale River drains into the Little Arrigle River which forms a confluence with the River Nore to the N, and the NE section of the Little Arrigle forms part of the River Barrow & river Nore SAC. The EPA / WFD have categorised water quality in this section of the river as Moderate, and At Risk. According to the desk studies (incl. NPWS & NBMC), this section of the river does not contain a wide variety of ***macroinvertebrates,*** or particularly good breeding or spawning habitat for ***fish.*** However, it does provide a migratory route for several fish species (incl. Salmon, and Sea, Brook & River Lampreys) which are QI species

	for the Barrow – Nore SAC, and the riverbed embankments provide a food source and shelter for fish during their various life cycle stages. The site is located within a designated Freshwater pearl mussel sensitive area, although there are no records of this species being present in this section of Ballyhale River. White-tailed crayfish has been recorded in the vicinity of the project. Implementation of EIAR & CEMP mitigation measures for in-stream works and the associated drainage arrangements, adherence to relevant legislation & guidelines (incl. IFI Guidance), and the use of best construction practices, would protect water quality, aquatic species, fisheries & their food sources during the construction phase. No adverse impacts ae anticipated during the operational phase. Concerns in relation to the impact of demolition and construction noise would be addressed by the EIAR and final CEMP mitigation measures, and the recommended planning condition (incl. soft start & ramping up of machinery). Fish migration in the river channel would be improved following the removal of obstacles along the watercourse (incl. weirs) and improved river flows. Existing and future hydraulic conditions within the river would not be affected to any significant extent.

	The proposed scheme would not have any significant long-term adverse effects on aquatic species during the operational phase.
Residual Effects: Impacts predicted to be minor subject to implementation of mitigation measures and any recommended planning conditions.	
Cumulative Impacts: Minor construction impacts may occur in-combination with the implementation of planning permissions for developments in the surrounding area which mainly comprise scale works. No significant cumulative impacts predicted during the operational phase.	
Conclusion: I have considered all the written submissions made in relation to biodiversity, in addition to those specifically identified in this section of the report. I have also considered a variety of issues and a range of potential direct & indirect impacts, and I am satisfied that the issues have been identified and appropriately addressed in terms of the application and that no significant adverse effect is likely to arise.	

Land, soil and water	
EIAR chapters 7 & 8 and associated Technical Appendices dealt with the water environment and land & soils. Volume 3 contains a Construction Methodology, CEMP, Hydrology & Hydraulic reports, and Flood Maps. The EIAR described the receiving environment, and several desktop studies, field surveys & site investigations were undertaken. The low-lying linear site mainly comprises a mix of riparian, wetland, grassland & urban lands underlain by a variety of bedrock types and bedrock aquifer types (Regionally Important Aquifer-Fissured Bedrock). The WFD status was classified as Moderate. The EIAR described the site preparation, demolition & excavation works, along with the installation of the flood defence walls, embankments & river crossings and associated works. It identified potential impacts (incl. sediment release during in-stream works, accidental sediment & chemical discharges to ground & surface water during the construction phase, possible hydraulic changes to flow patterns, and contaminated surface water run-off during the operational phase). The EIAR did not predict any significant adverse impacts on land, soil or water during the construction and operational phases, subject to implementation of mitigation measures related to the management of in-stream works and surface water drainage.	
Submissions	***Concerns raised***
IFI	• Water quality
Potential impacts	***Assessment & mitigation measures***
The linear site mainly comprises a mix of riparian, wetland, grassland, amenity & urban lands that drain to the Ballyhale and Little Arrigle rivers, upstream of the Little Arrigle's confluence with the river Nore. There is potential for the following impacts on land, soil & water in relation to the works associated with the construction & operation of the proposed scheme.	Refer to section 6.5 & 6.7 of this report for detailed analysis of land soil & water impacts which concluded that there would be no significant adverse effects (following mitigation).

Water quality: Potential pollution of surface waters (incl. Ballyhale, Little Arrigle & Nore rivers) by sediments & contaminants released during the demolition, excavation and in-stream flood wall, embankments & river crossing works during the construction phase, and by accidental fuel spillages or leaks during the construction & operational phases.	The EIAR contains a suite of mitigation measures to protect surface water quality during the site preparation, demolition, excavation & in-stream works and associated trenching and drainage, from contamination by sediments, historic substances and chemical spills during the construction & operational phases. Implementation of the EIAR and final CEMP mitigation measures, along with adherence to best construction practices, and compliance with all relevant legislation & regulations (incl. IFI Guidelines for in-stream works) would protect water quality during the construction phase. The proposed scheme would not have any significant long-term adverse effects during the operational phase.
Hydraulic changes: Potential for changes to river flow patterns resulting from the flood relief works and associated impacts on erosion patterns & riverbed morphology.	The Hydrology & Hydraulic reports did not predict any significant erosion or disturbance to riverbed sediments, or any significant changes to river flow patterns (notwithstanding the removal of the channel split in front of the Church & increased flow rates resulting from the removal of in-stream obstacles) or riverbed morphology because of the works.
Flood risk: Possible potential impacts resulting from uncontrolled surface water runoff.	These issues are addressed in detail in section 6.7 above. No adverse flood risk impacts are anticipated given that the purpose of the scheme is to protect against the harmful effects of existing and future fluvial flooding. The proposed embankments and flood walls would protect adjacent lands from overflows which

	could result from increased flow rates following the removal of the channel split and the diversion of flows to the W channel, and the removal of in-stream obstacles.
Residual Effects: Residual impacts are not predicted to be significant subject to the implementation of mitigation measures.	
Cumulative Impacts: Minor construction impacts may occur in-combination with the implementation of planning permissions for developments in the surrounding area which mainly relate to small scale projects. No significant cumulative impacts predicted during the operational phase.	
Conclusion: I have considered all the written submissions made in relation to land, soil & water, in addition to those specifically identified in this section of the report. I have also considered a variety of issues and a range of potential direct & indirect impacts, and I am satisfied that the issues have been identified and appropriately addressed in terms of the application and that no significant adverse effect is likely to arise.	

Material assets	
EIAR chapter 14 & 15 and associated Technical Appendices dealt with material assets (incl. access, power supply, telecommunications, water supply & wastewater management) and Traffic & Transport. The EIAR described the receiving environment (incl. the road network & access arrangements) and several desktop studies and traffic surveys were undertaken. The EIAR described the site as comprising a mix of agricultural, riparian and urban lands (incl. residential & commercial). It described the proposed movement, access and service arrangements to the main elements of the scheme and the site compound. It stated that the works would take place over a period of c.20 months and predicted minor localised traffic impacts. It noted that HGV vehicles would be directed to the construction compound on the N side of the Village, and that large vehicles would not normally enter Village centre or Chapel Lane. The EIAR did not predict any significant adverse impacts on material assets during the construction phase, subject to mitigation measures, nor during the operational phase.	
Submissions	***Concerns raised***
TII	None raised.
Potential impacts	***Assessment & mitigation measures***
Traffic: Potential for localised impacts on the road network & traffic safety during the construction phase.	Refer to section 6.4 of this report for a detailed analysis of traffic & movement impacts which concluded that there would be no significant adverse impacts on traffic movement or safety during the construction and operational phases. The national, regional & local road network has sufficient capacity to assimilate any additional construction traffic volumes associated with the construction phase, and HGVs would be diverted away from the village centre & Chapel Lane.
Water supply & drainage: Potential impacts on environmental services related to the provision of clean water and	Refer to section 6.7 of this report and section 7.4 (Land, soil & water) above for an analysis of water supply & drainage impacts. The proposed drainage arrangements would manage discharge

disposal of unclean water from the site (incl. wastewater & storm water), and resultant impacts on water quality because of uncontained & unmanaged discharges. ***Public water supply*:** potential adverse impacts on future connections to adjacent lands. ***Fisheries & tourism:*** potential localised adverse impacts on downstream angling & tourism.	volumes, prevent flooding & protect downstream water quality. Section 7.4 (Land, Soil & Water) above concluded that the proposed development would not have significant impact on surface & ground or ground water and would not give rise to a flood risk. These concerns would be addressed by ensuring compliance with standard IW & KCC requirements, and during the detailed design stage of the project. Short term disturbance to angling predicted during the construction phase but no long terms adverse effects during the operational phase. The EIAR drainage and surface water management arrangements would ensure that water quality is protected with no resultant adverse effects on fisheries anticipated.
Residual Effects: Residual impacts are not predicted to be significant subject to the implementation of mitigation measures and compliance with any recommended conditions.	
Cumulative Impacts: Minor construction impacts may occur in-combination with the implementation of planning permissions for developments in the surrounding area which mainly relate to small scale projects. No significant cumulative impacts predicted during the operational phase.	
Conclusion: I have considered all the written submissions made in relation to material assets, in addition to those specifically identified in this section of the report. I have also considered a variety of issues and a range of potential direct & indirect impacts, and I am satisfied that the issues have been identified and appropriately addressed in terms of the application and that no significant adverse effect is likely to arise.	

