



An  
Bord  
Pleanála

## Inspector's Report ABP-318632-23

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<b>Development</b>	Large scale residential development: 295 residential units and a two-storey creche.
<b>Location</b>	Ruanbeg, townlands of Kildare & Collaghknock Glebe, Kildare Town, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	23/510
<b>Applicant</b>	MRP Oakland Limited
<b>Type of Application</b>	Large-Scale Residential Development
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party vs. Refusal
<b>Appellants</b>	MRP Oakland Limited
<b>Observers</b>	<ol style="list-style-type: none"><li>1. Cllr. Suzanne Doyle</li><li>2. Dawn McCormack, on behalf of residents of Ruanbeg Ave &amp; Park</li></ol>
<b>Date of Site Inspection</b>	30 <sup>th</sup> January 2024
<b>Inspector</b>	Stephen Ward

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## 1.0 Site Location and Description

- 1.1. The subject site has a stated gross area of 10.3 hectares and is located at the eastern edge of Kildare Town. It is c. 1.7km walking distance from Market Square in the town centre and is c. 2.3km walking distance from Kildare Train Station on the Dublin (Hueston) line. The M7 Motorway runs to the southern side of the town at a distance of c. 300m from the appeal site.
- 1.2. The eastern environs of the town are mainly comprised of suburban housing, including the large 'Ruanbeg' and 'Coolaghknock' estates to the west and northwest of the site respectively. The site bounds onto a Regional Road (R445) to the south, while there is a large meat processing/storage site on the opposite (southern) side of this road. To the immediate east and northeast of the site are undeveloped agricultural fields, while further eastwards is 'The Curragh' plains.
- 1.3. The site itself comprises several undeveloped agricultural fields. The fields are generally bound by a mixture of mature hedgerows and trees, while the western boundary also includes a wall separating the site from the private gardens of the adjacent housing estate. The site is undulating with a small crescent in the central field, but it mostly slopes gently downward from north to south and east to west.

## 2.0 Proposed Development

- 2.1. The original application comprised the construction of 295 no. residential units along with a two storey creche facility measuring c.472.7sqm. The residential units and associated development / works included the following:
  - 15 no. single storey, semi-detached/terraced houses (12 no. 1 beds and 3 no. 2-beds) provided as "age-friendly housing".
  - 206 no. two storey, semi-detached/terraced (10 no. 2 beds, 160 no. 3 beds, 36 no. 4 beds).
  - 74 no. three storey duplexes/apartments (37 no. 2 beds, 37 no. 3 beds) arranged within 6 no. blocks.
  - All residential will be provided with associated private gardens / balconies / terraces facing to the north/south/east/west.

- New vehicular and pedestrian/cyclist accesses will be via Dublin Road (R445) and Ruanbeg Avenue and a pedestrian only access via Ruanbeg Park, with upgrade to existing public road as necessary.
- All associated site development works, including 571 no. car parking spaces (including EV parking), 236 no. cycle parking spaces, public and communal open spaces, landscaping, SuDS features, boundary treatment, plant areas, waste management areas/bin stores, and services provision (including ESB substations, pumping station) are also proposed.

2.2. The application was revised by Significant Further Information which included the replacement of 3. no. duplex apartment blocks in the northeast corner of the site with two storey housing and the inclusion of a new multifunctional space within the "age friendly housing block". This results in a reduction to 285 no. residential units, to include:

- 14 no. single storey, semi-detached/terraced houses (12 no. 1-beds and 2 no. 2 beds) provided as "age friendly housing".
- 231 no. two storey, semi-detached/terraced houses (20 no. 2 beds, 173 no.3 beds, 38 no .4 beds).
- 40 no. duplexes/apartments. (20 n. 2 beds, 20 no. 3 beds) arranged within 3 no. three storey blocks.
- An associated reduction in parking provision to 560 no. car parking spaces (including EV parking) and 138 no. cycle parking spaces.
- The inclusion of a signalised junction in the Dublin Road.

2.3. In addition to the standard plans and particulars, the application is accompanied by the following documents and reports:

- Environmental Impact Assessment Report
- Natura Impact Statement
- Planning Report (Statement of Consistency and Statement of Housing Mix)
- Social & Community Infrastructure Audit
- Part V Pack

- Operational Management Strategy
- Daylight Sunlight and Overshadowing Analysis
- Ecological Response
- Architectural Design Statement
- Operational Waste & Recycling Management Plan
- Construction Environmental Management Plan
- Resource and Waste Management Plan
- Archaeological Assessment
- Cultural Heritage Response
- Engineering Planning Report
- Site Specific Flood Risk Assessment
- Geophysical Survey Report
- Hydrogeological Site Assessment
- Traffic and Transportation Assessment
- Outline Mobility Management Plan
- Sustainable Urban Drainage Strategy
- Stormwater Drainage Maintenance Plan
- Ground Investigation Reports
- Road Safety Audit Stage 1/2
- Stage 1 Stormwater Audit
- Public Lighting Report
- Landscape Design Statement
- Arboricultural Impact Assessment
- Housing Quality Assessment
- Summary of Accommodation Schedule

- Preliminary Energy Report
- Visually Verified Views.

2.4. The above information was updated and supplemented by the information submitted with the further information response and by the appeal documentation.

### **3.0 Planning Authority Pre-Application Opinion**

3.1. The proposals for the subject site have been subject to Section 247 discussions, with consultations being held on 2nd of June 2022 and 19th of July 2022. A pre-application LRD meeting under Section 32C of the Planning and Development Act 2000 (as amended) took place on 17<sup>th</sup> October 2022 between the representatives of the applicant and the planning authority.

3.2. A Large-Scale Residential Development (LRD) Opinion was issued under Section 32D of the Act on the 11th of November 2022. This Opinion concluded that the documents submitted would not constitute a reasonable basis for making an LRD application. The reasons were as follows:

1. The SuDS strategy and Surface Water drainage proposals are not fully developed and therefore inadequate and prejudicial to the orderly development of the site, including drainage arrangements, usable open space provision, residential amenity, flood prevention and ecological impacts on Pollardstown Fen and the Curragh Aquifer.
2. The proposal does not demonstrate compliance with the 12 criteria set out in the Urban Design Manual.
3. The documents submitted do not adequately demonstrate that the proposed development does not require a Natura Impact Statement and Environmental Impact Assessment Report.

3.3. In accordance with section 32D (2)(b) of the Act of 2000, the Opinion set out the issues and documents that could result in a reasonable basis to make the application. And in accordance with Article 16A of the Regulations of 2001, it also set out the specific information that should be submitted with any LRD application.

## 4.0 Planning Authority Decision

### 4.1. Decision

By order dated 9<sup>th</sup> of November 2023, the planning authority made a decision to refuse permission for the following reasons:

1. *The Kildare Town Local Area Plan 2023-2029 contains objectives to prepare a Surface Water Masterplan for Kildare Town, based on information contained within the Surface Water Study that accompanies the Local Area Plan. It also contains objectives in relation to Pluvial Flood Risk and objectives to incorporate nature-based surface water drainage solutions as part of all plans and projects in Kildare Town*

*Policy IN P4 of the Kildare County Development Plan 2023-2029 seeks to ensure that developments provide adequate surface water drainage systems and promote the use of SuDS. Objectives IN O24 and IN O26 of the Kildare County Development Plan 2023-2029 limit the placing of attenuation/storage structures under public open space and seek to ensure that the design of SuDS enhances the quality of open spaces and that a maximum 10% of public open space is taken up by SuDs. Furthermore, it is an action of the Kildare County Development Plan 2023-2029 to Develop a ‘Sustainable Urban Drainage Systems Guidance Document’ for County Kildare within one year of the adoption of the Kildare County Development Plan 2023-2029.*

*Having regard to the above, noting in particular;*

- *The significant surface water issues affecting Kildare Town.*
- *The pluvial flood modelling carried out as part of the preparation of the Local Area Plan.*
- *The uncertainty regarding surface water drainage proposals within the proposed development.*
- *The extent of such features affecting public open space within the development.*

*It is considered that the proposed development would be contrary to objectives IN O24, IN O26 and INO33 of the Kildare County Development*

*Plan 2023-2029, premature pending the development of a Sustainable Urban Drainage Systems Guidance Document for County Kildare (to supercede these objectives) and premature pending the preparation of a Surface Water Masterplan for the town. The proposed development would therefore be prejudicial to the appropriate and orderly drainage of surface water within the site and surrounding area, would be prejudicial to the provision of high quality public open space within the residential development and would create a risk of flooding, which would seriously injure the amenities of property within the development, be prejudicial to public health and would endanger the health or safety of persons occupying dwellings within the proposed development, all of which would be contrary to the proper planning and sustainable development of the area.*

2. *Having regard to the zoning objective pertaining to the site, namely Phase 2 – New Residential, as set out in the Kildare Local Area Plan 2023-2029, which seeks to protect future development lands from inappropriate forms of development which would impede the sequential expansion and consolidation of the town in terms of providing for new residential development, it is considered that the proposed development would materially contravene this zoning objective. Furthermore, as the Local Area Plan and associated zoning pertaining to the site aligns with the fundamental requirements of the Core Strategy of the Kildare County Development Plan 2023-2029, to permit residential development on such lands would undermine the Core Strategy and would therefore be contrary to the proper planning and sustainable development of the area.*
3. *Having regard to the peripheral location of the application site at a distance from Kildare Town Centre, the proposed development is highly dependent on the use of private car. In addition, there are inadequate measures included in the proposal to segregate Vulnerable Road Users (VRUs), limit speed and collision severity along the regional road the R445. Having regard to the foregoing, and given the lack of cycle lane infrastructure proposed to be delivered as part of the development, it is considered that the proposed development would contravene policies TM P1 & TM P2 of the Kildare County Development Plan 2023-2029, which seek to promote and prioritise*



*sustainable development through facilitating cycling and public transport, and would endanger public safety by reason of a traffic hazard and would, therefore be contrary to the proper planning and sustainable development of the area.*

4. *Having regard to the deficiencies in the EIAR submitted by the Applicant in relation to the consideration of alternatives, and having regard to the lack of robust conclusions in relation to the impact of the proposed development on the environment in relation to hydrology and water services, population and human health, biodiversity, land, soils and geology, and climate, roads & traffic and interactions of the foregoing, it is considered that the proposed development would have an unacceptable impact on the environment of the surrounding area and would therefore be contrary to the proper planning and sustainable development of the area.*

## **4.2. Planning Authority Reports**

### **4.2.1. Further Information**

The Planning Authority's initial assessment of the application resulted in a request for further information. The issues raised can be summarised under the following headings.

#### **1. Surface Water and Water Services**

1. The proposals should consider the following:

(a) Maximise the provision of permeable surfaces.

(b) Promote Nature based SuDS and infiltration system SuDS.

(c) Clarify interaction between ponds-Nature based SuDS and underground attenuation structures.

(d) Address the variable infiltration test results and the test depths, designated design infiltration rates and groundwater monitoring data with respect to the location and depth of proposed infiltration storage.

(e) Shallow infiltration may be feasible subject to expert advice and assessment of groundwater monitoring boreholes over a 6-month period (including winter season).

- (f) Any infiltration to ground shall be adequately separated from structures.
  - (g) SuDS which store runoff at surface level shall be designed and constructed in accordance with CIRA SuDS Manual.
  - (h) Rationale for excluding Nature based and infiltration system SuDS.
  - (i) Taking in charge details to be agreed.
  - (j) Measures to account for drainage-SuDS design exceedance-failure events.
  - (k) Proposals to cater for the draft LAP Surface Water Drainage requirements, particularly the Nature Based Management Area at proposed Pond 3.
  - (l) The Drainage-SuDS Strategy shall compliment the Open Spaces Strategy.
  - (m) Details of SuDS with mixed vegetation (to be taken in charge) to be agreed.
2. A revised Stage 1 Surface Water Audit to be undertaken for the revised proposals.
  3. Revised drainage and SuDS drawings and detail for the above revisions.
  4. Submit a clear diagram setting out the sequence of SuDS techniques which control the flow, volume and frequency of run-off, as well as preventing/treating pollution.
  5. Submit proposals to address the excessive extent of attenuation tanks on site and the level of SuDS devices on the open spaces.

## 2. Transportation

- (a) Submit detailed design for the proposed R445 Cycle Tracks and Traffic Calming Works to the junction with French Furze Road/Rowanville.
- (b) Modify the works to the R445 to incorporate Bus Stops into the cycle tracks.
- (c) Submit detailed design of walk/cycle link with Coolaghknock Estate.
- (d) Submit letter of consent for R445 and other road works.
- (e) Submit Road Safety Audit Stage 1/2 to include cycle/traffic calming measures.
- (f) Submit longitudinal sections for the road network.
- (g) Cycle tracks to be designed in accordance with National Cycle Manual.
- (h) Submit details of connections to schools and estates to comply with DMURS.

- (i) Submit liaison plan for construction traffic disruption.
- (j) Submit improved cycle storage proposals.
- (k) Submit improve EV charging facilities.
- (l) Provide details of EV charge points.
- (m) Submit design details to comply with DMURS.
- (n) Submit road carriageway condition survey for R445.
- (o) Submit detailed design for two Toucan Crossings on R445.
- (p) Submit detailed design for signals.
- (q) The signalised crossings should be operational prior to commencement.
- (r) Reconsider the TTA based on updated trip rates and all traffic joining the R445 at the proposed new junction (no traffic through Ruanbeg Avenue).
- (s) Subject to revised TTA, submit proposals for new signalised junction with R445.
- (t) Detailed design for signals.
- (u) Proposals to ensure compatibility with the KCC Traffic Management Centre.
- (v) New signalised junction with R445 to be operational prior to commencement.
- (w) Design possible traffic calming measures for Ruanbeg Avenue.
- (x) Submit details of a Root Management System for roads/surfaces.
- (y) Submit full details of public lighting.
- (z) Submit revised details of traffic counts and true distances via roads/footpaths.

### 3. EIAR

- (a) Chapter 2 - Alternatives to consider the Draft LAP where the site is zoned New Residential Phase 2.
- (b) Chapter 3 - Submit full description of the site levels.
- (c) Chapter 4 – Clarify the capacity of the proposed creche.
- (d) Chapter 6 – Clarify where imported material (64,030m<sup>3</sup>) will go and implications for existing/proposed levels.
- (e) Chapter 14 – Clarify location of the nearest recorded archaeological monument.

#### 4. Draft Kildare Local Area Plan 2023-2029

The planning authority is considering the Draft LAP in its assessment and the applicant is requested to submit any relevant further detail/information.

#### 5. Detailed Design

- (a) The proposal for 3-storey development at the boundary of the site is not appropriate and should be addressed.
- (b) Architectural approach to reflect the distinctive and varied style of the area.
- (c) All units to meet internal storage requirements (excluding attic space).
- (d) Clarification of boundary treatment plan.
- (e) Submit improved boundary treatment proposals for the southern site boundary.
- (f) Submit proposals to address residential amenity at significant level differences.
- (g) Submit noise mitigation measures for units adjoining the Tyre Centre property.

#### 6. Social Infrastructural Assessment

Revise the assessment of the capacity of GP practices and address the shortfall through the provision of additional multi-functional space.

#### **4.2.2. Planning Reports**

The KCC assessment is outlined in two planning reports (i.e. the initial report and the subsequent report on the further information response). The main aspects of the reports can be cumulatively summarised under the following headings.

#### Appropriate Assessment

The report summarises and assesses the NIS as follows:

- The construction phase has the potential to impact on the qualifying interests / special conservation interests of the Pollardstown Fen SAC through the release of suspended soils, hydrocarbons, and uncured concrete.
- The mitigation measures outlined in the NIS are typical of residential development and provide certainty that the SAC will not be affected; a potential deterioration in ground water quality will be mitigated; and there will be no adverse impacts on the integrity of the SAC.

- A report from the KCC Heritage Officer has considered the NIS and outlines that there are no objections subject to conditions.

### Environmental Impact Assessment

The initial report summarises and assesses the EIAR. It generally accepts the EIAR assessment of the potential impacts and mitigation measures in relation to same. However, Further Information was requested on some matters as outlined in section 4.2.1 of this report. The subsequent Planner's report assesses the EIAR Addendum and raises the following concerns:

- Alternatives – The response considers the draft LAP but does not accurately reflect that:
  - Phase 2 residential zoning does not infer a commitment regarding the future zoning of the site;
  - Part of the site will be zoned F 'Open Space and Recreational Amenity';
  - Land to the southwest corner is zoned H 'Industry and Warehousing', not E 'Community and Education'.
- Hydrology and Water Services – The report highlights the concerns of the Water Services section of KCC, as outlined under the 'Surface Water / Flooding' heading below.

The 'Conclusion of Assessment of EIAR Addendum & NIS following FI response' highlights outstanding concerns with regard to the robustness of the EIAR and the NIS, particularly in relation to hydrology and water services (surface water and groundwater) and alternatives, and to a lesser extent, traffic and transportation, population and human health, biodiversity, land, soil & geology and climate. It considers that the likely environmental effects relating to hydrology and water services (surface water and groundwater) and alternatives have not been satisfactorily identified, described and assessed.

### Core Strategy and Zoning

- The initial report outlined that legacy zonings and extant permissions significantly exceed the Core Strategy housing allocation for Kildare Town. However, this has

been addressed in the preparation of the draft LAP and should not preclude a grant of permission.

- The initial report outlines that the site was zoned as 'C1 (New Residential)' in the Kildare Town LAP 2012-2018, but that there have been significant changes to local and national policy and the suitability of the site is questioned. It also notes that the land is zoned 'CP2 New Residential Phase 2' in the draft LAP, under which the proposed development would not be acceptable in principle. However, given the lack of certainty regarding the forthcoming LAP, it would be inappropriate to conclude that the principle would materially conflict with the CDP.
- The subsequent report on the FI response notes that the Kildare LAP 2023-2029 was adopted on 26<sup>th</sup> October 2023 and will come into effect on 6<sup>th</sup> December 2023. Under the adopted LAP, the site is zoned 'CP2 New Residential Phase 2'. The proposed development would not be acceptable in principle; would contravene the zoning objectives of the draft LAP; and would conflict with the CDP Core Strategy.

#### Development Management Standards

- The proposal would be acceptable in accordance with CDP/national standards for plot ratio, site coverage, housing mix, density, unit sizes, private open space, dual aspect, car-parking, childcare provision, and Part V. The F.I. response clarified internal storage space proposals, which were considered acceptable.
- Public Open Space (16%) meets the minimum CDP requirement of 15%. However, concerns apply in relation to the excessive incorporation of drainage/SUDS measures within public open space.

#### Transportation

The Transportation Section raised issues as outlined in the F.I. Request (section 4.2.1 of this report). Following the applicant's response, there were outstanding concerns in relation to the following:

- The applicant indicates that the design for the R445 Cycle Tracks and Traffic Calming Works (including a bus stop) would not be implemented by the developer and has not indicated the acceptance of a contribution in lieu of these

works. This raises concerns about the connectivity of the site with the town / town centre and the KCC Transportation Section recommends refusal of permission.

- The lack of dedicated secure storage for e-bikes and racing bicycles.

### Surface Water / Flooding

The further information request raised concerns as outlined in the F.I. Request (section 4.2.1 of this report). Following the applicant's response, there were serious outstanding concerns in relation to the SuDS strategy as follows:

- Gravel infiltration trenches underneath attenuation storage tank A are located within the unsaturated zone.
- The absence of a low flow channel-bioswale along the drainage corridor.
- The possible under design of the Nature based management areas, i.e. pond 3.
- The veracity of the conclusion of the revised SSFRA regarding impacts on the Pluvial Flood Risk Area identified in the LAP Surface Water Study.
- Given concerns about the robustness of the SuDS strategy, there are related concerns about the level of attenuation tanks in open space areas and the usability of these open spaces (particularly the central space A given the size of the tank and the location of gravel trenches within the unsaturated zone). There are also concerns about malfunction or maintenance, which would significantly affect residential amenity through disturbance of open space.
- While the approach to SuDS affecting public open space is under review, CDP Objectives IN O24 and IN O26 cannot be disregarded prior to the completion of a Surface Water Masterplan for Kildare Town and the 'Sustainable Urban Drainage Systems Guidance Document' (as per action IN A3 of the CDP).
- The LRD process does not facilitate 'Clarification of Further Information' and to impose conditions to address the shortcomings may not be technically sound, precise, or reasonable, and would be likely to significantly affect open space, residential amenity, and open space.
- The lack of robustness in surface water proposals and flood risk assessment highlights deficiencies in the EIAR relating to hydrology and water services, as

well as their interaction with other environmental elements such as biodiversity and material assets.

#### Social Infrastructure

- Clarification was sought in relation to GP capacity as outlined in the F.I. Request. The response included a multi-functional space within the age-friendly units that could be used as a GP practice or a community room. This was considered acceptable.

#### Site Levels and Finished Floor Levels

- Clarification was sought in relation to existing and proposed levels, as outlined in the F.I. Request. The response has satisfactorily addressed the matter.

#### Overlooking and Overshadowing

- Proposals meet the requirements for separation distances to prevent overlooking between the existing and proposed properties.
- The proposal will not result in any undue overshadowing of adjacent properties or internally within the site.

#### Urban Design Manual Criteria

The initial report outlines general satisfaction with the proposed design and layout. Some concerns were raised in relation to the design and layout as outlined in the F.I. Request. Following the FI response, it was stated that the concerns were generally addressed apart from:

- The 'wall to ratio' (*sic*) in house type D is particularly poor.
- The use of concrete roof tiles is not acceptable.

#### Conclusion

The report recommends refusing permission and this forms the basis of the KCC decision.

#### 4.2.3. **Other Technical Reports**

Roads: The initial report requested Further Information on the issues outlined in section 4.2.1. of this report. Following the receipt of further information, refusal was recommended. The concerns are reflected in reason no. 3 of the KCC decision.



Chief Fire Officer: No objections subject to conditions.

Environment: No objections subject to conditions.

Water Services: The initial report requested Further Information on the matters outlined in section 4.2.1 of this report. Following the receipt of further information, refusal was recommended. The concerns are generally reflected in reason no. 1 of the KCC decision.

Housing: No objections subject to conditions.

Parks: No objections subject to conditions.

Heritage Officer: No objections subject to conditions.

Strategic Projects & Public Realm: Comments were made of the design, layout, connectivity, boundary treatment etc.

Kildare Newbridge Municipal District: Recommends conditions to be attached.

#### 4.3. **Prescribed Bodies**

Uisce Eireann: No objections subject to conditions.

DAU: No objections subject to conditions regarding further archaeological impact assessment.

TII: Relies on the Planning Authority to Abide by official policy. The development shall be undertaken in accordance with the TTA and RSA.

#### 4.4. **Third Party Observations**

The planning authority received 5 no. submissions during the initial consultation period, followed by 2 no. submissions on the significant further information received. Many of the issues raised are covered in the observations received on the appeal (see section 7.2 of this report). Any additional issues can be summarised as follows:

- The vehicular link will impact on how the junction on the R445 road will service a link road to Mellita Road and service 3 large schools including the proposed new 1000+ pupil school at Magee Barracks.
- The scheme should be redesigned to include a link road through imminent development planned by KCC on lands at Coolaghknock.

- Concern that residents may complain about noise associated with the tyre centre.
- Surface water drainage is a significant concern as flooding has been experienced in surrounding areas.
- Open space is not sufficiently distributed to serve the rear of the site.
- Clarification of boundary treatment is required.
- The age-friendly units should be conditioned for such use.
- The need to minimise demand for energy.
- The site is within 500m of the No. 126 bus route and should be developed to a minimum density of 50 dwellings per hectare.
- The EIAR must consider reasonable alternatives such as building forms, solar-powered streetlights, lower carbon intensive materials, car travel/parking, carbon and environment related impacts, 2022 census statistics, EU energy/climate policy, district heating, and mitigation of peak electricity demand.
- The need to comply with all ministerial policy.
- The need to exceed Irish Building Regulations to comply with EU policy.
- Fast EV chargers are no longer favoured in EU Directives.
- The inclusion of multiple linkages with the Ruanbeg estate would intrude on the amenity of residents and generate anti-social behaviour.

## 5.0 Planning History

5.1. **P.A. Reg. Ref: 07/2326:** On 2<sup>nd</sup> March 2009, KCC issued a grant of permission for the construction of 204 no. houses and a commercial centre (1257m<sup>2</sup>).

**P.A. Reg. Ref. 11/161:** On 17<sup>th</sup> February 2011, an application for the extension of duration of P.A. Reg. Ref: 07/2326 was received. The application was deemed 'incomplete'.

## 6.0 Policy Context

### 6.1. National Policy

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

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024), Department of Housing, Local Government and Heritage.
- Design Manual for Urban Roads and Streets (DMURS) (2019).
- The Planning System and Flood Risk Management (including the associated Technical Appendices) (2009).
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2023) (i.e. 'the Apartments Guidelines').
- Delivering Homes, Sustaining Communities (2007) and the accompanying Best Practice Guidelines - Quality Housing for Sustainable Communities.
- Childcare Facilities – Guidelines for Planning Authorities 2001 and Circular PL3/2016 – Childcare facilities operating under the Early Childhood Care and Education (ECCE) Scheme.
- Regulation of Commercial Institutional Investment in Housing – Guidelines for Planning Authorities (May 2021).

Other relevant national guidelines include:

- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2009).
- Nature-based Solutions to the Management of Rainwater and Surface Water Runoff in Urban Areas Water Sensitive Urban Design Best Practice Interim Guidance Document, Department of Housing, Local Government and Heritage (2021).

6.1.2. 'Housing for All - a New Housing Plan for Ireland (September 2021)' is the government's housing plan to 2030. It is a multi-annual, multi-billion-euro plan which aims to improve Ireland's housing system and deliver more homes of all types for people with different housing needs. The overall objective is that every citizen in the State should have access to good quality homes:

- To purchase or rent at an affordable price
- Built to a high standard in the right place
- Offering a high quality of life.

6.1.3. 'Project Ireland 2040 – The National Planning Framework (NPF)' is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains several policy objectives that articulate the delivery of compact urban growth as follows:

- NPO 3 (c) aims to deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints.
- NPO 4 promotes attractive, well-designed liveable communities.
- NPO 6 aims to regenerate towns and villages of all types and scale as environmental assets.
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards.
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking.
- NPO 27 seeks to integrate alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility.
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location.
- NPO 35 seeks to increase densities through a range of measures including site-based regeneration and increased building heights.

6.1.4. The Climate Action Plan 2023 implements carbon budgets and sectoral emissions ceilings and sets a roadmap for taking decisive action to halve our emissions by 2030 and reach net zero no later than 2050. By 2030, the plan calls for a 40% reduction in emissions from residential buildings and a 50% reduction in transport emissions. The reduction in transport emissions includes a 20% reduction in total vehicle kilometres, a reduction in fuel usage, significant increases in sustainable transport trips, and improved modal share.

## 6.2. **Kildare County Development Plan 2023-2029**

6.2.1. The CDP has designated Kildare as a Self-Sustaining Growth Town. The CDP Core Strategy allocates 4.7% of the county housing and population target to the town of Kildare (a target increase of 1,182 persons or 430 units). Objective CS O1 is that future growth and spatial development is in accordance with the population and housing allocations contained in the Core Strategy.

6.2.2. Chapter 5 deals with 'Sustainable Mobility & Transport' and aims to promote and facilitate ease of movement by integrating sustainable land use planning and a high-quality integrated transport system; and to support and prioritise investment in more sustainable modes of travel, the transition to a lower carbon transport system, and the development of a safer, efficient, inclusive, and connected transport system. Relevant policies can be summarised as follows:

TM P1: Promote sustainable development through facilitating movement to, from, through and within the County that is accessible to all and prioritises walking, cycling and public transport.

TM P2: Prioritise and promote the development of high-quality, suitable, safe and sustainable walking and cycling pathways and facilities within a safe road/street environment that will encourage a shift to active travel that is accessible for all.

6.2.3. Section 6.6 of the CDP deals with Surface Water/Drainage and highlights the importance of compliance with best practice guidance and the use of Sustainable Urban Drainage Systems (SuDS). Relevant policies, objectives, and actions can be summarised as follows:

IN O21 - Facilitate the development of nature-based SuDS.

IN O22 - Require SuDS and other nature-based surface water drainage as an integral part of all new development proposals.

IN O23 – Reduce storm water run-off and ensure that it is disposed of on-site or attenuated and treated prior to discharge with consideration for ground infiltration, storage, and slow-down.

IN O24 - Only consider underground retention solutions when all other options have been exhausted. Underground tanks and storage systems will not be accepted under public open space, as part of a SuDS solution.

IN O26 - Ensure as far as practical that the design of SuDS enhances the quality of open spaces. SuDS do not form part of the public open space provision, except where it contributes in a significant and positive way to the design and quality of open space. In instances where the Council determines that SuDS make a significant and positive contribution to open space, a maximum of 10% of open space provision shall be taken up by SuDS. The Council will consider the provision of SuDS on existing open space, where appropriate. The ‘Sustainable Urban Drainage Systems Guidance Document’ prepared as an action of this plan shall supersede this standard.

IN O30 - Require all plans and projects to comply with the Best Practice Interim Guidance Document ‘Nature-based solutions to the management of rainwater and surface water runoff in Urban Areas (2021)’ published by the Department of Housing, Local Government and Heritage, or any subsequent updates to same.

IN A3 - Develop a ‘Sustainable Urban Drainage Systems Guidance Document’ for County Kildare within one year of the adoption of the Plan.

6.2.4. Section 6.7 of the CDP deals with Flood Risk Management and highlights the need to consider/manage risk as part of the planning process. Objective IN O33 is to manage flood risk in accordance with the sequential approach and requirements of the Planning System and Flood Risk Management Guidelines for Planning Authorities, DECLG and OPW (2009) and circular PL02/2014 (August 2014), and to require, for lands identified in the Strategic Flood Risk Assessment, a site-specific Flood Risk Assessment.