Cultural heritage	
EIAR chapters 9 & 10 and associated Technical Appendices dealt with Landscape & Visual impacts, and Archaeological & Architectural Heritage. The EIAR described the receiving environment as mainly comprising a mix of agricultural, riparian and urban lands (incl. residential & commercial). It described the underlying and overland archaeological heritage of the area. There are several National / Recorded Monuments and structures of built heritage importance in the vicinity including Protected Structure NIAH structures manly associated with the Church & Graveyard. There are several other Protected Structures, NIAH listings and other heritage features in the wider area and along Main Street. The EIAR described the proposed Scheme and identified potential impacts on cultural heritage. It did not predict any significant adverse impacts during the construction phase, subject to implementation of mitigation measures (incl. archaeological pre-testing, monitoring & recording). The EIAR did not predict any significant adverse impacts on Recorded Monuments or Protected Structures.	
Submissions	***Concerns raised***
DAU (Archaeology)	• Cultural heritage (R/NMs, PS & NIAH). • Terrestrial archaeology. • Underwater archaeology. • Burial grounds.
Potential impacts	***Assessment & mitigation measures***
There is potential for the following impacts on cultural heritage in relation to the construction & operational phases of the proposal. ***Terrestrial & Underwater Archaeology:*** Potential impacts on recorded and yet undiscovered artefacts within the environs of the Church & Graveyard, and in the riverbed.	Refer to section 6.6 of this report for detailed analysis of archaeology & cultural heritage impacts which concluded that there would be no significant adverse effects (post mitigation). It is possible that the church grounds & environs may contain yet undiscovered artefacts, including the possibility of human skeletal remains outside the graveyard boundary to the W on lands that will form part of the Riverside Walk. It is also possible that the riverbed may contain yet undiscovered artefacts

	and river dredge material should be transported to the work compound (or another suitable location) for archaeological examination. Groundworks should be monitored during the site preparation and construction phase, and any discoveries recorded and preserved by record. Notwithstanding these measures, the proposed scheme could have a permanent adverse impact on archaeological heritage along and within the Ballyhale river & environs. The Council has committed to undertaking archaeological investigations in line with the EIAR mitigation measures, and this could be re-enforced by way of a planning condition.
Heritage features: Potential impacts on character & setting of several N/RMs, Protected Structures & NIAH features, and other heritage features in the area, including the burial ground associated with the Church.	There would be no adverse impacts on the character or setting of any R/NMs, Protected or NIAH Structures located within the Church lands (incl. the Church & Graveyard), having regard to the linear nature of the scheme and to the scale, height & design of the main elements. The installation of the flood defence walls & embankments, and river crossing at Chapel Lane would not affect the character and setting of the Church & Graveyard or any other structures. The new Riverside Walk to the W of the Church would enhance the amenity value of the public realm. No other heritage features in the surrounding would be adversely affected to any significant extent having regard to the separation distances with the small scale and linear low-lying scheme.

Residual Effects: Residual impacts are not predicted to be significant subject to the implementation of mitigation measures and compliance with any recommended planning conditions.
Cumulative Impacts: Minor construction impacts may occur in-combination with the implementation of planning permissions for developments in the surrounding area which mainly comprise small scale works. No significant cumulative impacts predicted during the operational phase.
Conclusion: I have considered all the written submissions made in relation to cultural heritage, in addition to those specifically identified in this section of the report. I have also considered a variety of issues and a range of potential direct & indirect impacts, and I am satisfied that the issues have been identified and appropriately addressed in terms of the application and that no significant adverse effect is likely to arise.

7.12 Cumulative Impacts

Several small-scale projects are either permitted or being progressed in the wider area and the potential in-combination impacts of these works have been addressed in the EIAR. Having regard to the nature and scale of the permitted and proposed projects, and the predicted short duration of the proposed flood relief works, I am satisfied that cumulative effects can be avoided, managed and mitigated by the embedded measures which form part of the proposed development, mitigations measures, and recommended conditions. There is, therefore, nothing to prevent the granting of approval on the grounds of cumulative effects.

7.13 Interactions and Interrelationships

I have also considered the interrelationships between the key receptors and whether this might as a whole affect the environment, even though the effects may be acceptable when considered on an individual basis. In particular, the potential arises for the following interactions and interrelationships.

Population and human health:

- Noise, dust & odours
- Air quality and climate
- Landscape and visual amenity
- Material Assets (fishing)
- Roads and traffic (air quality, safety & disturbance)

Air & climate

- Noise, dust & odours
- Roads and traffic (emissions)
- Population and Human Health

Landscape

- Population and Human Health (visual amenity)
- Material Assets and Cultural Heritage (tourism & recreation)

Biodiversity:

- Hydrology (water quality & fisheries)
- Population and human health (water quality)
- Material assets (recreation, water sports, angling & tourism)
- Landscape (visual amenity)
- Soils and geology (protected species & water quality)
- Land (landscape character)

Land, Soil and water:

- Air quality
- Biodiversity (terrestrial & aquatic)
- Population & Human Health

Material Assets and Cultural Heritage:

- Population & human health
- Landscape (visual amenity & landscape character)
- Roads and traffic (disturbance & safety)

In conclusion, I am satisfied that any such impacts can be avoided, managed and mitigated by the measures which form part of the proposed development and the aforementioned conditions, as recommended in section 5.0 above.

7.14 Risks associated with major accidents and/or disasters.

No outstanding risks associated with major accidents or disasters identified or referenced in the EIAR, and the potential impacts associated with climate change have been factored into the design of the Flood Relief Scheme.

7.15 Reasoned Conclusion

Having regard to the examination of environmental information contained above, and in particular to the EIAR and the submissions from the prescribed bodies in the course of the application, it is considered that the main significant direct and indirect

effects of the proposed development on the environment have been identified in section 6.0 and section 7.0 of this report. It is considered that the main significant direct and indirect impacts of the proposal on the environment are as follows.

- ***Biodiversity impacts*** arising from proximity to sensitive habitats, foraging corridors and migratory routes, loss or fragmentation of habitat, changes to vegetation along the route, and general disturbance during the construction phase. These impacts would be mitigated by the agreement of measures within a Construction and Environment Management Plan and the implementation of mitigation measures and recommended conditions which include: - pre-construction surveys (for otter, bats & kingfisher); in-stream works and surface water management measures; management of construction noise, an Invasive Species Management Plan; and the appointment of a Project Ecologist.

- The ***risk of pollution of ground and surface waters during the construction phase*** through a lack of control of surface water during excavation and construction, the mobilisation of sediments and other materials during excavation and construction and the necessity to undertake construction activities within an existing watercourse (incl. the installation of the flood defence walls & embankments). The construction of the proposed development could also potentially impact negatively on ground and surface waters by way of contamination through accidents and spillages. These impacts would be mitigated by the agreement of measures within the Construction and Environment Management Plan, and the implementation of mitigation measures and recommended conditions related to: - design and avoidance, management of in-stream works, management of accidental spills and contamination and drainage management.