6.2.5. Section 12.14.11 deals with Green Infrastructure and SuDS and relevant policies and objectives can be summarised as follows:

BI P15 - Promote SuDS to ensure surface water is drained in an environmentally friendly way by replicating natural systems.

BI O76 - Promote SuDS such as integrated constructed wetlands, permeable surfaces, filter strips, ponds, swales and basins at a site, district and county level and to maximise the amenity and bio-diversity value of these systems.

BI O77 - Integrate nature-based solutions and climate change considerations into the design, planning, and implementation of infrastructure provision/ works and development proposals at the earliest possible stage.

BI O78 - Actively promote and encourage nature-based approaches and green infrastructure solutions as viable mitigation and adaptation measures to surface water management.

6.2.6. Section 13.7 deals with Urban Recreation and Amenity. Objective LR O82 requires the provision of good quality, well located and functional open space in new residential developments, including landscaping with native species and scale appropriate natural play areas to cater for all age groups.

6.2.7. Chapter 15 deals with Development Management Standards and relevant aspects can be summarised as follows:

Section 15.6.6 outlines a range of standards relating to public open space in residential developments. On greenfield sites, the minimum portion of open space is 15%, which may include Natural / Semi-Natural Green Spaces up to a maximum of 8%. In cases where there is a shortfall in the provision of open space due to the practicalities of the site (e.g., unsuitable due to topography, flooding, gradient, SuDS, overhead powerlines etc.) the council will require an equivalent monetary contribution in lieu of remaining open space provision via the Kildare County Council Development Contribution Scheme. SuDS are not generally acceptable as a form of public open space provision, except where they contribute in a significant and positive way to the design and quality of open space. Where the Council considers that this is the case, in general a maximum of 10% of the open space provision shall be taken up by SuDS. Underground tanks and storage systems will not be accepted under public open space, as part of a SuDS solution.

Section 15.8 sets out a range of guidance and standards for surface water. It states that SuDS are the most appropriate for surface water management and that Nature Based solutions should be considered in the first instance.

### 6.3. Kildare Town Local Area Plan 2023-2029

6.3.1. The LAP was adopted on the 26<sup>th</sup> of October 2023. Shortly after the making of the local authority decision on this case (9<sup>th</sup> November 2023), the LAP came into effect on the 6<sup>th</sup> of December 2023.

6.3.2. The LAP expands on the CDP Core Strategy to target 502 additional housing units (1,380 persons) within the plan period. The majority of the site is zoned as 'CP2: Phase 2 New Residential', the objective for which is:

*To protect future development lands from inappropriate forms of development which would impede the sequential expansion and consolidation of the town in terms of providing for new residential development for future plans.*

*The inclusion of these lands will not in any way infer a prior commitment regarding the nature of any future zoning. Such a decision will be considered within the framework of the need for additional zoned lands and the proper planning and sustainable development of the area.*

6.3.3. A footnote (No. 75) associated with the zoning objective states that the land identified as Phase 2 could be brought forward for New Residential through a statutory amendment under Section 20 of the Planning and Development Act 2000 (as amended) to align the local area plan with any future revised population growth contained in any possible variation to the Core Strategy of the Kildare County Development Plan 2023-2029. In the event that there is a significant unmet social housing demand in the Kildare Town area, proposals for social housing schemes on Phase 2 may be considered during the plan period subject to all other assessments.

6.3.4. A small portion in the central/western part of the site (adjoining Ruanbeg Park) is zoned as 'F – Open Space and Amenity', the objective for which is:

*To protect and provide for open space, amenity and recreation provision.*

6.3.5. Chapter 7 deals with Movement and Transportation and aims to enable residents to reduce their carbon emissions through the provision of sustainable mobility



alternatives and pursuing the delivery of the 10-minute settlement concept. Relevant provisions include the following:

MTO 1.1 aims to implement specific walking / cycle measures, including 'Cycle 10 – Dublin Road (Meadow Road to Curragh) - Cycle track/cycle lane (Short-medium term timeframe)'.

MTO 1.4 & MTO 1.5 require suitable connectivity/permeability in new developments.

MTO 1.11 is to ensure the provision of footpaths/improvement works (and cycle track / cycle lane where appropriate) on both sides of the R445 Dublin Road.

MTO 2.1 is to improve public transport, including bus stop facilities along Dublin Road (PT3).

6.3.6. Chapter 9 deals with Natural heritage and Green Infrastructure. Relevant provisions include the following:

NHO 1.3 is to encourage and promote appropriate sustainable access from Kildare Town to the Curragh.

NHO 2.2 promotes the protection and integration of hedgerows and treelines identified on the site in Map 9.1.

NHO 3.1 requires all development proposals located within the 'Curragh Buffer Zone' (as identified along the eastern site boundary on Map 9.1) to include a tree planting programme of native trees to protect the ecological/amenity value of the Curragh.

6.3.7. Section 10.3 deals with Surface Water and Groundwater and confirms that there is no municipal surface water management scheme in the town. As part of the preparation of the LAP, the Kildare Town Surface Water Study was commissioned to provide a municipal-level, multi-site nature-based solution(s) to surface water management in the town. The locations for Nature-Based Management Areas (NBMAs) and indicative surface water pathways / natural drainage paths are shown on Map 10.1, which includes 'surface water pathways' leading to a NBMA in the central/western portion of the appeal site (adjoining Ruanbeg Park). Relevant objectives can be summarised as follows:

IO 2.1 - Pursue opportunities to increase surface water drainage capacity in the town as identified in the Surface Water Study.

IO 2.2 - Prepare a Surface Water Masterplan based on the Surface Water Study.

IO 2.3 - Incorporate nature-based water drainage solutions as part of all plans and projects. Proposals shall align with the Surface Water Study, the Surface Water Masterplan (once finalised), and the County Kildare Sustainable Urban Drainage Systems Guidance Document (once finalised).

IO 2.4 - Ensure NBMA's are reserved free from development and integrated into design proposals for nature-based surface water drainage purposes; whilst also ensuring a network of Surface Water Corridors (surface water pathway corridors) are provided in accordance with the indicative locations shown on Map 10.1.

- 6.3.8. Section 10.4 deals with Flood Risk Management. Objective IO 3.1 is to require a site-specific FRA for developments within the Pluvial Flood Risk Area as outlined on Map 10.2 (which includes the central/northern portion of the site).

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

- 7.1.1. The KCC decision to refuse permission has been appealed by the applicant (MRP Oakland Ltd). The appeal is accompanied by a response report prepared by Punch Consulting Engineers, a legal Advisory Note prepared by Mason Hayes & Curran LLP, as well as a copy of the applicant's submission as part of the public consultation on the Draft LAP.
- 7.1.2. The appeal outlines that the site has been zoned for residential development for over 20 years; that planning permission was previously granted on the site; and that the local authority's assessment of the application was supportive in many respects. The grounds of appeal address each of the reasons for refusal, which can be summarised under the following headings.
- 7.1.3. Reason 1 – Surface Water Drainage and Flood Risk

The response refers to the accompanying PUNCH report and addresses the grounds for refusal under the following headings.

### KCC Decision

- The Water Services report recommended refusal on 2 specific technical matters:  
(a) the proposed gravel trenches and the absence of a minimum 1m unsaturated zone above high site groundwater level, and  
(b) the absence of a low-flow channel-bioswale along the drainage corridor, the possible under design of the NBMA, and the veracity of the conclusion in the revised FRA).
- The Water Services report did not recommend refusal on the development being contrary to CDP policies INO24, INO26 & INO33, or that it would be premature pending the development of a SuDS guidance document for the county or a Surface Water Masterplan (SWM) for the town.
- The approach is unreasonable and lacks consistency.

### Prematurity

- Prematurity regarding a SuDS guidance document or a SWM is unreasonable in the context of the policies referenced and the absence of any clear timeline for their adoption.
- Policy IO 2.2 gives no timeline for the SWM.
- Policy IN A3 gives a 1-year timeline (from 9<sup>th</sup> December 2022) for the SuDS guidance document but there is no evidence of it being produced.
- There is nothing in the CDP or LAP that restricts granting permission in the absence of these plans.
- A refusal of permission on the basis of prematurity would be contrary to Section 7.16.1 of the Development Management Guidelines for Planning Authorities.
- The SWM is extraneous to the development which provides an independent drainage proposal and does not rely on town drainage to function.
- The proposed SuDS measures accord with the CDP (including IN O24 & IN O26) and therefore permission need not be withheld pending further guidance.

### SuDS & Public Open Space

- In addition to INO24 and INO26, the appeal highlights other provisions of the CDP, namely sections 6.6, 12.14.11, and 15.6.6, and Policies IN O21, IN O22, IN O23, BI P15, BI O76, BI O77, BI O78. These evidence strong support for the provision of SuDS and nature-based surface water management measures.
- The proposal includes a range of combined underground and overground features. The underground tanks have been included having firstly maximised the use of overground elements as per IN O24.
- SuDS features and tanks along roads/hard surfaces can only provide a certain share of the overall requirement.
- The alternative would be to provide additional dedicated space for SuDS features, which would not be classed as public open space and would significantly lower residential below CDP requirements.
- Notwithstanding IN O24 & IN O26, a wider reading of the CDP makes it evident that the proposals may not represent a material contravention of the CDP. In the event that the Board considers that it does, a justification to grant permission is outlined in response to refusal reason no. 2 (below).
- The planning authority chose to ignore S.15.6.6 of the CDP, which allows for the payment of a monetary contribution in lieu of public open space in such cases. The applicant would have no objection to the inclusion of such a condition.
- The inclusion of SuDS above/below public open space was unavoidable but was nonetheless properly designed in accordance with policies IN O21, IN O22, BI O76, BI O77, & BI O78.

### Uncertainty of proposals

- The appeal raises concerns that the applicant was not given an opportunity to address all technical matters.
- There is no requirement in the LAP for a 'low flow channel bioswale' along the identified drainage corridor. It simply requires a 'drainage pathway' as per Map 10.1, which shows only 'indicative' routes.

- In accordance with the LAP, a drainage pathway to connect upstream areas through the development is provided by piped drainage within the design.
- Regarding the NBMA, the LAP does not provide any guidance on the sizing of same (other than the definition/zoning of the area as Open Space).
- The design incorporates the full extent of the NBMA, which is kept free of other development or recreational use.
- Design and capacity proposals for the NBMA were included in the application (PUNCH 'Engineering Planning Report' and FI Response) which are in accordance with LAP guidance, including an explanation of how upstream areas would provide their own attenuation.
- Regarding the gravel trenches under Tank A, the PUNCH appeal report confirms that the proposed infiltration storage is provided in excess of 1m above the highest recorded groundwater level.
- Overall, the technical matters have been addressed in the PUNCH design; did not warrant a refusal of permission; and can be addressed as a condition of permission, if necessary.

### Flood Risk

- The flood risk claims are unsubstantiated.
- The pluvial flood risk stems from flood modelling as part of the LAP preparation.
- The applicant's submission on the LAP questions the accuracy and source of the flood mapping, which could be due to the modelling incorrectly identifying adjoining lands to the southwest as hard standing (it is pervious surfacing), or possibly due to the existing site topography.
- The possible flood risk is not rejected in the Site-Specific FRA. It demonstrates that the risk would be appropriately addressed/mitigated.
- The indicative pluvial flooding was addressed in the FI Response, which provided drainage attenuation for the site within below ground infiltration tanks.
- The risk has been addressed in a comprehensive manner in accordance with the Flood Risk Guidelines. The reason to refuse permission is completely unfounded.

#### 7.1.4. Reason 2 – Zoning & Core Strategy

The appeal response to this reason for refusal can be summarised under the following headings.

##### KCC Decision

- Given the date of the refusal (9<sup>th</sup> November 2023), this refusal reason was illegitimate given that the LAP did not come into effect until 7<sup>th</sup> December 2023.
- It is acknowledged that the new LAP will be in operation at the time of the Board's decision and the site will be zoned 'C: New Residential (Phase 2)'.
- The applicant remains of the view that the restriction on the zoning is unwarranted and has occurred primarily due to the need to align with CDP population/housing targets.
- However, the Core Strategy figures are significantly underestimated given that they relied on pre-Census 2022 figures. The Census indicates a population of 10,302 persons for the town, which has likely already surpassed the 2028 target in the CDP and is close to the 2029 target of 11,541 as per the LAP.
- The Minister has outlined that the NPF figures need to be reviewed and this will likely result in far greater population and housing targets. A directive has also been issued to local authorities not to de-zone land in new development plans.

##### Material Contravention

- Notwithstanding the Phase 2 designation, the site remains zoned for residential development. It has not been zoned for an alternative use or Strategic Reserve.
- The Board's justification for granting the proposal in accordance with Section 37(2)(b) of the Act would be supported under the following provisions.

(i) Strategic or national importance

Having considered national and regional policy, it is contended that the proposed development would:

- Contribute to Government policy in 'Rebuilding Ireland' and 'Housing for All' to significantly increase housing delivery in the short term.
- Contribute to addressing significant shortfalls in housing supply targets.

- Contribute to Kildare Town’s designation as a Self-Sustaining Town.
- Support sustainable development at an appropriate scale relative to its location and adjacent residential areas.
- Create an attractive community, a mix of housing, and a high quality of life.
- Contribute to the rejuvenation of the town providing increased population and enhance levels of amenity.

(ii) Conflicting / unclear objectives

Having considered the CDP and LAP objectives, it is contended that:

- The policies and objectives facilitate the continued residential growth and consolidation of Kildare Town.
- The LAP objectives also seek to provide increased permeability (PERM 24) and strategic drainage (Map 10.1) through the appeal site.
- The above objectives conflict directly with the zoning of the lands as ‘Phase 2’, which restricts the lands from being developed.
- Having considered Policy IN O24 (prohibiting outright underground storage tanks and storage systems); Policy IN O26 (limiting overground SuDS features to only 10% of the public open space); and s. 15.6.6. (allowing a monetary contribution for shortfalls in open space); there is a lack of clarity as to how SuDS within public open space is to be assessed.

(iii) RSES, S. 28 Guidelines, S.29 Directives, statutory obligations, and other relevant government/ministerial policy

The LAP zoning provisions fail to comply with statutory obligations as per s. 20(5) of the Act by reference to the following.

National Planning Framework

- Failure to act in a manner consistent with Objectives 72, 72a and Appendix 3 of the NPF.
- The tiered approach to zoning is solely based on infrastructure and not any other planning factors. The NPF recognises that other factors may be considered in assessing the zoning of lands.

- The 'scoring matrix' and associated zoning exercise carried out in the LAP is therefore inconsistent with the NPF.

The Development Plan: Guidelines for Planning Authorities (2022)

- As per section 4.4.3 of the Guidelines, it is not a requirement that the quantum of zoned land adheres precisely to projected housing demand.
- The LAP erroneously misinterprets sections 4.4 & 4.4.1 of the Guidelines in relation to 'land/sites already zoned' and 'extant permissions'.
- Section 4.3 of the RSES is highlighted in relation to 'Taking Account of Existing Plans'.

Other Guidelines

The proposed development complies with the following Guidelines.

- The aims of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) and the accompanying Urban Design Manual (now revoked).
- The standards and SPPRs in Sustainable Urban Housing: Design Standards for New Apartments (July 2023).
- The proposed creche complies with Childcare Facilities Guidelines for Planning Authorities (2001).
- Compliance with the 4 Design Principles of the Design Manual for Urban Roads and Streets (2019)(DMURS).

(iv) Pattern of development and permissions granted

- Since the adoption of the CDP, no permissions have been granted in the town for commercial residential development (i.e., 3 or more houses).
- During the same time, several permissions have been refused despite the designation of the town to provide for growth, including:
  - P.A. Reg. Ref: 23/416: 168 no. units at Southgreen Road (Note: subsequently granted under ABP Ref. 318401).
  - P.A. Reg. Ref: 23/60104: 10 no. apartments at Tully Road
  - P.A. Reg. Ref: 23/303: 20 no. apartments at Dublin Road



- P.A. Reg. Ref: 23/60110: 96 no. elderly housing units at Athy Road.
- The site is adjacent to 2 large residential communities and is therefore within a well-established residential area.
- The lands have been zoned for residential uses since 2002; represent a logical expansion of residential development; would provide much-needed connectivity between residential areas; and would provide amenities to serve the wider area.
- The proposal should have been granted having regard to the pattern of development, the established character of the area, and the potential to provide significant benefits to existing communities.

#### 7.1.5. Reason 3 – Sustainable Transport & Traffic

- The proposed development includes significant improvement measures for cyclists and Vulnerable Road Users (VRUs) for the 290m road frontage. These measures (together with the location within the 50 km/ph speed limit) will help reduce traffic speed.
- The proposals also facilitate proposed/future pedestrian/cyclist links with the adjoining residential areas, as per CDP Policies TM O20 and TM O21.
- The policies quoted in the refusal reason (TM P1 and TM P2) are clearly more strategic policies which promote Active Travel measures (also reflected in Policy MTO 1.1). These measures are principally the responsibility of the local authority (and the NTA) to deliver within and between its settlements and cannot be delivered by the applicant. Furthermore, the proposal does not in any way conflict or prejudice the broader aims of TM P1 and TM P2.
- The application provided a design for the cycle track and traffic-calming measures along the R445 to the junction with French Furze Road/Rowanville. It was not proposed as part of the application due to the inclusion of numerous third-party properties. It was also considered unreasonable to expect the applicant to deliver the works given that it is a wider Active Travel measure identified in the LAP to serve the entire eastern side of the town and is not designated as a piece of infrastructure to exclusively serve the appeal site. The applicant would agree to pay a contribution towards the cost of the works, once the cost is proportionate and equitable.

#### 7.1.6. Reason 4 - EIAR

The response can be summarised under the following headings.

##### Alternatives

- The KCC concerns about the accuracy of zoning information misinterprets the EIA Directive. The environmental impacts remain the same, irrespective of zoning objectives or the phasing/delivery timeframe.
- The EIAR has considered alternatives in accordance with the requirements of EIA Directive and EC Guidance. It has considered the 'do nothing' scenario, alternative locations, alternative use, and alternative designs.
- As per the EIA Directive, the alternatives have been described and assessed, and the reason for selecting the preferred alternative has been outlined.

##### Population and Human Health

- The planner's report appears to agree with the findings, yet the refusal reason indicates that this chapter lacks robust conclusions and is deficient.

##### Biodiversity

- The planner's report appears to agree with the findings, yet the refusal reason indicates that this chapter lacks robust conclusions and is deficient.

##### Land, Soils and Geology

- The planner's report appears to agree with the findings, yet the refusal reason indicates that this chapter is deficient.

##### Hydrology & Water Services

- The planner's report considered the issues raised by Water Services, the significance of the underlying Groundwater Body, and the potential implications for Biodiversity and Appropriate Assessment.
- However, the planner's report concluded that the assessment of impacts and mitigation measures proposed are considered to be reasonable.

##### Climate & Air

- The planner's report appears to accept the assessment and mitigation measures.

- It notes that the Environment Section report recommends the attachment of conditions, which the applicant would be willing to accept.
- It is therefore unclear why this was identified as deficient in the refusal reason.

#### Traffic and Transportation

- Concerns about accessibility (as per Reason 3) have already been addressed.
- However, these concerns were not raised in the context of the EIAR.

#### Interactions

- The planner's report appears to agree with the findings, yet the refusal reason indicates that this chapter is deficient.

#### Mitigations measures

- The planner's report indicates that the measures are clear and acceptable.

#### Compliance with Article 5(1) of the EIA Directive

The EIAR contains adequate information on the likely significant environmental effects as follows:

- A description of the project as outlined in Chapter 3 and a description of the receiving environment and the project as relevant to each chapter.
- A description of the likely significant effects in each chapter, including potential impacts, cumulative impacts, mitigation measures, and predicted impacts, as well as interactions as outlined in Chapter 15.
- A description of the mitigation measures that will avoid, prevent or reduce any likely significant effects.
- As description of alternatives as previously outlined.
- The additional information as per Vol. 2 (Appendices) of the EIAR.
- The EIAR has been carried out in accordance with EC Guidance by competent experts. It includes a clear description of the project, the environmental setting, and the environmental impacts, which allows for mitigation measures and a reasoned conclusion in accordance with all applicable legislation and guidance.

## 7.2. Observations

The Board has received two observations on the appeal. The observations support the KCC decision and are summarised below.

### Cllr. Suzanne Doyle

- The development of 'Phase 2' lands would be premature.
- The town has experienced recent rapid growth through new developments in South Green, Rathbride Road, Grey Abbey, and Magee Barracks SHD, which increase housing units by 1,000+. This exceeds the projected growth for the town as per the CDP settlement strategy.
- A recent KCC LCDC report outlines significant deprivation factors in the town such as education. Recent development in the town has been at a higher density rate which may create a mono socio-economic demographic and compound deprivation factors. More low-density development is needed to create balanced communities and would be suitable at this location.
- The LAP identifies a significant pluvial flood risk affecting the site. The development poses a risk to a key access route, neighbouring residences, and employers, and would be premature until such time as the matter is resolved.
- The town suffers from a chronic lack of social infrastructure such as education, health services, recreation/amenity facilities and community facilities, and there is no clear means of delivery in the LAP. A recalibration of development is required to allow social infrastructure to support the fast-growing population.

### Residents of Ruanbeg Avenue & Park

- Based on the Phase 2 zoning, the development is premature and out of sequence with the planned sustainable growth of the town.
- The application does not address the pluvial flood risk concerns outlined in the draft LAP. The solution needs to be a comprehensive town-wide approach and not piecemeal in each estate.
- The inclusion of vehicular access through Ruanbeg estate is unsustainable and poses serious health and safety risks to residents and vulnerable road users.

- The Ruanbeg estate has insufficient road capacity to support existing residents in terms of parking, visibility, visitor access, and emergency services. The occupancy rates of the existing and proposed houses would be high and this needs to be considered in the assessment.

### 7.3. **Prescribed Bodies**

None.

### 7.4. **Planning Authority Response**

The Planning Authority notes the content of the appeal and confirms that its opinion remains the same. It refers the Board to the planner's report and the other reports and submissions received in connection with the application.

## 8.0 **Assessment**

### 8.1. **Introduction**

- 8.1.1. I have considered all of the documentation and drawings on file, the planning authority reports, the submissions/observations from third parties and prescribed bodies, the statutory Development Plan and Local Area Plan, as well as relevant national policy, regional policy and section 28 guidelines.
- 8.1.2. Having regard to the foregoing, I consider that the main planning issues arising from this LRD appeal can be addressed under the following headings:
- The principle of the development
  - Surface Water Drainage and Flooding
  - Traffic & Transport
  - Design, Layout, and Development Standards
  - Other matters.

### 8.2. **The principle of the development**

- 8.2.1. I note the appeal concerns about the evolving status of the LAP zoning during the assessment of the application and the making of the decision. However, the LAP 2023-2029 is now in effect and the Board is required to determine the appeal based on its provisions.

- 8.2.2. As previously outlined, the majority of the site is zoned as 'CP2: Phase 2 New Residential'. The zoning objective aims to protect future development lands from inappropriate forms of development which would impede the sequential expansion and consolidation of the town in terms of providing for new residential development for future plans. However, it does not infer any prior commitment regarding future zoning, and the associated footnote (no. 75) outlines that any bringing forward of the lands for residential development of the nature proposed would be via a statutory amendment (under S.20 of the Act) to align the LAP with any future revised population growth contained in any possible variation to the Core Strategy of CDP.
- 8.2.3. In addition to the zoning objective, other provisions of the LAP clearly outline the lack of development potential on 'CP2: Phase 2 New Residential' lands. Section 3.6 'Projecting Residential Yield' confirms that the lands have 'no potential for development'. Core Strategy Objective CSO 1.10 aims to preserve the lands from inappropriate forms of development, thereby controlling the level of piecemeal and haphazard development on these lands and safeguarding their strategic value in accommodating the orderly sequential expansion of the urban settlement beyond the current Plan period. Furthermore, the 'CP2: Phase 2 New Residential' zoning objective is not at all included within the Zoning Matrix, which outlines the acceptability of various uses within each of the LAP zones.
- 8.2.4. Having regard to the foregoing, I am satisfied that the principle of the proposed development would not be acceptable in accordance with the LAP provisions. Furthermore, I would concur with the KCC decision that the proposed development would materially contravene the 'CP2: Phase 2 New Residential' zoning objective in the LAP. It should be noted that the KCC decision states that the proposal would 'undermine' the Core Strategy of the Kildare County Development Plan 2023-2029 but does not state that it would materially contravene the CDP.
- 8.2.5. In my opinion, the CDP Core Strategy outlines housing/population targets which should not represent an absolute limit. This view would be supported by the fact that the Kildare Town LAP has already expanded on the Core Strategy targets (see sections 6.2.1 and 6.3.2 of this report). Therefore, I do not consider that there would be a material contravention of the CDP Core Strategy.

8.2.6. In the event that the Board considers that there is a material contravention of the CDP, it will be aware that s. 37 (2)(a) of the Act still allows a grant of permission. Section 37 (2)(b) of the Act addresses circumstances where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan. It is my opinion that the KCC decision refers to a material contravention of the LAP and not the 'development plan'. However, the appeal raises the question of s. 37(2)(b) and I proposed to address the issue in the interest of completeness. In the event that the Boards determines that s. 37(2)(b) does apply, it may only grant permission where it considers that one of the following circumstances ((i) to (iv)) applies.

(i) Strategic or national importance

8.2.7. I acknowledge the strategic and national importance of housing supply in general. The new housing plan for Ireland 'Housing For All' outlines that housing supply is not meeting the needs of the population and this challenge continues to prevail. However, the housing system and the issue of supply is multi-faceted. And with regard to land-zoning, it is important that an appropriate quantity of land is provided in suitable locations in accordance with a hierarchical plan-led system.

8.2.8. Based on the NPF and the identification of 'growth towns' in the EMRA RSES, the CDP has designated Kildare as a 'Self-Sustaining Growth Town'. The Core Strategy allocates 4.7% of the county housing and population target to the town, resulting in a target increase of 1,182 persons and a housing target of 430 units.

8.2.9. The LAP acknowledges that the Census 2022 population figure for the town (10,302) was not factored into the CDP Core Strategy, and also that the LAP must consider an additional 12-months growth compared to the earlier CDP. Therefore, it expands on the CDP targets to accommodate 1,380 persons or 502 units. The LAP (Table 3-4) also considers the issue of extant planning permissions, outlining a total of 985 units (897 of which have commenced). The other units (87 no. units at Rathbride Road) have since been permitted by the Board (ABP Ref. 313008-22). In addition to this, I would note that the Board recently issued a decision to grant permission for another 166 no. units at South Green Road (ABP Ref. 318401-23). Therefore, of the 1,188 no. units identified in the Residential Development Capacity Audit (Table 3-7

of the LAP), I note that developments amounting to c. 897 units have commenced and a further 253 no. units have been permitted).

- 8.2.10. This quantum of housing (1150 units) significantly exceeds the housing targets as outlined in the CDP and LAP (430 units and 502 units respectively). However, section 3.8 of the LAP acknowledges this issue, outlining that the situation occurs due to a legacy of surplus residential zoned land from previous local area plans.
- 8.2.11. I note the appellant's concerns that the population/housing targets outlined in the CDP and LAP are underestimated and have already been largely achieved. In this context, I also note that the process to revise the NPF has commenced. The 'Road Map' for the revision (June 2023) acknowledges that an update of demographic modelling and related housing demand projections will be undertaken. The timeline indicated that a draft revision would be published by January 2024, with the final revision being published in March 2024. The 'Report of Expert Group for the First Revision of the National Planning Framework' was completed in August 2023 and would inform the preparation of an 'Issues Paper' for stakeholder consultation.
- 8.2.12. I consider that the LAP has zoned sufficient land to meet the growth/housing targets as outlined in the CDP. Indeed, the LAP significantly exceeds those targets due to the legacy issues previously discussed. In turn, the CDP has been prepared in accordance with regional and national housing policy. And while I acknowledge that the process of reviewing national housing policy/targets has commenced in light of changing demographics and the ongoing housing shortage, I would consider it premature to consider the development of these lands in the absence of a hierarchical and plan-led review of housing requirements.
- 8.2.13. I acknowledge the strong pipeline supply of housing currently being delivered in Kildare Town. And while this supply may meet or exceed housing targets at an early stage of the LAP lifetime, I do not consider that this would warrant a grant of permission in this case. As yet, despite the ongoing housing shortage at national level, there is no empirical policy evidence to support the development of these lands. Accordingly, I consider that the strategic importance of the site is limited to its role in protecting land for future development, rather than in the supply of housing in the short term.



8.2.14. Having regard to the forgoing, I do not consider that a material contravention would be justified on the grounds that the proposed development would be of strategic or national importance.

(ii) Conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned

8.2.15. As previously outlined in section 8.2.4. above, it is my opinion that the LAP is clear regarding the unacceptability of the proposed development within the 'CP2: Phase 2 New Residential' zoning objective. And while the LAP acknowledges the need to consolidate the town and facilitate further growth/expansion, it also provides a reasoned basis to meet these requirements on more suitable sites in accordance with local, regional, and national policy.

8.2.16. The appeal refers to other specific objectives and contends that they conflict with the restriction on development of the lands within the 'Phase 2' zoning objective. It refers to objective 'PERM 24' as a pedestrian/cyclist link connecting Ruanbeg to Coolaghknock Gardens. However, while this objective may have formed part of the draft LAP, it should be noted that it was not included in the adopted LAP.

8.2.17. The appeal also contends that the inclusion of strategic drainage objectives on the site conflicts with the 'Phase 2' zoning. The Surface Water Study (SWS) accompanying the LAP is based on a wider assessment of the zoning map contained in the earlier LAP (2012-2018). It contains maps for 6 subcatchments surrounding the town centre and recommends that following site-specific SuDS measures, surface water should be conveyed from each site to potential Nature Based Management Areas (NBMAs) in the directions indicated on the maps via open swales where feasible.