- The proposed project would give rise to an impact on yet undiscovered ***underwater and terrestrial archaeology (incl. burial grounds)*** during the construction phase. These impacts would be mitigated by the implementation of measures related to the protection of cultural heritage and the preparation of an Archaeological Strategy.

- The proposed project would give rise to an increase in ***vehicle movements and resulting traffic impacts*** during the construction phase where the vehicles would interact directly and indirectly with several roads and junctions. The construction phase impacts would be mitigated by the agreement of measures within a Construction and Environment Management Plan and the implementation of mitigation measures and recommended conditions (incl. the preparation of a Traffic Management Plan).

- The project could give rise to minor localised impacts on ***residential amenity*** during the construction phase (incl. noise, dust, odours, traffic safety & general disturbance). These impacts would be mitigated by the implementation of measures related to the protection of air quality, control of noise and traffic management.

- The proposed development would have ***potentially significant positive environmental impacts*** for Ballyhale and environs during the operational phase by the provision of flood relief works along the river, and public realm improvements.

In ***conclusion***, having regard to the above identified significant effects, I am satisfied that the proposed development would not have any unacceptable direct or indirect impacts on the environment, subject to the implementation of the mitigation measures and any conditions recommended in section 6.0 of this report.

8.0 APPROPRIATE ASSESSMENT

8.1 Compliance with Articles 6(3) of the EU Habitats Directive

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.

8.2 Natura Impact Statement

The application was accompanied by a Natura Impact Statement report which contained a Stage 1 Appropriate Assessment (AA) Screening report and a Stage 2 Natura Impact Statement (NIS). The reports described the site, the receiving environment and the proposed development. The reports utilised the data from desktop studies (incl. NPWS, IFI, WFD & EPA) and field surveys.

The AA Screening report described the site and the characteristics of the proposed development, it summarised the legislative requirements and described the AA screening methodology. It identified several European sites within of the zone of influence, described the likely sources of impact, and concluded that the project had the potential to affect the Conservation Objectives of 2 x European Sites (River Barrow & River Nore SAC and River Nore SPA).

The NIS described the individual elements of the project with potential to give rise to effects on the Conservation Objectives and Qualifying / Special Conservation Interests for each site. It described any likely direct and indirect effects along with in-combination effects, and it assessed the significance of any effects. It identified the potential for direct and indirect effects during the construction and operational phases. It concluded that the proposed development had the potential to adversely

affect several QI habitats and species, and it outlined a range of mitigation measures (incl. water quality protection measures) and assessed the likelihood of residual effects following mitigation. It also assessed the potential for cumulative effects in-combination with other plans and projects in the area. The NIS was informed by the Stage 1 AA Screening exercise, Ecological desk studies and field surveys, and the Hydrology and Hydraulic Modelling reports, and relevant EIAR Chapters.

The ***NIS objectively concluded*** that no significant adverse effects are likely on Natura 2000 sites, their qualifying interests or conservation objectives, and that the proposed project will not adversely affect the integrity of European sites.

Having reviewed the NIS and supporting documentation, I am satisfied that it provides adequate information in respect of the baseline conditions, does clearly identify the potential impacts, and does use best scientific information and knowledge, and details of mitigation measures are provided. I am satisfied that the information is sufficient to allow for the appropriate assessment of the proposed development, subject to the further consideration of European sites located within an enlarged Zone of Influence (further analysis below).

8.3 AA Screening Assessment

The main issues related to ecology and the concerns raised by the Prescribed Bodies are summarised and addressed in section 4.0 of this report, section 6.5 deals with Biodiversity and section 7.0 contains an environmental impact assessment (Biodiversity). These sections should be read in conjunction with this assessment.

The European sites within the Zone of Influence (i.e the area over which an impact can have a potential effect in relation to proximity of European sites and the mobility of faunal species from further afield sites) of the proposed works and approximate separation distances are set out below. The NE section of the proposed development would overlap with a European site however it is not relevant to the maintenance of this or any other any such sites. There are 5 x European sites located within the Zone of Influence and the QI habitats and species, and SCI species, and approximate aquatic separation distances are listed below.

European site	Conservation Objectives	Qualifying Interests (QIs)	Distance	Link
River Barrow & River Nore SAC (002162)	To maintain or restore favourable conservation condition.	Estuaries & Reefs Mudflats & sandflats Salicornia & other annuals Atlantic & Mediterranean salt meadows Floating River Vegetation European dry heaths Tall herb fringe communities Petrifying springs & Alluvial forests Old sessile oak woods Desmoulin's Whorl Snail Freshwater Pearl Mussel & Nore Pearl Mussel White-clawed Crayfish Sea, Brook & River Lamprey Twaite Shad & Salmon Otter & Killarney Fern	0.0km	Yes
River Nore SPA (004233)	To maintain or restore favourable conservation condition.	Kingfisher	6.5km NE	Yes
Thomastown Quarry SAC (002252)	To maintain favourable conservation condition.	Petrifying springs with tufa formation.	7.5km NE	No
Hugginstown Fen SAC (000404)	To maintain favourable conservation condition.	Alkaline fens	7.5km SW	No
Lower River Suir SAC (002137)	To maintain or restore favourable conservation condition.	Atlantic & Mediterranean salt meadows Floating River / Ranunculion Vegetation Tall herb fringe communities Old sessile oak & Alluvial forests Freshwater Pearl Mussel White-clawed Crayfish Sea, Brook & River Lamprey Twaite Shad, Salmon & Otter	14km W	No

The potential effects relate to:

- In-situ impacts on qualifying interest species within the European sites:
    - Release & transport of pollutants in ground or surface water.
    - Loss habitats used by QI/SCI species.
    - Loss of foraging & commuting areas used by QI/SCI species.
    - Noise disturbance to QI/SCI species during construction.
- Ex-situ impacts on qualifying species outside the European sites but which are an integral and connected part of the population.

Based on my examination of the:- NIS report and supporting information (incl. the desktop studies & field surveys), NPWS website, aerial and satellite imagery; the scale of the proposed works and nature of the likely effects; the substantial separation distance and functional relationship between the proposed works and the European sites and their conservation objectives; the site specific characteristics, the species specific characteristics and requirements (incl. habitat preference, diet & foraging distances), and the absence of suitable support habitats or an aquatic connection between the European site and the proposed works; taken in conjunction with my own assessment of the subject site and surrounding area, I conclude that a Stage 2 Appropriate Assessment is required for the following 2 x European sites which I consider to be within the Zone of Influence by reason of mobile and/or aquatic connections.

- River Barrow & River Nore SAC
- River Nore SPA

AA Screening Conclusion

In conclusion, having regard to the nature and scale of the proposed development, the location of the project within and proximate to the European sites, to the nature of the qualifying interest habitats and species, and the conservation objectives of the European sites, and to the available information as presented in the EIAR regarding ground and surface water pathways and mobile connections between the project and the European sites, and other information available, it is my opinion that the proposed development has the potential to affect the River Barrow & River Nore and

River Nore European sites having regard to the conservation objectives of the sites, and that progression to a Stage 2 Appropriate Assessment is required.

8.4 Appropriate Assessment:

The details for the remaining European sites within the Zone of Influence of the proposed development, their Conservation Objectives and relevant Qualifying Interest habitats and species, and Attributes and targets are summarised below.

Site name	QIs & SCIs
River Barrow & River Nore SAC (002162)	Estuaries & Reefs, Mudflats & sandflats, Salicornia & other annuals, Atlantic & Mediterranean salt meadows. Floating River Vegetation, European dry heaths, Tall herb fringe communities, Petrifying springs, Old sessile oak woods, Alluvial forests. Desmoulin's Whorl Snail, Freshwater Pearl Mussel & Nore Pearl Mussel, White-clawed Crayfish. Sea, Brook & River Lamprey, Twaite Shad & Salmon. Otter & Killarney Fern
River Nore SPA (004233)	Kingfisher

Favourable Conservation Status is achieved when:

1. Habitats

- The natural range (and area covered) is stable or increasing.
- The specific structure and functions which are necessary for its long-term maintenance exist now and for the foreseeable future.
- The conservation status of its typical species is favourable.