8.2.18. The appeal site is located within Subcatchment 3. The proposed drainage strategy outlines that a potential corridor was identified from Coolaghknock Site D (north of the appeal site) down to a potential NBMA at a central western position within the appeal site. It indicates that surface water within the appeal site would also drain towards this NBMA. It states that there is no obvious outlet for NBMAs at this location due to the Ruanbeg Housing estate located downstream. Therefore, infiltration is proposed through bioretention areas, infiltration basins or similar. Consequently, the SWS 'Conceptual Overview' (Appendix A) includes proposals for

'Recommended SW Drainage Corridors' and a 'Potential NBMA' within the appeal site. These are reflected as 'surface water pathways' and 'nature based management areas' on CDP Map 10.1.

- 8.2.19. The Board should note that the drainage strategy for Subcatchment 3 is not presented as a linked strategy. The appeal site and adjoining lands to the north are effectively treated separately (i.e., Sites D, E, P, L, and C). Furthermore, it should be noted that all these sites are zoned as 'Phase 2' lands which are not suitable for development within the LAP period. Therefore, given that drainage objectives pertaining to the appeal site are part of a strategy for a larger area, all of which is within the 'Phase 2' lands, I do not consider that the zoning of the site as 'Phase 2' lands would conflict with the LAP drainage objectives. I would consider it unreasonable to conclude that the drainage objectives need to be achieved on the appeal site to facilitate other development specifically identified in the LAP.
- 8.2.20. The appeal also contends that there is a lack of clarity regarding the treatment of SuDS proposals within public open space (i.e., as per Policy IN O24, Policy IN O26, and s. 15.6.6.). However, this is not relevant to the pertinent question regarding conflict or clarity around the zoning objective for the site. These matters will be dealt with later in this report.
- 8.2.21. Having regard to the foregoing, I consider that the proposed development would clearly and materially contravene the zoning objective for the site, and I do not consider that a grant of permission would be warranted on the grounds that there are conflicting objectives, or that the objectives are not clearly stated.

(iii) Permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government.

- 8.2.22. As outlined in response to point (i) above, I am satisfied that the zoning of the site is in accordance with the NPF and the RSES for the EMRA area. I have acknowledged the Minister's review of the NPF and the potential implications for population/housing targets. However, the proposed development would be premature pending the

completion of the review and full implementation of any relevant revisions through the hierarchical plan-led system.

- 8.2.23. The appeal contends that the LAP has not correctly followed the tiered approach to zoning as outlined in objectives 72 (*sic*), 72a, and Appendix 3 of the NPF, stating that the LAP zoning is based solely on infrastructure and does not consider other factors. In this regard, I note that the LAP zoning is based on an accompanying Settlement Capacity Audit (SCA). Section 5 of the SCA outlines 'Criteria and Assessment Scoring' for residential sites. Contrary to the appeal suggestions, Stage 1 of the exercise assessed 'sustainability' and scored sites based on 'compact growth' and 'climate adaptation and biodiversity'. Stage 2 then assessed 'infrastructural provisions' and scored sites based on 'roads and transportation', 'water supply', 'wastewater', 'surface water drainage and flood risk', 'parks and recreation facilities' and 'social infrastructure' such as childcare, schools, health care, town centre services, and neighbourhood centres. Accordingly, I am satisfied that the assessment considered an appropriately comprehensive range of factors.
- 8.2.24. I acknowledge that the SCA categorised the appeal site as 'Tier 2' or 'serviceable' lands. However, it also acknowledged that the zoning of land for residential development must be in keeping with the Core Strategy of the CDP, and that there are many extant permissions that have recently commenced on site with delivery during the lifetime of the Plan, even on sites that did not perform adequately under the SCA. Accordingly, I consider that the LAP exercises a prioritising of development lands which is in accordance with objective 73b of the NPF.
- 8.2.25. The appeal contends that the LAP does not comply with the Development Plan Guidelines for Planning Authorities (2022), stating that the quantum of zoned land is not required to adhere precisely to projected housing demand and that the LAP erroneously misinterprets sections 4.4 & 4.4.1 of the Guidelines in relation to 'land/sites already zoned' and 'extant permissions'. I have already addressed these matters in response to point (i) above. In this case, the LAP does not indeed adhere to projected housing demand given that it accommodates a housing yield which significantly exceeds the CDP Core Strategy allocation. I am also satisfied that the LAP appropriately addresses the question of existing zoned lands in the context of prioritising compact development, and that it appropriately accounts for extant

permissions in accordance with reasonable estimates as recommended in the Guidelines.

- 8.2.26. The appeal outlines that the development complies with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) and the accompanying Urban Design Manual. These Guidelines have now been revoked and replaced by the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024), and I will assess compliance with the 2024 Guidelines later in this report. However, in terms of the pertinent question regarding the zoning objective for the site, I do not consider that these Guidelines contain any provisions that would warrant a material contravention.
- 8.2.27. The appeal also refers to compliance with the provisions of Sustainable Urban Housing: Design Standards for New Apartments (July 2023), Childcare Facilities Guidelines for Planning Authorities (2001), and the 4 Design Principles of the Design Manual for Urban Roads and Streets (2019) (DMURS). These Guidelines largely set out design standards and guidance for various elements of development. Again, however, I do not consider that they contain any provisions that would warrant a material contravention of the zoning objective.
- 8.2.28. Having regard to the foregoing, I am satisfied that the zoning of the site is in accordance with the NPF and the RSES for the EMRA area, as well as any other relevant ministerial or governmental guidance. Accordingly, I do not consider that a grant of permission would be warranted on the grounds of the RSES, guidelines under section 28 of the Act, policy directives under section 29 of the Act, the statutory obligations of the local authority, or any relevant policy of the Government, the Minister or any Minister of the Government.

The pattern of development, and permissions granted, in the area since the making of the development plan

- 8.2.29. The appeal contends that no permissions have been granted in the town for commercial residential development (i.e., 3 or more houses) since the adoption of the CDP. It also highlights that a number of developments have been refused by the local authority.

- 8.2.30. In this regard, I would highlight that the Board has permitted 87 no. houses and a creche at Rathbride Road (ABP Ref. 313008-22). The Board's Order was dated 9<sup>th</sup> June, which was after the adoption of the CDP but before the adoption of the LAP. In addition to this, the Board recently issued a decision to grant permission for 166 no. units at South Green Road (ABP Ref. 318401-23), which was after the adoption of both the CDP and LAP. However, unlike the appeal site, it should be noted that both of these developments are located on lands that are appropriately zoned 'C New Residential' (Phase 1) in the LAP.
- 8.2.31. Apart from these recent permissions, I have also previously outlined the strong pipeline supply of housing via developments that have already commenced. Therefore, despite the appellant's contentions about the absence of significant commercial residential permissions, I am satisfied that there is a strong pipeline supply of housing which is in accordance with the LAP zoning.
- 8.2.32. I acknowledge the existing pattern of development and the location of the site adjoining large residential areas to the west and northwest. However, the site is still peripheral in the wider town context and there is no existing development to the east or northeast of the site. I do not consider that the development would provide any significant infill function, or that it would facilitate strategic or over-riding connectivity improvements for the wider area. And while the lands may facilitate a future expansion of the town, I consider that development would be premature at this stage for the reasons previously outlined.
- 8.2.33. Having regard to the foregoing, I do not consider that a grant of permission would be warranted on the grounds of the pattern of development, and permissions granted, in the area since the making of the development plan.

### Conclusion

- 8.2.34. Having regard to the foregoing, I am satisfied that LAP zoning objective has been appropriately applied having regard to the CDP Core Strategy and relevant regional and national guidance. I would agree with the KCC decision that the proposed development would materially contravene the LAP zoning objective and undermine the CDP Core Strategy. And while I do not consider that the provisions of Section 37(2)(b) of the Act apply in this case, I would also not recommend that a grant of

permission would be warranted based on the grounds outlined therein. Accordingly, it is my view that the principle of the development is not acceptable.

### 8.3. Surface Water Drainage and Flooding

8.3.1. Reason 1 of the KCC decisions raises a range of concerns about surface water drainage and flooding. The individual issues raised in the refusal reason can be addressed under the following headings.

#### Surface Water Pathway / Corridor

8.3.2. I note the planning authority concerns that a low flow channel-bioswale has not been provided along the drainage corridor. I have already acknowledged that the LAP (based on the SWS) includes surface water pathways/corridors through the appeal site. The main pathway would come from the adjoining lands to the north and drain northeast to southwest across the site to the proposed NBMA. The route largely coincides with the proposed linear central 'Public Open Space A'. A shorter pathway is proposed to drain the southeastern portion of the site westwards (also to the proposed NBMA). The route of this shorter pathway would be largely covered by the proposed dwellings and other hard surfaces.

8.3.3. Consistent with the appeal submission, I acknowledge that section 10.3 of the LAP outlines that the surface water pathways / natural drainage paths shown on Map 10.1 'Surface Water Management' are indicative. Section 4 of the SWS also outlines that the exact routes of corridors are flexible and will be subject to the design and landscaping proposals for each development. Therefore, I would accept that there is flexibility with the routes provided, subject to achieving the overall strategy aims.

8.3.4. However, the nature and design of the pathways is also an issue. The planning authority has indicated that a low flow channel-bioswale is required, while the appellant contends that there is no such requirement in the LAP. The appeal outlines that the application provides a drainage pathway to connect upstream areas through the development by piped drainage in accordance with the LAP.

8.3.5. Section 3 of the SWS outlines the 'surface water management proposals', stating that surface water should be conveyed from each site to potential NBMA's in the directions indicated on the maps 'via open swales where feasible'. And while, I note that the objectives and standards of the CDP and the LAP outline a clear preference

for nature-based solutions, I do not consider that there is any provision to specifically prohibit piped drainage. In any case, I consider that the main proposed drainage pathway through the site (and the only section which has implications for other lands) largely coincides with Public Open Space A, and there would be potential to accommodate an open drainage corridor within this area subject to detailed design and consideration.

#### Infiltration trenches and the unsaturated zone

- 8.3.6. The planning authority has raised concerns that the proposed infiltration via gravel trenches underneath attenuation storage tank 'A' does not provide the required minimum 1m unsaturated zone above high site groundwater levels.
- 8.3.7. The 'Engineering Planning Report' submitted as 'further information' outlines that groundwater level monitoring over 6 months commenced in September 2022. Additional groundwater monitoring was completed through July and August 2023. Based on this monitoring, it outlines that all below ground attenuation tanks are 1m minimum from the maximum surveyed groundwater level.
- 8.3.8. It is clear from the PUNCH drawing '222143-PUNCH-XX-XX-DR-C-0511' that the base of the infiltration tank (90.3m OD) is more than 1.3 metres above the highest water level (88.97m OD). The planning authority concerns would appear to be limited to the proposed natural gravel trenches to the underside of the tank (to level 89.3m OD or 330mm of the high water level). However, as outlined in the appeal, the trenches are intended to enable infiltration to the ground only and do not form part of the infiltration storage. The trenches would replace existing material (with poor infiltration capabilities) with natural gravel (with suitable infiltration capabilities). Therefore, I am satisfied that the proposal would improve conditions within the existing unsaturated zone, whilst still maintaining at least 1m between the infiltration tank and the highest water level. I consider this to be a reasonable proposal.

#### Design of the Nature Based Management Area (NBMA)

- 8.3.9. The planning authority has raised concerns that the proposed NBMA (i.e. Pond 3) may be under-designed to cater for the LAP Surface Water Drainage requirements. This matter was raised in the KCC FI Request, which also outlined the need to accommodate the requirements of a proposed social housing development to the east of Coolaghknock Glebe.

- 8.3.10. The applicant has outlined that the entire area of the NBMA has been incorporated into the design in accordance with LAP requirements. The FI response highlights that the proposed social housing development and surface water masterplan for the town are outside the scope of the application and that no design parameters are currently available. However, it assumes that upstream areas will be required to suitably manage their own surface water drainage and, accordingly, a greenfield equivalent discharge rate through the site is assumed.
- 8.3.11. Infiltration is not proposed within the NBMA as part of the proposal, and it has been included purely to comply with the SWS/LAP requirements. The proposed development will be drained independently by a series of ponds and infiltration tanks. The drawings submitted with the FI Response clarify the interaction between ponds and underground infiltration storage tanks. With reference to the KCC determination of exceedance areas as being 1 in 100-year storms, the response outlines that the infiltration tanks are designed to a 1 in 100-year storm plus 30% climate change and 10% urban creep. It also clarifies that Pond 3 is within an area to be taken in charge by KCC and is therefore to be maintained by KCC.
- 8.3.12. The FI Response included indicative calculations/drawings illustrating how drainage from upstream lands could be attenuated and managed to greenfield rates before flowing through the appeal site (Public Open Space A) to the proposed NBMA. It is then suggested that overflow from the NBMA could be connected to an indicative downstream pipe network through Ruanbeg Manor (to be designed by others).
- 8.3.13. I would acknowledge the challenges in this case given the lack of certainty regarding other housing developments and the surface water masterplan for the town. However, based on the available information as outlined in the Surface Water Strategy, I consider that the proposed development is reasonably consistent with the overall aims and objectives. And as previously outlined in section 8.2 of this report, I would highlight that the SWS treats the appeal site and adjoining lands to the north (i.e., Sites D, E, P, L, and C) separately, and that all of these sites are zoned as 'Phase 2' lands which are not suitable for development within the LAP period.
- 8.3.14. With regard to the planning authority's reference to a proposed social housing development at Coolaghknock Glebe, I acknowledge that the LAP (zoning objective footnote No. 75) allows for social housing schemes on Phase 2 land in the event that



there is a significant unmet social housing demand for the town and subject to all other assessments. However, my inspection of the KCC website<sup>1</sup> did not find any record of a Part 8 Housing proposal at this location and it cannot be assumed that any such proposal would be approved.

8.3.15. In conclusion, I am satisfied that the NBMA proposals are generally consistent with the LAP and its accompanying SWS and that they have been reasonably designed to facilitate the requirements associated with the future development.

### Flooding

8.3.16. The LAP outlines that flood risk is generally restricted to pluvial risk and Map 10.2 outlines the Pluvial Flood Risk Area. Objective IO 3.1 of the LAP requires a site-specific Flood Risk Assessment (SSFRA) for developments within this risk area. It is acknowledged that some of the appeal site is affected by the identified pluvial flood risk and that the application (FI Response) has included a SSFRA.

8.3.17. In the absence of detailed information regarding the pluvial flood modelling affecting the site, the SSFRA suggests two possible reasons for the flood modelling. Firstly, it considers that flooding may have been determined to accumulate as a result of development at the proposed development site. In such a case, it outlines that development at the site would be required to accommodate its own drainage with design to 1 in 100-year events with suitable climate change and urban creep in accordance with the CDP, thus mitigating any potential pluvial flood risk. Secondly, it considers that flooding may have been determined to flow overland from a neighbouring site (directly to the southwest). It is suggested that this may be on the basis that the adjoining site was incorrectly deemed to consist of impermeable hard standing material rather than the permeable sand-based surface that actually exists. It concludes that there would not be any runoff from the neighbouring site and that there is no increase in pluvial flood risk to the site to be assessed.