2. Species

- Population dynamics data indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats.
- The natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future.
- There is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

River Barrow & River Nore SAC (002162) & River Nore SPA (004233)

These European sites lie within the Zone of Influence of the proposed works as they have a direct aquatic connection to the project site via a downstream confluence with the Ballyhale River, Little River Arrigle and River Nore.

European site descriptions:

These sites consist of the freshwater stretches of the Barrow and Nore River catchments. The River Barrow & River Nore SAC extends from the Slieve Bloom Mountains in Co. Offaly to the Creadun Head estuary in Co. Waterford, and it is designated for a wide variety of habitats and species. The River Nore SPA is a long, linear site that extends from NW of Borris in Ossory in Co. Laois to S of Inistioge in Co. Kilkenny. The site includes several tributaries of the River Nore and the designation for Kingfisher includes the river channel and marginal vegetation.

QI habitats and species and SCI species:

The *River Nore SPA* is designated for its importance to Kingfisher.

The *River Barrow & River Nore SAC* is designated for its importance to a wide variety of terrestrial and aquatic habitats (incl. riparian, estuarine & coastal), along with one species of mammal (Otter), several species of fish (incl. Salmon, Twaite Shad & Lampreys), and 4 x invertebrate species (incl. 2 x pearl mussels, crayfish & whorl snail). The full list of QI habitats and species is set out in the table above. It is noted from the NPWS documentation and accompanying maps that several of the QI habitats and species are either located upstream of the confluence of the Ballyhale and Little Arrigle rivers, or upstream or significantly downstream (in excess of 8km). of the confluence of the Little Arrigle and Nore rivers, and they will not be included for further consideration (Petrifying springs, Old sessile oak woods, European dry heaths, Desmoulin's Whorl Snail, Nore Freshwater Pearl Mussel & Killarney fern). It is also noted that several of the QI estuarine habitats are located a substantial distance downstream of the proposed works (in excess of 40km) and they will not be included for further consideration. Given that the site lies within a Freshwater pearl mussel catchment, this species will be assessed in more detail.

The remaining QI habitats and species, and SCI species, their Conservation Objectives, and Attributes and Targets, are summarised below: -

QIs & SCIs	Conservation Objectives	Attributes & Targets
Tall herb fringe communities	Maintain favourable conditions.	Habitat distribution (no decline); Habitat area (stable); Hydrological regime (maintained); Vegetation structure (sward height); Vegetation composition (broadleaf herb: grass ratio); Vegetation composition (typical species & negative species indicator).
Alluvial forests	Restore favourable conditions.	Habitat area (stable or increasing); Habitat distribution (no decline); Woodland size (stable or increasing); Woodland Structure (maintain cover, diversity & regeneration); Hydrological Regime (maintain flood depth); Woodland Structure (no decline); Vegetation Composition (maintain range of species & no increase in negative species indicators).
Freshwater pearl mussel	Under review	None specified.
White-tailed crayfish	Maintain favourable conditions.	Distribution (No reduction); Population structure (Juveniles /females with eggs in at least 50% of samples); Negative indicator species (No alien species); Disease (No instances); Water quality (At least Q3-4); and Habitat quality No decline in heterogeneity or quality).
Sea, Brook & River Lamprey	Restore favourable conditions.	Distribution; Population structure of juveniles; Juvenile density in fine sediment; Extent and distribution of spawning habitat; Availability of juvenile habitat.
Twaite Shad	Restore favourable conditions.	Distribution (extent of anadromy); Population structure (age classes); Extent and distribution of spawning habitat (no decline); Water quality (oxygen levels); Spawning habitat quality: Filamentous algae; macrophytes; sediment (stable).
Salmon	Restore favourable conditions.	Distribution; Adult spawning fish; Salmon fry abundance; Out-migrating smolt abundance; Number and distribution of redds; Water quality
Otter	Restore favourable conditions.	No significant decline in: - Distribution, Extent of terrestrial & freshwater habitats, couching sites & holts, Availability of fish biomass & Connectivity.
Kingfisher	Maintain or restore favourable conservation condition.	None specified.

Potential direct and indirect effects: The NE section of the proposed development would overlap with a European site however it is not relevant to the maintenance of any European sites. There is potential for direct and indirect effects having regard to the location and scale of the proposed development within and adjacent to the Little Arrigle River which forms part of this SAC. The Little Arrigle also forms a confluence with the River Nore SPA c.7.5km to the N. There is potential for direct and indirect effects on several of the QI habitats and species during the ***construction phase*** as a result of:-water pollution from the unmitigated release of fine sediments and contaminated river dredge during construction works and hydrocarbons by way of accidental spillages from machinery, which could give rise to water pollution in the downstream waterbodies, chemical contamination and clogging of fish gills, with resultant impacts on the availability of prey biomass for the QI species Otter. Further potential direct and indirect effects relate to the loss of or disturbance to riparian vegetation within and along the riverbanks. The uncontrolled introduction of invasive species from works vehicles could give rise to the colonisation of habitats by invasive species, with resultant impacts on the attributes and targets for the QI species, in the absence of mitigation. There is no potential for any additional significant direct or indirect adverse effects during the ***operational phase*** when the works are complete as the hydraulic regime and riverbed morphology would not be significantly affected, given the small scale of flood relief works relative to the size and extent of the watercourse. The removal of the channel split in front of the Church and the diversion of flows to the W channel along with the removal of in-stream obstacles would increase flow rates, which have positive effect on fish mobility and passage.

Mitigation measures: The NIS mitigation measures which would serve to protect the SAC and its QI habitats and species from adverse effects, include: -

- Preparation of a CEMP
- Preparation of an Invasive Species Management Plan
- Erection of buffer zones
- Timing & seasonality of works.
- Appointment of Ecological Clerk of Works
- Adherence to best construction practices

- Compliance with relevant legislation & guidance
- Surface water management measures to protect water quality including: -
    - regular surface water monitoring,
    - no concrete mixing, refuelling or washing out on site,
    - waste management plan & off-site waste disposal,
    - protection of watercourses from contamination.

Habitats & species:

Tall herb fringe communities & Alluvial forests: The NPWS Site Synopsis notes that these habitats are present throughout the river systems within the River Barrow and River Nore SAC. Having regard to the nature and scale of the proposed development and following the implementation of the mitigation measures and any recommended conditions (incl. the management of sediments & accidental spills, and invasive species control) the proposed works would not have an adverse impact on water quality in the River Barrow and River Nore SAC or introduce invasive species to the watercourse during any of the works. There would be no resultant adverse effects on these QI habitats with respect to their attributes and targets (incl. Habitat area, Habitat distribution, Vegetation and Woodland structure & composition, Hydrological regime, and negative species indicators).

Fisheries: The site and environs drain to the Little Arrigle River which forms part of the River Barrow and River Nore SAC, and several species of fish (incl. Salmon & Lampreys) have been recorded in the river and its tributaries during their various lifecycle stages. Any deterioration of biological or chemical water quality or smothering of the riverbed substratum because of siltation, accidental fuel spills or poorly managed in-stream works could have adverse resultant impacts on the QI fish species, by affecting spawning grounds, food availability (incl. macro-invertebrates & macrophytes) and health (incl. clogging of fish gills). However, I am satisfied that following the implementation of the mitigation measures and any recommended conditions (incl. the management of sediments & accidental spills, ongoing water quality monitoring and the invasive species control), the proposed scheme would not have an adverse impact on fisheries in the River Barrow and River Nore SAC. There would be no resultant adverse effects on these QI species with respect to their

attributes and targets (incl. Distribution, Population structure & density, Extent and distribution of spawning habitat, Availability of juvenile habitat, & Water quality). The proposed removal of in-stream barriers to passage (incl. weirs) would have a positive impact on fish mobility and passage.

Otter: Otter has been recorded commuting in the environs of the Ballyhale and Little Arrigle rivers. Although no holts were identified a preconstruction survey should be undertaken. Otter has the potential to be temporarily disturbed during the construction phase however the flood relief scheme would not introduce a barrier to movement along the river. Any deterioration of water quality because of the proposed works and resultant impacts on the availability of fish biomass for Otter could have an adverse impact on this QI species. However, I am satisfied that following the implementation of the mitigation measures (incl. the measures to protect water quality & hence the availability of prey species) the proposed development would not have an adverse impact on Otter during the construction and operational phases. Therefore, there would be no resultant adverse effects on this QI species respect to its attributes and targets (incl. Distribution, Extent of terrestrial & freshwater habitats, Couching sites & holts, and availability of fish biomass or Connectivity).

Aquatic invertebrates: NPWS records indicate the presence of White-clawed crayfish in the Ballyhale River in the vicinity of the proposed works and it is possible that other specimens may occur in the watercourse which has a suitable borderline Q3 water quality status to support this species, although Q3-4 is preferable. There are no records of Freshwater pearl mussel in the Ballyhale River or the upper reaches of the Little Arrigle River, and the Q3 status falls well below the Q5 status required for this species, although the site does lies within a Freshwater pearl mussel catchment. Any deterioration of biological or chemical water quality or smothering of the riverbed substratum because of siltation, accidental fuel spills or poorly managed in-stream works could have adverse resultant impacts on these QI species. However, I am satisfied that following the implementation of the previously referenced mitigation measures and recommended conditions, the proposed scheme would not have an adverse impact on the QI aquatic invertebrates for the River Barrow and River Nore SAC. There would be no resultant adverse effects on White-

clayed crayfish with respect to its attributes and targets (incl. Distribution, Population structure, Negative indicator species, Disease, Water quality and Habitat quality).

Kingfisher: The surrounding watercourses may provide suitable nesting and foraging habitat for this species for which the River Nore SPA has been designated. The EIAR did not record the presence of this species within the site and immediate environs during the desk studies and site surveys. However, pre-construction surveys should be undertaken before works commence and if a nest is identified a 500m buffer should be provided around the nest until it has been vacated. Any loss of foraging habitat or diminution of water quality would be mitigated by the EIAR and CEMP mitigation measures. This species would gradually habituate to the area post construction, with no adverse long-term impacts are anticipated.

Potential in-combination effects: Potential direct and indirect in-combination effects relate to damage to QI habitats and species because of accidental spillages and sediment run off during the works, and the accidental introduction of invasive species by construction vehicles. This could give rise to pollution, contamination and/or colonisation with resultant impacts on water quality, fisheries, and the availability of prey species for Otter, having regard to the various plans or projects in wider area (incl. agriculture, commercial, domestic & recreation) in the absence of mitigation. However, having regard to the implementation of the mitigation measures and recommended conditions (see below), I am satisfied that there would be no adverse cumulative effects on this European site or its QI habitats and species.

Suggested conditions: Compliance with IFI “Guidelines on protection of fisheries during construction works in and adjacent to waters” should be required. A Project Ecologist should be appointed to oversee the works. Pre-construction Otter and Kingfisher surveys should be undertaken. All plant and machinery used during the works should be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

Conclusion: I am satisfied that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of these European site/s in light of their Conservation Objectives, subject to the implementation of mitigation measures and planning conditions outlined above.

The NIS: I am satisfied that the applicant has described the receiving environment, identified the European sites within the Zone of Influence, and provided sufficient information to assess potential effects during the construction and operational phases on the QI habitats and species and SCI species before and after the implementation of mitigation measures. I am satisfied that the NIS was informed by relevant and robust desktop and site surveys and prepared in accordance with all relevant guidelines. I concur with the conclusions of the NIS as summarised above.

Conclusion:
I concur with the conclusions reached in the NIS that the proposed flood relief scheme will have no adverse effects (direct, indirect or in-combination) on the Conservation Objectives or Qualifying Interests for any European Sites within the Zone of Influence of the scheme.

8.5 Appropriate Assessment conclusion:

I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site Nos. 002162 and 004233, or any other European site, in view of the site's Conservation Objectives.

9.0 COMPULSORY PURCHASE ORDER

9.1 Introduction

The statutory powers of the local authority to acquire land are contained in Section 213 of the Planning and Development Act 2000 (as amended) which authorises the Local Authority to compulsorily acquire any land or any rights in relation to land specified in the approved scheme.

As noted in section 5.3 above, 3 x submissions were made in respect of the compulsory purchase order, and no submissions have not been formally withdrawn.

Kilkenny County Council's case is based on the grounds that the proposed CPO will serve an important local need in terms of providing flood relief measures along the Ballyhale Village section of the Ballyhale River to alleviate flooding up to the 1% Annual Exceedance Probability fluvial event, that would: - protect properties (incl. residential & non-residential) from flood damage, reduce flood related disruption and disturbance, and provide a basis for maintaining the river to manage future flood risk; and that it would be in accordance with European, national and regional policy; and that it would accord with proper planning and sustainable development of the area.

The Objectors raised concerns in relation to: - permanent loss of grazing land and access to other lands in their ownership (Wayleave agreement preferred); devaluation and impact on future development opportunities; impacts on Capital gains Tax; lack of consideration of alternatives; various environmental concerns (incl. amenity, ecological & cultural heritage impacts [incl. archaeology]); and non-compliance with the LAP.

The Board should note that several of the Objector's concerns have been addressed in preceding sections of this assessment which should therefore be read in conjunction with this CPO assessment [section 7.0 (Planning Assessment) section 8.0 (Environmental Impact Assessment) and section 9.0 (Appropriate Assessment)]. These assessments concluded that the proposed Flood Relief Scheme would be in keeping with the proper planning and sustainable development of the area subject to compliance with recommended conditions, and that it would not have any significant adverse effects on the environment or European sites, subject to the implementation of mitigation measures.

9.2 Assessment of CPO

The criteria normally applied where it is proposed to use powers of compulsory purchase to acquire land or property is listed below:

- Development Plan compliance,
- Community need,
- Suitability of land to meet the community need,
- Alternatives, and
- Proportionality.

9.2.1 Development Plan compliance

The works to be carried out should accord with, or at least not be in material contravention of, the policy and objectives contained in the statutory development plan relating to the area.

Section 2.0 of the EIAR provides a comprehensive review of an extensive range of public policy and sets out how the proposed development complies European, national, regional and local environmental, planning, climate change and flood protection policy. This includes: - the EU Water Framework Directive and EU Strategy on Adaptation to Climate Change; National Flood Policy, Project Ireland 2040 which encompasses the National Planning Framework and National Development Plan, the Climate Action Plan; the Regional Spatial and Economic Strategy for the Southern Region; and the Kilkenny County Development Plan.

Section 6.1 of this report assesses policy compliance and concludes that the proposed Flood Relief Scheme complies with European, national, regional and local environmental, planning, climate change and flood protection policy, and in particular the current Kilkenny County Development Plan. These plans contain a variety of policy objectives related to land use, environment, biodiversity, flood protection, heritage, amenity, recreation, tourism and residential amenity that are of relevance to the lands affected by the CPO. The affected lands are occupied by a variety of land

uses including agricultural, residential, commercial, village centre, community, amenity, open space and heritage. The relevant local policies and objectives are summarised in section 3.5 of this report and the most pertinent to this CPO case are summarised below.

Kilkenny County Development Plan 2021 to 2027

Climate Change - Strategic Aim: to provide a policy framework to facilitate the transition to a low carbon and climate resilient County with an emphasis on reduction in energy demand and greenhouse gas emissions, through a combination of effective mitigation and adaptation responses to climate change.