8.3.18. I have reviewed the Strategic Flood Risk Assessment accompanying the LAP, which outlines the pluvial flood risk modelling techniques used. It highlights that the output of the model is intended for the sole purpose of determining the need to implement SSFRAs to support development proposal applications. A precautionary approach

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<sup>1</sup> <https://kildarecoco.ie/AllServices/Planning/Part8Schemes/housing/index> - accessed 4th March 2024

has been taken and the results are not intended for any other purpose and should not be interpreted for wider application of flood risk. It states that the SSFRAs should demonstrate that pluvial flood risk is appropriately managed within the development, and that there is no increase in flood risk elsewhere as a result of the development. Regarding the appeal site, it states that 'flood waters accumulate from the north due to low topography'.

- 8.3.19. Apart from the pluvial risk modelling, I note that the LAP does not identify any historical or recorded flooding on the site. And having reviewed historical sources, aerial photography, and having inspected the site conditions, I can find no indications of significant flooding relating to the site. I consider that a SSFRA has been carried out for the site in accordance with LAP requirements and the planning authority has not put forward any significant evidence to contradict the findings of the SSFRA. Accordingly, I am satisfied that the development of the site would necessitate and facilitate the proper drainage of the site and I am satisfied that this would address any potential pluvial flood risk.

#### Prematurity

- 8.3.20. The planning authority raised concerns that the proposed development would be premature pending the preparation and/or adoption of various policy/guidance documents related to surface water.
- 8.3.21. I note that LAP Objective IO 2.2 is to prepare a Surface Water Masterplan based on the SWS, and Objective IO 2.3 states that new development shall align with the SWS and the Masterplan (once finalised). The LAP has only recently been adopted and the Masterplan has not been finalised at the time of writing. I would consider it unreasonable to deem the proposed development premature pending the completion of the Masterplan, particularly given that the development is generally consistent with the guiding principles of the SWS.
- 8.3.22. I also note that CDP Action IN A3 is to develop a 'Sustainable Urban Drainage Systems Guidance Document' for County Kildare within one year of the adoption of the Plan (i.e. by 9<sup>th</sup> December 2023). The document shall supersede the standards outlined in CDP objective IN O26, and LAP Objective IO 2.3 states that new development shall align with the SuDS document (once finalised). However, at the

time of writing, there is no evidence that the SuDS document has been finalised<sup>2</sup>. I would consider it unreasonable to deem the proposed development premature on this basis, and I am satisfied that the application has demonstrated satisfactory compliance with other relevant guidance in the form of the SWS contained in the LAP and other CDP policies including compliance with 'Nature-based Solutions to the Management of Rainwater and Surface Water Runoff in Urban Areas' (DHLGH, 2021). In the event that the SuDS document is finalised prior to the Board's decision, I am satisfied that its guidance could be satisfactorily incorporated through the agreement of detailed design measures as per the conditions of any permission.

### Conclusion

8.3.23. I have acknowledged the challenges in this case given the lack of certainty regarding the surface water masterplan for the town and the relationship between the proposed development and other surrounding land/development. However, I do not consider that the planning authority has identified any insurmountable obstacles to the development of the lands. I am satisfied that the proposals would generally be satisfactory to facilitate the proposed development and that appropriate consideration has been given to accommodating surrounding lands in accordance with the SWS in the LAP.

8.3.24. I acknowledge that the planning authority has outstanding concerns in relation to the detailed design of the surface water drainage system and associated flood risk measures. However, in the event that the Board is considering a grant of permission, I consider that the detailed design requirements could be agreed with the planning authority as a condition of any such permission and would not warrant a refusal of permission.

## **8.4. Traffic & Transport**

8.4.1. The planning authority has outlined concerns that the peripheral location of the site would be highly dependent on the use of the private car. It also contends that there are inadequate measures to segregate Vulnerable Road Users (VRUs) and limit traffic speed along the regional road R445, including a lack of cycle lane infrastructure to be delivered as part of the development. On this basis, the planning

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<sup>2</sup> <https://kildarecoco.ie/AllServices/Planning/> - Accessed on 4<sup>th</sup> March 2024

authority has concluded that the proposal would contravene policies TM P1 & TM P2 of the CDP and would endanger public safety by reason of a traffic hazard.

- 8.4.2. As previously outlined in relation to the question of zoning (section 8.2 of this report), I would concur with the concerns about the peripheral location of the site. I would acknowledge that there is a generally continuous footpath connection to the town centre but there is a significant separation (c.1.7km), which would not constitute a convenient or easy walking distance. The footpaths would require upgrading in places. More importantly however, there are no cycle lanes connecting to the town centre and the regional road itself would certainly benefit from traffic calming measures.
- 8.4.3. The application proposed to carry out significant improvement measures for cyclists and Vulnerable Road Users (VRUs) for the 290m road frontage along R445. It also includes a design proposal for the cycle track and traffic-calming measures along the R445 to the junction with French Furze Road/Rowanville (a distance of c. 625m), but it does not propose to carry out these works as part of the proposed development.
- 8.4.4. I acknowledge that the planning authority has outlined some concerns about the detailed design of proposals within and around the subject site. However, consistent with the KCC decision, I consider that the question of peripherality and the lack of appropriate connectivity to the town centre are the key traffic and transport issues in this case.
- 8.4.5. The appeal has outlined that the improved connectivity works involve numerous third parties and would not be within the applicant's gift to deliver. Furthermore, I would concur with the appellant's contention that the works would be part of a wider measure to serve the entire eastern side of the town and that it would be unreasonable to expect the applicant to deliver the works. Unreasonable as it may be, however, I would agree that the works would be necessary to facilitate the development of the site in a proper and sustainable manner.
- 8.4.6. The appeal suggests a solution whereby the applicant would agree to pay a contribution towards the cost of the works, once the cost is proportionate and equitable. However, I would have several outstanding concerns about any such approach. Firstly, there is no evidence that there is an agreed planning consent (e.g. Part 8 approval) to carry out the works, nor is there any evidence of legal consent

from the numerous third-party land owners. Secondly, there is no evidence of a suitable development contribution mechanism to apply towards the works, either in the form of a Supplementary scheme (under section 49 of the Act) or a 'special contribution' that has been appropriately specified in accordance with Section 48 (2)(c) and Section 48 (12)(a) of the Act.

- 8.4.7. In the absence of significant upgrading works to the R445, I would concur that the proposed development would be premature, both in terms of transport sustainability due to an over-reliance on the private car, as well as traffic safety due to the absence of suitable proposals for traffic calming and the segregation of vulnerable road users. Ultimately, I consider that this is reflective of the LAP approach in zoning the site as 'phase 2' lands which are not suitable for development in the plan period.
- 8.4.8. In addition to this issue, I also note that significant concerns have been raised by third parties about the inclusion of vehicular access through the Ruanbeg estate. The concerns relate primarily to traffic congestion and traffic safety as a result of increased traffic volumes associated with the proposed development. Concerns are also raised about potential anti-social behaviour.
- 8.4.9. I note that the application proposed a vehicular connection with Ruanbeg Avenue at the northwest corner of the site. There is a turning area within the Ruanbeg Avenue development at this point, which would appear to have been designed to facilitate such a future connection. The F.I. Response also included proposals for traffic-calming measures along the existing road carriageway within Ruanbeg Avenue. In principle, I consider that the proposed connection would be in accordance with good transportation planning practice. I do not consider that the proposal would result in excessive traffic volumes within Ruanbeg as the majority of traffic would continue to use the proposed new entrance/exit onto the R445, and I am satisfied that suitable traffic calming measures could be put in place. Similarly, I do not consider that there is any reasonable evidence to conclude that the additional movements through Ruanbeg would lead to anti-social behaviour.
- 8.4.10. However, as previously outlined, I have wider and more fundamental concerns about the substandard connectivity between the appeal site and the town centre and I consider that the proposed development would be premature in the absence of definitive proposals to deliver a solution in tandem with the proposed development.

## 8.5. Design, Layout, and Development Standards

8.5.1. Apart from the matter of Public Open Space, the planning authority was generally satisfied with the design and layout of the scheme and its consistency with development standards. However, the Board will be aware that the 'Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities' (hereafter referred to as 'the Guidelines') were introduced in January 2024, after the KCC decision on the 9<sup>th</sup> November 2023. Therefore, I propose to address the relevant issues in the context of the new Guidelines.

### Density

8.5.2. Section 3.3 of the Guidelines outlines recommendation for settlements, area types, and density ranges. Based on the criteria therein, I consider that the current case comes within the 'Key Towns and Large Towns (5,000+ population)' settlement category and the 'Suburban Extension' area type. It is a policy and objective of these Guidelines that residential densities in the range 30 dph to 50 dph (net) shall generally be applied at such locations, and that densities of up to 80 dph (net) shall be open for consideration at 'accessible' locations (as defined in Table 3.8). The proposed development involves the construction of 285 no. units on a stated net site area of 8.8 ha. This results in a net density of c. 32 dwellings per hectare, which would be within the recommended 30-50 dph range as per the Guidelines.

8.5.3. Section 3.4 of the Guidelines outlines further guidance on 'Refining Density' within the recommended ranges. 'Step 1' of that process involves consideration of site accessibility based on location and proximity to public transport services. It encourages densities at or above the mid-density range at the most central and accessible locations in each area, densities closer to the mid-range at intermediate locations, and densities below the mid-density range at peripheral locations.

8.5.4. The application outlines that there is only one bus/train stop within 1km of the site. However, this 'stop' at French Furze Road (c. 600m or 8-min walking distance) would not comply with the 'high capacity' or 'accessible' category criteria as per Table 3.8 of the Guidelines. It outlines that the French Furze Road stop is served by Route 126 (to/from Dublin). However, while the walking distance would be within 500-1000m, this does not provide high frequency (i.e. 10 minute peak hour frequency) urban bus services in accordance with the 'intermediate' category criteria.

Accordingly, the site falls within the 'peripheral' category and that the proposed density of 32 dph would be acceptable at the lower end of the 30-50 dph range.

- 8.5.5. 'Step 2' of the 'refining density' exercise relates to impacts on local character; historic environments; the environment and protected habitats and species; the amenities of surrounding residential properties; and the capacity of water supply and wastewater networks. Having considered these matters (as outlined elsewhere in this report), particularly the location of the site at the edge of the town adjoining The Curragh buffer zone, I consider that the proposed density would be acceptable at the lower end of the 30-50 dph range.
- 8.5.6. I note that observers have raised concerns about the density of the proposal and other permitted developments, including the associated impacts on social infrastructure in the area. The application was accompanied by a Social & Community Infrastructure Audit. It concluded that the proposed development will be well served by existing social infrastructure in the town and will also further contribute to the development of the area providing additional public open spaces, a large creche with surplus childcare spaces and age friendly accommodation that will serve the wider area. And while the planning authority raised concerns about the capacity of health services, it was satisfied with the applicant F.I. response which included a multi-functional space within the development. In the event that the Board is considering a grant of permission, I consider that the proposed density is almost at the minimum level allowable, and I do not consider that a lower density would be warranted on the basis of social/community infrastructure capacity.

#### Urban Design & Placemaking

- 8.5.7. Chapter 4 of the Guidelines focuses on planning and design at settlement, neighbourhood and site levels, including key indicators of good urban design and placemaking which are to be applied in the consideration of individual planning applications as per Policy and Objective 4.2 of the Guidelines. The key factors are discussed in the following paragraphs.
- 8.5.8. Sustainable and Efficient Movement: The Guidelines aim to ensure that places are well connected and accessible by sustainable modes. I acknowledge that the application aims to implement the principles, approaches and standards set out in the Design Manual for Urban Roads and Streets, 2013 (including updates), as

required under Policy and Objective 4.1 of the Guidelines. However, as previously outlined in this report, I have concerns about the peripheral location of the site and the lack of connectivity via public transport and cycle facilities.

- 8.5.9. Mix and Distribution of Land Uses: The Guidelines promote the integration of land uses and transportation and a diverse and innovative mix of housing that can facilitate compact housing and provide greater housing choice. Having regard to the peripheral location of the site, I would have no objection in principle to the proposed mix of uses and/or housing types.
- 8.5.10. Green and Blue Infrastructure: The Guidelines place an emphasis on the protection of natural assets and biodiversity, whilst also taking a more strategic view as to how open space networks are formed to balance the needs of communities. As will be outlined later in this section and the EIA section of my report, I consider that proposals would be acceptable in this regard.
- 8.5.11. Public Open Space: This is discussed later in this section of my report.
- 8.5.12. Responsive Built Form: The Guidelines place an emphasis on the creation of a coherent urban structure and design approach that responds to local character and is attractive. Consistent with the planning authority's view, I consider that proposals would be generally acceptable in this regard. I note that the planning authority has raised some concerns about the design of House Type D and the use of concrete roof tiles. However, I consider that these are minor issues that could be addressed by condition and would not detract from the character of the area.

#### Separation Distances

- 8.5.13. SPPR 1 of the Guidelines deals with separation distances between opposing windows serving habitable rooms at the rear or side of houses, duplex units or apartment units above ground floor level. It states that development plans shall not include minimum separation distances that exceed 16 metres and that planning applications shall maintain a separation distance of at least 16 metres. Distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme.
- 8.5.14. The application outlines that all units addressing an existing boundary with neighbouring residential developments achieve a 22m separation distance.



Throughout the proposed development, 22m is generally achieved for all back-to-back units. I note that distances are less on some corner (side-to-back) sites, but I am satisfied that the relationship between units will not have a detrimental impact on privacy or amenity. The distance between the duplex apartments and opposing two storey residential units is reduced to c. 18m but I acknowledge that this relates to the front of the houses and design measures have been incorporated to protect privacy and amenity. Accordingly, I consider that the separation distance proposals are acceptable.

#### Private Open Space

8.5.15. SPPR 2 of the Guidelines deals with private open space for houses. It outlines that minimum spaces shall be provided for 1-bed units (20m<sup>2</sup>), 2-bed units (30m<sup>2</sup>), 3-bed units (40m<sup>2</sup>), and 4-bed units (50m<sup>2</sup>). A further reduction below the minimum standard may be considered acceptable where an equivalent amount of high quality semi-private open space is provided in lieu of the private open space, subject to at least 50 percent of the area being provided as private open space.

8.5.16. The proposed development has been designed to meet the more onerous standards outlined in the CDP. Accordingly, all of the proposed houses comply with SPPR 2. I acknowledge that the 'age-friendly units' would not comply given that provision is as low as 5m<sup>2</sup> for 1-bed units and 7m<sup>2</sup> for 2-bed units. However, this is a specialised housing category where normal standards would not apply, and I note that the reduced private space is compensated by a larger 'semi-private' open space for the specific use of the residents in keeping with the approach of the Guidelines. Accordingly, I consider that proposals are acceptable in this regard.

#### Public Open Space

8.5.17. Policy and Objective 5.1 of the Guidelines is that development plan requirements shall be for not less than 10% of net site area and not more than 15%, save in exceptional circumstances as specified. It also recommends that a provision to set aside (in part or whole) the public open space requirement is included within the development plan to allow for flexibility, subject to payment of a financial contribution in lieu, within the terms of Section 48 of the Act.

8.5.18. The proposed development would provide public open space at a rate of 16% of the net site area. The planning authority has accepted that this would meet the CDP

requirements for a minimum of 15%. However, it outlines concerns about an excessive inclusion of drainage/SuDS measures within the space, including particular concerns about attenuation tanks such as that proposed within Public Open Space A. There are also concerns about malfunction or maintenance, which would significantly affect residential amenity through disturbance of open space.

8.5.19. In section 8.3 of this report, I have already outlined my satisfaction with the principle of the surface water drainage proposals, and that any outstanding detailed design and maintenance issues could be agreed with the planning authority as a condition of any permission. Apart from these technical issues I note the CDP policy provisions which restrict the inclusion of SuDS/drainage measures within public open space.

8.5.20. Objective IN O24 is to only consider underground retention solutions when all other options have been exhausted and outlines that underground tanks and storage systems will not be accepted under public open space.

8.5.21. Objective IN O26 is to ensure as far as practical that the design of SuDS enhances the quality of open spaces and outlines that SuDS do not form part of the public open space provision, except where it contributes in a significant and positive way to the design and quality of open space. In instances where the Council determines that SuDS make a significant and positive contribution to open space, a maximum of 10% of open space provision shall be taken up by SuDS.

8.5.22. However, the Board should note that these matters are also addressed in the recently published Compact Settlement Guidelines. Appendix A of the Guidelines states that the calculation of public open space can include areas used for Nature-based Urban Drainage and other attenuation areas where they form part of an integrated open space network. It would not generally include large retention ponds where they are fenced or separate to the open space network but may include smaller retention basins that are integrated into and form part of the open space and landscaping scheme.

8.5.23. In this regard, it should be noted that the proposed NBMA has not been included in the 16% calculation and I am satisfied that the other areas would accommodate smaller ponds which are satisfactorily integrated into the wider public open space network. I also note that the Guidelines allow for the inclusion of 'other attenuation areas' and I am satisfied that this could include underground attenuation areas.

Therefore, I am satisfied that the proposed quantity of public open space (16%) would exceed CDP requirements (at least 15%) and has been appropriately calculated in accordance with the Compact Settlement Guidelines.

- 8.5.24. In the event that the Board determines that there is a shortfall in public open space, I would highlight that Section 15.6.6 of the CDP allows for such shortfalls as a result of the practicalities of the site (including SuDS). And in this case, the application has had to accommodate strategic drainage measure such as the drainage corridors and NBMA identified in the LAP. Section 15.6.6 of the CDP provides for any such shortfall to be addressed through a development contribution in lieu via the Kildare County Council Development Contribution Scheme. I am satisfied that this would be a satisfactory resolution to any perceived shortfall in open space and I do not consider that a refusal of permission would be warranted on this basis.

#### Car Parking

- 8.5.25. SPPR 3 (iii) of the Guidelines outlines that in peripheral locations such as this, the maximum rate of car parking provision for residential development, where such provision is justified to the satisfaction of the planning authority, shall be 2 no. spaces per dwelling.
- 8.5.26. The application proposes 442 spaces to cater for 231 no. houses, including a maximum of 2 spaces for 3/4-bed houses and 1 space for 2-bed units. The 14 no. age-friendly units have been provided with 1 space per unit, while the 40 duplex units are provided with 70 no. spaces. In total, 560 spaces would be provided for 285 no. residential units. I acknowledge that the proposals are at and/or close to the maximum allowable of 2 spaces per unit in many cases. However, I consider that this is still compliant with SPPR 3 of the Guidelines and that it would be justified given the car-dependant nature of the appeal site.

#### Cycle Parking

- 8.5.27. SPPR 4 of the Guidelines outlines that for residential units that do not have ground level open space or have smaller terraces, a general minimum standard of 1 cycle storage space per bedroom should be applied, while visitor cycle parking should also be provided. It states that any deviation from these standards shall be at the discretion of the planning authority and shall be suitably justified.

8.5.28. The application proposes residential (resident and visitor) cycle parking for duplexes in secure cycle storage areas. On the basis of 1 space per duplex bedroom, it proposes 100 no. resident spaces. And on the basis of CDP standards of 1 visitor space per 2 units, it proposes 20 no. visitor spaces. I am satisfied that these proposals would satisfactorily comply with SPPR 4.

#### Daylight

8.5.29. Section 5.3.7 of the Guidelines outlines that a detailed technical assessment in relation to daylight performance is not necessary in all cases. It should be clear from the assessment of architectural drawings (including sections) in the case of low-rise housing with good separation from existing and proposed buildings that undue impact would not arise.

8.5.30. Given the low-rise nature of the proposed housing and the proposed separation distances from existing and proposed properties, I am satisfied that a detailed technical assessment is not required in this case. Notwithstanding this, I note that the application included a 'Daylight, Sunlight and Overshadowing Analysis'. The analysis concludes that the standards for existing and proposed properties would be in line with the recommendations of BRE guidance. I note that the planning authority or other parties did not raise any significant concerns in this regard.

#### Conclusion

8.5.31. Having regard to the design and layout of the proposed development, the assessment of the application by the planning authority, and the provisions of the Compact Settlement Guidelines introduced in January 2024, I consider that the proposed development standards would be generally acceptable.

8.5.32. However, consistent with my previous concerns, I consider that the peripheral and inaccessible location of the site would not promote 'sustainable and efficient movement' in accordance with the key indicators of good urban design and placemaking outlined in the Compact Settlement Guidelines. The Board will note that this issue has been raised consistently throughout the application and appeal process. The Compact Settlement Guidelines have not introduced any significant new requirements in this regard and, accordingly, I do not consider that this constitutes a 'new issue' in the context of the appeal.

## 9.0 Environmental Impact Assessment

### 9.1. Introduction

- 9.1.1. This section sets out an Environmental Impact Assessment (EIA) of the proposed project and should be read in conjunction with the planning assessment (i.e. section 8 of this report). A number of the topics and issues addressed in the planning assessment concern environmental matters. Where relevant, I have cross-referenced between sections to avoid unnecessary repetition.
- 9.1.2. The proposed development involves the construction of 285 no. residential units, a creche, a multifunctional space, and all associated site works and services. The site has a gross area of 10.3 hectares (net area 8.8 ha).
- 9.1.3. Item 10(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended and section 172(1)(a) of the Planning and Development Act 2000, as amended, provides that an Environmental Impact Assessment (EIA) is required for projects that involve:
- i) Construction of more than 500 dwelling units*
  - iv) Urban Development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.*
- 9.1.4. The proposal (285 no. units) does not exceed 500 units and would not be a class of development described at 10(b)(i). It is an urban development project that would adjoin the built-up area but would not be within a 'business district'. Therefore, the applicant has submitted an EIAR on the basis that the gross site area (10.3ha) would exceed the 10ha threshold outlined in sub-section (iv) above.
- 9.1.5. The gross site area would appear to include a significant length of the R445 regional road. The application outlines a design proposal for road upgrade works but does not actually propose to carry out the works. Therefore, the full extent of the proposed works may involve a site area that is less than 10 hectares. Notwithstanding this, an EIAR has been submitted with the application. Under Article 102 of the Planning and Development Regulations 2001, as amended, where an application for a sub-threshold development is accompanied by an EIAR, the application shall be dealt with as if the EIAR had been submitted in accordance with section 172(1) of the Act.

- 9.1.6. The EIAR contains a Non-Technical Summary (Vol. 3), the main EIAR statement (Vol. 1), and supporting appendices (Vol. 2). An EIAR Addendum was included as part of the F.I. Response documentation. Chapters 1-3 inclusive set out an introduction and description of methodology; a description of alternatives considered; and a description of the proposed development. Chapters 4 to 15 describe and assess the likely significant direct, indirect and cumulative effects of the proposed development in accordance with the relevant headings listed in Article 3(1) of the 2014 EIA Directive, including the interactions between relevant effects. The proposed mitigation measures are outlined in Chapter 16.
- 9.1.7. This section of my report evaluates the information in the EIAR and carries out an independent and objective environmental impact assessment (EIA) of the proposed project in accordance with the requirements of relevant legislation. In carrying out an independent assessment, I have examined the information submitted by the applicant, including the EIAR, as well as the written submissions made to the Board as set out in Sections 4 & 7 of this report.
- 9.1.8. I am satisfied that the information contained in the EIAR has been prepared by competent experts (as outlined in Section 1.8 of the EIAR) to ensure its completeness and quality; that the information contained in the EIAR and supplementary information adequately identifies and describes the direct, indirect and cumulative effects of the proposed development on the environment; and that it complies with article 94 of the Planning and Development Regulations 2001 (as amended) and the provisions of Article 5 of the EIA Directive 2014.
- 9.1.9. I am satisfied that opportunity for participation of the public has been appropriately afforded, and that the application has been made accessible to the public by electronic and hard copy means with adequate timelines afforded for submissions.

## 9.2. **Consideration of Alternatives**

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

*“a description of the reasonable alternatives studied by the developer, which are relevant to the development and its specific characteristics, and an indication of the*

*main reasons for selecting the chosen option, taking into account the effects of the development on the environment.”*

9.2.2. Annex (IV) (Information for the EIAR) provides more detail on ‘reasonable alternatives’:

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

9.2.3. Chapter 2 of the EIAR (including the Addendum) deals with ‘Alternatives’. The reasonable alternatives examined can be summarised as follows:

- Do Nothing: Even considering the ‘Phase 2’ zoning in the Draft LAP, this scenario would mean that the lands would not be developed in accordance with the objectives of the LAP, in either the short or long-term. It outlines that this would have knock-on effects on the CDP and would not be in accordance with national and regional policy.
- Alternative Locations: The continued zoning of the site as residential, whether it is phase 1 or phase 2, demonstrates that the use of this site for residential purposes is appropriate and acceptable in terms of best land use for the town.
- Alternative Uses: The proposed uses are consistent with the LAP zoning objectives and national housing policy under ‘Housing For All’. As such this is considered the most appropriate use of the land.
- Alternative Designs: A range of designs have been considered as part of the pre-application process and the response to the KCC further information request.
- Alternative Layout: A range of layouts have been considered as part of the pre-application process and the response to the KCC further information request. The environmental impacts of each layout have been considered. Section 2.9

concludes that the proposed development achieves a better result in terms of impact on the environment than the other design options considered.

- Alternative processes: The residential use is in line with the CDP and LAP. Therefore, it is not considered appropriate to assess other processes.

9.2.4. I note that the planning authority raised concerns that the alternatives were not adequately considered in the context of the draft LAP. It highlighted inadequacies in relation to zoning objectives, particularly the draft zoning of the site as 'phase 2' lands. However, I note that this has been addressed by the applicant in the EIAR Addendum. I consider that the planning authority's requirement to consider the 'phase 2' zoning (i.e. that the lands are not suitable for development within the plan period) is effectively akin to the 'do nothing' scenario which has already been considered. Furthermore, I would concur with the appellant's view that the planning authority has conflated the issue of alternatives in the context of the planning assessment rather than EIA, and that the environmental impacts would remain the same irrespective of zoning/phasing objectives. Overall, I am satisfied that the EIA Directive requirements in relation to 'alternatives' have been satisfied.

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

9.3.1. Article 3(2) of the 2014 EIA Directive includes a requirement that the expected effects derived from the vulnerability of the project to major accidents and/or disasters that are relevant to the project concerned are considered.

9.3.2. The EIAR outlines that the site and surrounding area does not include any man-made industrial sites or activities (including SEVESO II Directive sites) that would be likely to result in a risk to human health and safety. The potential for accidents and/or disasters are also considered, where relevant, in the various specialist chapters and the interactions. Having regard to the nature and scale of the proposed development and the nature of the site and its surroundings, I consider this to be a reasonable approach to risks associated major accidents and disasters.



#### 9.4. **Assessment of the likely significant direct and indirect effects**

9.4.1. The likely significant effects of the development are considered below to include the factors set out in Article 3 of the EIA Directive 2014/52/EU.

#### 9.5. **Population and Human Health**

9.5.1. Chapter 4 of the EIAR acknowledges the potential for construction phase impacts relating to noise and vibration, dust emissions, and traffic. However, it outlines that any adverse likely and significant environmental impacts will be avoided by the implementation of the remedial and mitigation measures. Noise limits and hours of operation, along with implementation of appropriate noise and vibration control measures, will ensure that impacts are minimised. Dust minimisation measures will also apply, while a Construction and Environmental Management Plan (CEMP) will address traffic impacts. It also highlights that positive impacts are likely to arise due to an increase in employment and economic activity associated with this phase. It concludes that the overall predicted construction phase impacts will be short-term, temporary, and neutral.

9.5.2. It states that the operational phase will contribute to further growth of population. The noise and vibration mitigation measures will ensure that impacts will be neutral and imperceptible, while the air dispersion modelling has shown that emissions of air pollutants are significantly below the ambient air quality standards. It concludes that the overall predicted operational phase and cumulative impacts (considering other permitted developments) will be long term and positive.

9.5.3. I note the planning authority view that there is a lack of robust conclusions on population and human health. The basis for this view is not clearly outlined, although it may be based on the potential for interactions with other concerns relating to zoning, surface water drainage, flood risk, and traffic/transport. However, as outlined in section 8.3 of this report, I am generally satisfied with the surface water drainage proposals and flood risk assessment. And while I have concurred with the planning authority's concerns regarding zoning and traffic/transport in the context of my planning assessment, I do not consider that these matters would warrant a refusal of permission on the basis of environmental impacts on population and human health.

9.5.4. Having regard to the foregoing, I am satisfied that impacts predicted to arise in relation to population and human health would be avoided, managed, and mitigated

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

## 9.6. **Biodiversity**

- 9.6.1. Chapter 5 of the EIAR assesses impacts on protected flora and fauna with a particular emphasis on protected species found within the proposed development and with cognizance for Natural Heritage Areas (NHAs). It should be noted that the potential impacts on Natura 2000 sites are considered in the NIS and section 10 of my report. As will be outlined, I am satisfied that the project, individually, or in combination with other plans or projects, would not be likely to give rise to significant effects on any European Sites in view of the sites' conservation objectives.
- 9.6.2. The EIAR outlines that the site consists mainly of 'improved agricultural grassland' of low ecological value, although it does include key ecological receptors in the form of hedgerows and treelines. To the east of the site is the Curragh Plains, an extensive expanse of semi-natural grassland which is of hydrogeological importance due to the existence of the Curragh aquifer, whose discharge feeds major springs to Pollardstown Fen. The site is located within the Barrow\_SC\_060 sub-catchment which is part of the Barrow Catchment (ID:14). The closest watercourse is the Tully Stream located approximately 1.6km southwest, which is connected to the River Barrow and River Nore SAC. The nearest Natura 2000 site is Pollardstown Fen SAC (3.8KM east), while the nearest NHA is the Curragh (c. 30m east).
- 9.6.3. The EIAR outlines that habitat loss will be mitigated by the inclusion of less intensively managed landscaped areas and the retention and strengthening of vegetation along the northeast site boundary (Curragh Buffer Zone). The potential for the introduction of invasive flora species during the construction phase will be mitigated by regular inspection and management of plant and materials. The construction phase also has the potential for fauna disturbance/mortality. However, the construction hours, plant, and methodologies will be suitably designed in accordance with legislation (e.g., hedgerow removal periods) and best practice (e.g. pre-construction badger survey, although no evidence was yet detected on site).