Infrastructure & environment - Strategic Aim: to ensure a sufficient level of water services within the county for the implementation of the core strategy, provide a framework for the protection of the environment, including ***water quality, the avoidance of flood risk*** and the provision of telecommunications infrastructure.

Flood management**:** seek to ensure that new developments do not reduce the effectiveness or integrity of any existing or new flood defence infrastructure, and to facilitate the provision of new, or the reinforcement of existing, flood defences & protection measures where necessary.

Climate Adaptation Strategy, 2019-2024 -

This strategy seeks to inform the policies and objectives of the KCDP. It contains c.96 individual actions under the headings with ***Flood Resilience*** identified as one of the main areas of focus.

It is therefore clear that the adopted Kilkenny County Development includes general objectives for the proposed flood relief scheme based on the scheme currently before the Board.

Furthermore, Section 15 (1) of the Planning and Development Act 2000, as amended states that it shall be the duty of the Planning Authority to take steps within its powers as may be necessary for securing the objectives of the Development Plan. Section 212 (3) of the same act permits the Local Authority to “in connection

with any of its functions under this Act, make and carry out arrangements or enter into agreements with any person or body for the development or management of land and may incorporate a company for those purposes."

Conclusions:

Having regard to the foregoing, I am satisfied that the lands affected by the proposed CPO substantially accord with European, national and regional planning and environment policy, and the various policy objectives contained in the Kilkenny County Development Plan as they relate to land use, environment, heritage, residential amenity and tourism, and this includes the Objector's lands. I am therefore satisfied that the use of a CPO to acquire lands for the implementation of the Ballyhale Flood Relief scheme would be appropriate.

9.2.2 Community Need

There is a community need that is to be met by the acquisition of the lands in question.

Section 1.0 of the EIAR sets out the background, need, objectives and main benefits of the Ballyhale Flood Relief scheme, which are summarised below:

- Facilitate the implementation of the Ballyhale Flood Relief Scheme.
- Provide flood relief measures along the Ballyhale River to alleviate flooding up to the 1% Annual Exceedance Probability fluvial event.
- Protect residential & non-residential properties from flooding & damage.
- Provide basis for maintenance of the river to manage future flood risk.
- Facilitate improved public realm amenities.
- Comply with European, national, regional & local plans and policy.

The planning and environmental merits of the scheme were assessed in Sections 7.0 and 8.0 of this report which concurred with this analysis. I note that the Objectors did not raise any substantial concerns in relation to planning and environmental issues. The concerns raised in relation to potential impacts on archaeological

heritage and possible human skeletal remains are addressed in sections 6.6 and 7.4 of this report.

I am satisfied that the Ballyhale Flood Relief Scheme is an appropriate and suitable means of meeting the stated objectives of the project. It would accord with national, regional and local policy, it would provide for protection from periodic flooding in Ballyhale Village and along the Ballyhale River, provide for improved environmental conditions and enhancements to the public realm. It could also provide a resultant economic return on investment in Ballyhale Village. It is considered, therefore, that the proposed development will benefit the wider community and the CPO can be justified in the interests of the common good. I consider that the community need for the scheme has therefore been established.

Conclusion:
Having regard to the foregoing, I am satisfied that the proposed CPO of the lands affected by the proposed Ballyhale Flood Relief Scheme, including the plots owned by the Objectors, would serve a community need which has been fully established.

9.2.3 Suitability of land to meet community need.

The project proposed and the associated acquisition of lands is suitable to meet the community need.

It is proposed to permanently acquire land (c.0.852ha) which is currently in public and private ownership or occupation for the construction of the Ballyhale Flood Relief Scheme and associated public realm works. Additional land (c.1.341ha) will be temporarily acquired for construction works and several Wayleaves (c.0.880ha) and Rights of Way (c.0.067ha) will be compulsorily acquired. At present the lands are in a variety of uses, including agriculture, commercial, community and residential. No habitable dwellings will be permanently acquired. No Public Rights or Private Rights of Way will be permanently extinguished. No Fishing Rights will be temporarily extinguished.

I refer to Section 7.0 of this report (Planning Assessment) and to the conclusion that the proposed design and layout of the Flood Relief Scheme and associated public

realm works are appropriate, as is the location and layout of the proposed public realm works along the Riverside Walk. The extent of the land that would be acquired under the Order on a permanent and temporary basis is determined by the specifications of the proposed Scheme, including its layout and associated construction works. I am satisfied that the lands proposed to be acquired are necessary to facilitate the provision of the scheme, and that the land-take is necessary and proportional to ensure the delivery of the proposed development to an appropriate design standard.

The landowner's objections in relation to the effect of the land-take on agricultural activities, biodiversity, cultural heritage and material assets has been addressed in Sections 6.0, 7.0 and 8.0 of this report. These sections concluded that although the proposed Scheme would give rise to a permanent effect during the operational phase (incl. minor habitat loss & loss of grazing land) and general disturbance during the construction phase (incl. from noise, vibration, dust, odours & traffic), the impact would not be unduly significant when balanced against the wider community benefits of the scheme. Any loss of private space would be compensated for under the terms of the CPO arrangements and associated accommodation measures.

A substantial proportion of the Scheme would utilise land that is already in public ownership, in addition to some backland sites, which is supported by the general policy objectives contained in the County Development Plan. I am therefore satisfied that the location of the lands is appropriate for meeting community needs in terms of complying with planning policy.

Conclusion:

Having regard to the foregoing, I am satisfied that the lands identified in the CPO are required for the construction of the project and that the lands are therefore considered suitable to meet this community need.

9.2.4 Alternatives

Any alternatives proposed to meet the community need have been considered but are not demonstrably preferable.

The consideration of reasonable alternatives was addressed in EIAR Section 4.0. This section considered the “Do-Nothing” alternative as well several other measures (incl. alternative routing of overflows to Little Arrigle River via pipes & channels) which were evaluated against a range of technical, economic, social and environmental criterion. The various alternatives were discounted as they would not fully achieve the Council’s objective of protecting properties from the adverse effects of predicted fluvial flooding.

The Objectors did not raise any specific concerns in relation to the principle of the Flood Relief scheme or the corridor selected relative to their landholdings. Specific concerns related to the spatial extent of the land acquisition, property and land devaluation, Capital Gains Tax, loss of future development opportunities, a preference for a temporary versus permanent land take at some locations, and the use of Wayleaves along with the need to access adjacent lands in their ownership.

It is considered that the process undertaken by the Council has been a robust assessment of alternative options having regard to environmental considerations and the stated Scheme Objectives, which are considered to be reasonable. I agree that the flood relief measures, and corridor chosen best meets these objectives. I concur with the reasons for choosing the preferred alternative as presented in the EIAR.

The Objectors also identified potential impacts on property, as well as environmental considerations including impacts on residential amenity, biodiversity and cultural heritage. The issues relating to properties and lands are likely to arise no matter which flood defence measures are chosen. The planning and environmental issues have been addressed in detail in the Sections 6.0, 7.0 and 8.0 of this report. It is acknowledged that sections of the proposed Flood Relief Scheme may present burdens in respect of agricultural, residential and access impacts on owners, and that these impacts will, in many cases, be permanent impacts notwithstanding the mitigation measures proposed.

Conclusion:

Having regard to the foregoing, I am satisfied that several alternative options for providing the Ballyhale Flood Relief Scheme have been considered and assessed, and that the proposed option and affected lands represent the most reasonable means of achieving the scheme's objectives and meeting the identified community need, in the interests of the common good.

9.2.5 Proportionality

The extent of land-take should have due regard to the issue of proportionality.

As previously stated in section 9.2.3 above, it is proposed to permanently acquire land (c.0.852ha) which is currently in public and private ownership or occupation for the construction of the Scheme and associated public realm works. Additional land (c.1.341ha) will be temporarily acquired for construction works, and several Wayleaves (c.0.880ha) and Rights of Way (c.0.067ha) will be compulsorily acquired. At present the lands are in a variety of uses, including agriculture, commercial, community and residential.

The scale of the permanent individual land take would range from c.0.003ha to c.317ha, with most of the Plots lying at the smaller end of this scale. The largest Plot (6.1P) comprises agricultural lands owned by Mr Andrew Connolly (Objector) that would be mainly incorporated into the Riverside Walk public amenity area and flood embankments. Likewise, the scale of the temporary individual land take would range from c.0.012ha to c.387ha, with most of the Plots lying within the smaller end of this scale. The largest Plot (6.1T) is also owned by Mr. Connolly and it comprises agricultural lands that would be utilised during the construction phase of the project. There would be a similar pattern of the acquisition of Wayleaves (c.001ha to 0.204ha), and Rights of Way (c.0.001 to 0.049ha.).

Having regard to the scale of the proposed Flood Relief Scheme, the predominantly small size of the Plots to be acquired, and the benefits to the public that would accrue from the Scheme, in terms of protecting residential and non-residential property from adverse flood events, and the associated public realm improvements, I am satisfied that the extent of the proposed land take would be fair and just and that it would achieve the correct balance in terms of proportionality.

9.3 Site specific CPO issues

9.3.1 CPO submissions

Three written submissions were received in relation to the CPO, and none were withdrawn. The main issues raised in the written submission are summarised in section 5.3 and section 6.2 of this this report and reiterated below.

- **Plots 6.1P & T: -** Loss of grazing lands & no viable alternative plots available; loss of future development opportunities & resultant impact on Capital Gains Tax; Wayleave agreement preferable to CPO; LAP designates lands as Open space/amenity & Area of Ecological Interest (various habitats & species) and N section is in an SAC; and proximity to Church & Graveyard (PS) with potential for impacts on human remains.

- **Plots 3.1P, 3.2P, 3.3P, 3.4P, 3.5P, 3.1T 3.2T & 3.3T: -** Loss of grazing lands & no viable alternative plots available; loss of future development opportunities; resultant impact on Capital Gains Tax; Wayleave agreement preferable to CPO; LAP designates lands as open space, amenity, ecological interest & SAC; and proximity to Church & Graveyard with potential for impacts on human skeletal remains.

- **Plots 23.1P, 23.2P, 23.3P & 23.1W: -** Object to the proposed wayleave (Project & CPO); Loss of future development opportunities (house); Restricted access to lands; and property devaluation.

9.3.5 Consideration of CPO Issues

The general concerns raised in relation to agricultural lands, residential amenity, disturbance during construction, biodiversity, cultural heritage and archaeology have been addressed in preceding sections of this report which should therefore be read in conjunction with this CPO assessment in section 6.0 (Planning Assessment) and section 7.0 (Environmental Impact Assessment). These concerns would be addressed by the implementation of EIAR mitigation measures and recommended

planning conditions, compliance with a final CEMP, and adherence to best construction practice.

The concerns raised by the Objectors (Mr Andrew Connolly & Mr Seamus Connolly) in relation to potential adverse impacts on land valuation and future financial implications (incl. Capital Gains Tax) are noted. However, the consideration of land valuations, compensation and future financial matters (incl. Capital Gains Tax) are not a planning matter but are a matter for property arbitration. These concerns therefore lie outside the Boards jurisdiction.

The concerns raised by the Objectors (Mr Andrew Connolly & Mr Seamus Connolly) in relation to the loss of future development opportunities, are noted. However, I note that their Plots (6.1P & 6.1T and 3.1P, 3.2P, 3.3P, 3.4P, 3.5P, 3.1T 3.2T & 3.3T) occupy positions close to the Ballyhale River, mainly within Flood Zones A and B, that a 10m buffer with a watercourse is usually required for new developments, and that the flood embankments on these lands are required to protect adjacent lands from future flood events as a result of improved stream flows. I also note that the Council has confirmed that the acquisition of these Plots would not result in a significant loss of agricultural land relative to the size of their overall landholdings, or the permanent loss of access to agricultural lands, with no significant adverse impacts on agricultural operations anticipated.

The concerns raised by the Objections (Mr Seamus Connolly) in relation to a preference for a Wayleave over a permanent land acquisition area noted. However, I note that the Council has confirmed this would not be practical but also that most of the acquisitions relate to an existing Wayleave and streambed, or that the lands are required for the flood embankments to protect adjacent lands from future flood events as a result of improved stream flows.

The concerns raised by the Objector (Mr Patrick Prendergast) in relation to the loss of future development opportunities at lands close to the entrance to the GAA grounds are noted. However, I note that the Council has confirmed the acquisition of Plots 23.1P & 23.1W) would not result in the permanent loss of a future access to

these lands, with no adverse impacts on future development opportunities anticipated (subject to compliance with normal planning requirements).

Although I understand the concerns raised by the Objectors in relation to the potential adverse effects of the Ballyhale Flood Relief scheme on their landholdings, on balance, I am satisfied that the overall benefits of the Scheme to the wider community would outweigh these localised impacts. Furthermore, many of the Objector's concerns can be addressed by way of the EIAR mitigation measures, compliance with the final CEMP, adherence to best construction practices, and any recommended planning conditions, in addition to the accommodation measures agreed with the Council.

9.3 Overall conclusion

Having regard to the assessment carried out above, I am satisfied that:

- The community need for the Ballyhale Flood Relief Scheme has been established.
- The particular lands that constitute the corridor for the scheme are suitable to meet the needs of the Ballyhale Flood Relief Scheme.
- The scale, layout and location of the proposed Ballyhale Flood Relief Scheme have been justified.
- All lands included in the CPO, and the proposed Ballyhale Flood Relief Scheme is compatible with the relevant development plan provisions.
- The extent of land-take is proportional to the scale of the proposed Ballyhale Flood Relief Scheme.

The proposed development is therefore acceptable in environmental and planning terms, and I recommend that the CPO be confirmed and the application for the Ballyhale Flood Relief Scheme be approved.

9.5 Recommendation

I acknowledge that the proposed Compulsory Purchase Order for the proposed Ballyhale Flood Relief scheme will involve the permanent loss of land for construction works. At present the lands are in a variety of uses including agricultural, residential, commercial and amenity lands. However, this loss should be balanced against the wider objectives which seek to implement the Ballyhale Flood Relief Scheme in accordance with the policies and provisions contained in the Development Plan, and the need to secure the objectives of the Development Plan in accordance with the provisions of Section 15(2) and Sections 212(1) (a) of the Planning and Development Act 2000.

The acquisition of the lands in question would also serve an important community need by providing a flood defence facility that would address the need to provide community wide and environmental benefits in the surrounding area. I therefore recommend that the Compulsory Purchase Order of the Ballyhale Flood Relief scheme be confirmed.

9.6 Decision

CONFIRM the above compulsory purchase order without modifications to the Deposit Maps and Schedules based on the reasons and considerations set out in Section 12.0 and Schedule 2 below.

10.0 CONCLUSIONS AND RECOMMENDATION

I recommend that the application under Section 175 of the Planning and Development Act, 2000 (as amended) for the construction of the Ballyhale Flood Relief should be granted for the reasons and considerations as set out in Schedule 1, and consequently that the CPO application under Section 216 of the Planning and Development Act, 2000 (as amended) is approved for the reasons and considerations as set out in Schedule 2.

11.0 SCHEDULE 1 – BALLYHALE FLOOD RELIEF SCHEME

REASONS AND CONSIDERATIONS

Having regard to:

a. the National Planning Framework Plan 2018-2040,
b. the National Development Plan 2021-2030,
c. the Climate Action Plan 2024,
d. Regional Spatial and Economic Strategy for the Southern Region 2020,
e. the policies of the planning authority as set out in the Kilkenny County Development Plan 2021 to 2027,
f. the distance to dwellings or other sensitive receptors,
g. the submissions made in connection with the application,
h. the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European Sites,
i. the Appropriate Assessment report of the Inspector, and
j. the report and recommendation of the Inspector.

Proper planning and sustainable development:

It is considered that subject to compliance with the conditions set out below the proposed development would accord with European, national, regional and local planning and environmental policy, it would not have an unacceptable impact on the landscape or ecology, it would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and it would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Stage 1:

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the following European sites are the only sites for which there is a possibility of significant effects and must therefore be subject to Appropriate Assessment: -

- River Barrow and River Nore SAC (Site code: 002162)
- River Nore SPA (Site code: 004233)

Appropriate Assessment Stage 2:

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed flood relief development for European Sites in view of the site's Conservation Objectives, namely: -

- River Barrow and River Nore SAC (Site code: 002162)
- River Nore SPA (Site code: 004233)

The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's conservation objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the following:

(i) the site Specific Conservation Objectives for these European Sites,
(ii) the current conservation status, threats and pressures of the qualifying interest features,
(iii) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, and
(iv) the mitigation measures which are included as part of the current proposal,

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the implications of the proposed development on the integrity of the aforementioned European Sites, having regard to the site's Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of any European sites in view of the site's Conservation Objectives and there is no reasonable scientific doubt as to the absence of such effects.

Environmental Impact Assessment:

The Board completed an environmental impact assessment of the proposed development taking account of:

(a) the nature, scale, location and extent of the proposed development on a site,

(b) the Environmental Impact Assessment Report (EIAR) and associated documentation submitted in support of the application,

(c) the submissions received from the prescribed bodies, and

(d) the Inspector's report.

The Board considered that the environmental impact assessment report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board agreed with the examination, set out in the Inspector's report, of the information contained in the environmental impact assessment report and associated documentation submitted by the applicant and submissions made in the course of the application. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- The risk of pollution of ground and surface waters during the construction phase which would be mitigated by the implementation of measures set out in the Environmental Impact Assessment Report (EIAR) and the final Construction and Environment Management Plan (CEMP) which include specific provisions relating to groundwater, surface water and drainage.
- Noise, vibration and dust during the construction and phase would be avoided by the implementation of the measures set out in the Environmental Impact Assessment Report (EIAR) and the final Construction and Environment Management Plan (CEMP) which include specific provisions relating to the control of noise, vibration and dust.
- Biodiversity impacts, including on habitats, flora and fauna (incl. terrestrial and aquatic wildlife), would be mitigated by the implementation of specific mitigation to protect such habitats, flora and fauna (incl. pre-construction surveys, timing and seasonality of works, drainage and runoff management, the management of artificial lighting, buffers and the appointment of a project ecologist), during the construction and operational phases.
- The increase in vehicle movements and resulting traffic during the construction phase would be mitigated by the preparation of a Construction Traffic Management Plan.
- Landscape and visual impacts would arise during the operational phase from the insertion of the flood defence walls into the urban and riparian landscape, however, the scale, design and linear layout of the project would assist in assimilating the works into the landscape.
- The impacts on residential amenity during the construction phase would be avoided by the implementation of the measures set out in the Environmental Impact Assessment Report (EIAR) and the final Construction and Environment Management Plan (CEMP) which include specific provisions relating to the control and management of dust, vibration, noise, water quality and traffic movement.

- The impact on cultural heritage would be mitigated by terrestrial and underwater archaeological pre-testing and monitoring with provision made for resolution of any archaeological features or deposits that may be identified (including burial grounds).
- Positive environmental impacts would arise during the operational phase from the installation of robust flood relief works.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, and subject to compliance with the conditions set out below, the effects of the proposed development on the environment, by itself and in combination with other plans and projects in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

CONDITIONS

1. The applicant shall ensure that all construction methods and environmental mitigation measures set out in the Environmental Impact Assessment Report, the Natura Impact Statement and associated documentation are implemented in full, save as may be required by the conditions set out below.
   Reason: In the interest of the protection of the environment.

2. The following nature conservation requirements shall be complied with:
   a. The services of a suitably qualified and experienced Ecologist shall be retained to undertake pre-construction surveys at the various project elements immediately prior to commencing work in order to check for the presence of protected species in the vicinity (incl. Otter, Bats and Kingfisher).
   b. Derogation Licences shall be obtained for the removal of any Bat roosts or Otter holts.
   c. In-stream works shall be carried out in accordance with the requirements of Inland Fisheries Ireland.

d. Vegetation clearance should not take place during the bird nesting season and a 500m buffer shall be provided around any Kingfisher nests.
e. Appropriate noise and vibration mitigation should be undertaken to reduce any impacts on aquatic species (incl. soft start & ramping up of machinery).

Reason: In the interest of protecting ecology and wildlife in the area.

3. The landscaping proposals shall be carried out within the first planting season following commencement of construction of the proposed development. The landscaping and screening shall be maintained at regular intervals. Any trees or shrubs planted in accordance with this condition which are removed, die, become seriously damaged or diseased within two years of planting shall be replaced by trees or shrubs of similar size and species to those original required to be planted.

   Reason: In the interest of visual amenity.

4. All plant and machinery used during the works should be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

   Reason: In the interest of the proper planning and sustainable development of the area, and to prohibit the spread of invasive species.

5. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be finalised prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise, vibration, dust and odour monitoring and management measures, traffic management, protection of wayleaves, an invasive species management plan and off-site disposal of construction, demolition and post examination river dredge waste.

   Reason: In the interests of public safety and residential amenity.

6. The preservation, recording and protection of archaeological materials or features that may exist within the site shall be facilitated, and all excavated material from the riverbed shall be spread at the work compound (or other suitable location) and metal detected to assess the artefact bearing potential. In this regard, suitably qualified archaeologists (terrestrial and underwater) shall be retained to monitor all site investigations and other excavation works and provide arrangements for the recording and for the removal of any archaeological material considered appropriate to remove. The mitigation measures contained in the EIAR in relation to underwater and terrestrial archaeology shall be fully implemented.
   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.

12.0 SCHEDULE 2 – COMPULSORY PURCHASE ORDER

Local Government (No. 2) Act, 1960

Housing Act, 1966

Planning and Development Acts, 2000 to 2022

Planning Authority: Kilkenny County Council

Application received by An Bord Pleanála on the 9th day of May**,** 2023 from Kilkenny County Council pursuant to section 76 of, and the Third Schedule to, the Housing Act, 1966 as extended by section 10 of the Local Government (No. 2) Act, 1960 (as substituted by section 86 of the Housing Act, 1966) and the Planning and Development Acts, 2000 to 2019, for confirmation of a compulsory purchase order authorising compulsory acquisition of lands and entitled Ballyhale Flood relief Scheme.

Decision

CONFIRM the Compulsory Purchase Order without modification, based on the reasons and considerations set out below.

Reasons and Considerations

Having considered the objections made to the compulsory purchase order and the report of the Inspector, the purpose of the compulsory purchase order to implement the Ballyhale Flood Relief Scheme, and also having regard to

(i) the constitutional and Convention protection afforded to property rights,
(ii) the need to provide flood defence measures along the Ballyhale River,
(iii) the community need for the Scheme, public interest served by the Scheme, and the overall benefits of the Scheme, which will protect residential and non-residential property from the adverse effects of flooding, to be achieved from the Ballyhale Flood Relief Scheme,

(iv) the design response, which has been appropriately tailored to the identified need,

(v) the suitability of the lands and the necessity of their acquisition to facilitate the provision of the Ballyhale Flood Relief Scheme,

(vi) the provisions of Kilkenny County Development Plan 2021 to 2027,

it is considered that the permanent and temporary acquisition of lands, Wayleaves and Rights of Way by Kilkenny County Council, as set out in the compulsory purchase order and on the deposited maps, is necessary for the purpose stated, which is a legitimate objective being pursued in the public interest, and that the CPO and its effects on the property rights of affected landowners are proportionate to that objective and justified by the exigencies of the common good.

In reaching this conclusion, the Board agrees with and adopts the analysis contained in the report of the person who carried out the assessment into the objections.

13.0 Professional declaration

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

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Karla Mc Bride
Senior Planning Inspector
28th March 2024