- 9.6.4. The bat surveys detected three species within the site, with bat activity concentrated along the mature treelines and hedgerows. None of the trees to be removed as part the proposed development were in use as a bat roost. Mitigation measures have been incorporated to address potential impacts. The landscaping proposals will enhance the existing vegetation and the inclusion of ponds will increase the potential for foraging. Construction and operational lighting will be designed to reduce pollution. The felling and removal of trees will also be scheduled to protect bats.
- 9.6.5. Regarding the potential for groundwater deterioration and impacts on designated sites, standard construction stage control measures will be implemented. Concrete works will be supervised, fuels and oils will be appropriately stored/handled, and spill kits will be provided for accidents. At operational stage, it is proposed that the drainage system will be properly maintained.
- 9.6.6. The EIAR concludes that the residual impact of the development is anticipated to be a slight negative local effect. It also considers potential cumulative effects relating to a deterioration in groundwater quality during the operational phase resulting in an impact upon the Curragh Aquifer, as well as loss or fragmentation of natural habitat. However, based on the proposed mitigation measures, it does not predict that significant cumulative effects would arise.
- 9.6.7. I note the planning authority view that there is a lack of robust conclusions on biodiversity. This view would appear to be based on the planning authority concerns regarding surface water drainage and flood risk assessment and the potential for interactions with biodiversity. However, as outlined in section 8.3 of this report, I am generally satisfied with the surface water drainage proposals and flood risk assessment, and I do not consider that this would warrant a refusal of permission on the grounds of environmental impacts on biodiversity.
- 9.6.8. Having regard to the foregoing, I am satisfied that impacts predicted to arise in relation to biodiversity would be avoided, managed, and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative environmental impacts in terms of biodiversity (with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC).

## 9.7. Land, Soil & Geology

- 9.7.1. For the construction phase, the EIAR identifies potential impacts relating to the removal of topsoil and subsoil. Mitigation measures outline that these works will be managed to include stockpiling, surface water management, reuse of material, and stabilisation. There is a requirement for imported fill to achieve the proposed levels and the source and storage of this material will be carefully managed. Construction traffic and spills/leaks also have the potential to impact on soils and a traffic management plan and CEMP will be implemented. Underlying geology may be disturbed in areas of deep excavation and will be further assessed following more detailed site investigation works prior to construction. Subject to the implementation of mitigation elements, the EIAR deems the risk of impact as negligible.
- 9.7.2. At operational stage, the EIAR outlines that geology will remain unchanged and subsoil will be covered by surfacing works/landscaping. Accidental losses of oil, petrol or diesel on roadways or in car parks could cause contamination of subsoil. The surface water system will discharge to groundwater and mitigation is provided in the form of SuDS and petrol interceptors upstream of all connections to the infiltration tanks. Subject to the implementation of mitigation elements, the EIAR deems the risk of impact as limited.
- 9.7.3. The EIAR considers the potential for cumulative impacts with other permitted developments. It concludes that the works associated with these developments would be similar in nature to the proposed development and would involve additional similar impacts.
- 9.7.4. I note the planning authority view that there is a lack of robust conclusions on land, soils, and geology. This view would appear to be based on the planning authority concerns regarding surface water drainage and flood risk assessment and the potential for interactions with land, soils, and geology. However, as outlined in section 8.3, I am generally satisfied with the surface water drainage proposals and flood risk assessment, and I do not consider that this would warrant a refusal of permission on the grounds of environmental impacts on land, soils, and geology.
- 9.7.5. Having regard to the foregoing, I am satisfied that impacts predicted to arise in relation to land, soils, and geology would be avoided, managed, and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures,

and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative environmental impacts in terms of land, soils, and geology.

## 9.8. **Water**

- 9.8.1. Chapter 7 of the EIAR provides an assessment of the likely impact on the surrounding hydrology, hydrogeology, existing surface and foul water drainage and water supply. It outlines a comprehensive description of the receiving environment. The site is underlain by the Regionally Important (Rg) Curragh Gravel Aquifer West Groundwater Body (GWB). The GWB is a feeder for the Grand Canal and an important source of baseflow for the major river catchments in Kildare, namely the Liffey, the Barrow and the Boyne. It influences the ecology of a number of interesting habitats, and it is the main source of water for Pollardstown Fen. The GSI maps indicate that the groundwater vulnerability across the majority of the site is mapped as 'High'. The WFD Status of the Curragh GWB and the linked Pollardstown Fen SAC is rated as "Good". Groundwater is interpreted to flow locally in a southwesterly direction across the site and not towards Pollardstown Fen. The lands are located within the subcatchment Barrow\_SC\_060 (Code 14\_18), which has a WFD status of 'good'. Only the Tully stream lies downgradient of the subject site (c. 1.67km to southwest) and it has a 'Poor' WFD Status.
- 9.8.2. For the construction stage, the EIAR outlines the potential for groundwater and surface water impacts. The potential impacts relate to contamination from excavation, fuels, traffic, waste/contamination, vandalism, imported fill, and flooding / soil erosion. However, it outlines a comprehensive range of mitigation measures to address these impacts. This includes a limited depth of excavation and groundwater protection measures in relation to fuel/waste storage and traffic. There will be ongoing groundwater quality monitoring and an Emergency Operating Plan will address potential accidents/spills. Site security measures will be installed and all imported fill will be suitably sourced and monitored. An appropriately designed site drainage system for the construction stage shall be developed.
- 9.8.3. For the operational stage, the EIAR outlines the potential for groundwater and surface water impacts related to surface water run-off and imported material. However, it outlines that mitigation measures will be provided in the form of

appropriately designed SuDS and maintenance of an appropriate unsaturated zone (>1m) between groundwater and the invert of the lowest proposed drainage tank. Imported fill will be suitably sourced and monitored, and there will be regular monitoring and maintenance of drainage and SuDS measures.

- 9.8.4. Following implementation of the mitigation measures, the EIAR concludes that construction and operational stage impacts would be imperceptible. I note the planning authority view that there is a lack of robust conclusions on hydrology and water services. This view would appear to be based on the planning authority concerns regarding surface water drainage and flood risk assessment. However, as outlined in section 8.3 of this report, I am generally satisfied with the surface water drainage proposals and flood risk assessment, and I do not consider that this would warrant a refusal of permission on the grounds of environmental impacts on water.
- 9.8.5. Having regard to the foregoing, I am satisfied that impacts predicted to arise in relation to water would be avoided, managed, and mitigated by the measures which form part of the proposed scheme, proposed mitigation measures, and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative environmental impacts in terms of water.

## 9.9. **Air & Climate**

- 9.9.1. The EIAR acknowledges the potential for construction stage effects relating to dust and greenhouse gas emissions which may impact on human health. Best practice mitigation measures including a dust management plan are proposed which will focus on the pro-active control of dust and other air pollutants to minimise generation of emissions at source. No significant impacts are predicted following mitigation.
- 9.9.2. At operational phase, it acknowledges the potential for the proposal and other developments to cause traffic-related air emissions which may generate quantities of air pollutants. An air modelling assessment has been carried out considering sensitive receptors surrounding the site. It demonstrates that levels of traffic-derived air pollutants will not exceed the ambient air quality standards either with or without the proposed development in place and concludes that the impact of the development would be negligible, long-term, and imperceptible. Mitigation by design is also proposed with the proposed units being designed to be energy efficient.

9.9.3. I note that some third-party submissions have highlighted concerns about energy efficiency and air/climate impacts. The planning authority also concludes that there is a lack of robust conclusions on climate. The basis for this view is not clearly outlined, although it may be based on the potential for interactions with other concerns relating to zoning, surface water drainage, flood risk, and traffic/transport. However, as outlined in section 8.3 of this report, I am generally satisfied with the surface water drainage proposals and flood risk assessment. And while I have concurred with the planning authority's concerns regarding zoning and traffic/transport in the context of my planning assessment, I do not consider that these matters would warrant a refusal on the basis of environmental impacts on air and climate.

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

## 9.10. **Landscape & Visual**

9.10.1. The EIAR outlines that the site is located within "Central Undulating Lands" according to the Council's Landscape Character Area study. Such lowlands are deemed "Class 1 Low Sensitivity". The site lies in close proximity to the 'The Curragh', which is of "Class 5 Unique Sensitivity". There are two designated Scenic Routes (3 & 4) in close proximity to the site, which generally relate to views of The Curragh.

9.10.2. The EIAR acknowledges the potential for construction, operational, and cumulative impacts with other developments. Mitigation by design and avoidance was carried out with the preparation of a Landscape Masterplan which has influenced the overall site layout through design evolution. Construction mitigation will involve the retention of existing vegetation and keeping the site tidy. Operational measures involve the retention of vegetation along with additional landscaping and improved legibility.

9.10.3. The landscape sensitivity is regarded as 'medium'. The magnitude of change at construction stage is deemed 'high' and the impacts are generally described as

temporary and visually adverse. The magnitude of change at operational stage is deemed 'medium' and the impacts are generally described as moderate and neutral.

9.10.4. Based on the assessment of the landscape characteristics, values and sensitivities, 12 representative viewpoints were selected to assess visual impacts and effects. The significance and quality of the impacts are generally deemed to be insignificant. Significant adverse short-term impacts are identified for views 6 & 7 (Dublin Road R445), changing to moderate and neutral in the medium to long-term.

9.10.5. I would concur with the EIAR findings that there will be no significant adverse effects on landscape or visual amenity in the medium to long-term. I note that the planning authority did not raise any significant concerns in this regard.

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

#### 9.11. **Material Assets**

9.11.1. The impacts and effects identified in the EIAR can be summarised as follows:

- Access, traffic and transport - The construction phase will be subject to a management plan with short-term negative impacts. Chapter 11 of the EIAR outlines that operational impacts will have no significant effects on the surrounding road network.
- Foul water & Water supply – There may be temporary imperceptible interruptions to the network at construction stage and Irish Water has confirmed that operational connections are feasible with long-term low impacts predicted.
- Surface Water – The construction stage will implement best practice measures and impacts are likely to be short term and medium. There is no proposed operational connection to existing surface water networks and therefore the expected impact is neutral. Chapter 7 of the EIAR outlines the surface water drainage strategy and demonstrates that impacts will be limited.



- Gas, Electricity & ICT – The construction and operational impacts on the supply to the surrounding area will be neutral / beneficial.

9.11.2. No significant cumulative impacts have been identified with other developments and mitigation measures are proposed to liaise with service providers and to protect the existing assets. I note the planning authority view that there is a lack of robust conclusions on material assets. This view would appear to be based on the planning authority concerns regarding surface water drainage, flood risk assessment, and traffic/transport. However, as outlined in section 8.3 of this report, I am generally satisfied with the surface water drainage proposals and flood risk assessment. And while I would concur with concerns in relation to traffic and transport in the context of my planning assessment, I do not consider that these matters would warrant a refusal of permission on the basis of environmental impacts on material assets.

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

## 9.12. **Cultural Heritage**

9.12.1. The EIAR outlines that the appeal site does not include any archaeological monuments or NIAH structures. No archaeological features were identified during the walkover survey of the site. The geophysical survey identified two areas of possible archaeological interest. Archaeological mitigation is proposed in the form of archaeological testing prior to construction, which will ensure that impacts will not be significant. No operational or cumulative impacts are identified in the EIAR.

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

### 9.13. **Interactions**

9.13.1. Chapter 15 of the EIAR identifies and assesses the interrelationships between the aforementioned factors. In summary, it outlines that there is potential for interaction for 'population and human health' with soil, water, air & climate, landscape, cultural heritage, and material assets. 'Biodiversity' has the potential to interact with soil, water, air & climate, landscape, and material assets. Finally, 'soil' has the potential for interactions with hydrology, air & climate, and landscape.

9.13.2. I acknowledge the planning authority's view that robust conclusions have not been reached in relation to all interactions. This view would appear to be based on the planning authority concerns regarding zoning, surface water drainage, flood risk assessment, and traffic/transport. However, as outlined in section 8.3 of this report, I am generally satisfied with the surface water drainage proposals and flood risk assessment. And while I would concur with concerns in relation to zoning and traffic and transport in the context of my planning assessment, I do not consider that these matters would warrant a refusal of permission on the basis of environmental interactions with any other factors.

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

### 9.14. **Mitigation Measures**

9.14.1. Chapter 16 of the EIAR outlines a collective list of all the construction and operational mitigation measures that apply to each individual chapter. I am satisfied that this accurately and adequately represents the mitigation measures associated with the proposed development.

### 9.15. **Reasoned Conclusion**

9.15.1. Having regard to the examination of environmental information contained above, and in particular to the EIAR and supplementary information provided by the applicant, as well as the submissions received in the course of the application and appeal, I am satisfied that the potential effects of the proposed development have been

adequately identified, described and assessed, and I am satisfied that there will be no other likely significant environmental effects arising from the proposed development. I consider that the main significant direct and indirect effects of the proposed development on the environment, including mitigation and monitoring measures, are as follows:

- Positive socioeconomic effects on population and human health associated with increased employment and demand for services during the construction phase, and the availability of additional housing when complete.
- The potential for significant negative population and human health effects associated with nuisance/disturbance during the construction phase will be addressed through construction management mitigation measures and will not result in any unacceptable residual effects.
- The potential for significant contamination effects on groundwater and surface water as a result of construction activities and the discharge of surface water on site, along with the potential for interactions with biodiversity, land, soil, and geology. This will be satisfactorily mitigated through best practice construction management measures and the implementation of an appropriately design Sustainable Urban Drainage System and will not result in any unacceptable residual effects.
- The potential for significant effects on biodiversity and landscape which will be satisfactorily mitigated through the retention of existing vegetation and the completion of additional landscaping and surface water features and will not result in any unacceptable residual effects.

## 10.0 **Appropriate Assessment**

The requirements of Article 6(3) of the Habitats Directive, as related to screening the need for Appropriate Assessment of a project under Part XAB (section 177U) of the Planning and Development Act 2000 (as amended), are considered fully in this assessment.

## 10.1. **Background to the application**

- 10.1.1. As part of the application, a Natura Impact Statement (NIS) including AA Screening was compiled by Panther Ecology Ltd. In summary, the AA Screening exercise concluded that there may be potential for an indirect impact upon the qualifying interests / special conservation interests of Pollardstown Fen SAC due to a potential deterioration in groundwater during the construction phase. However, the NIS included control measures and standard practice (mitigation measures) during the construction phase and concluded that there would be no adverse impact to the conservation objectives of the habitats and species for which the Pollardstown Fen SAC has been designated. It considered that there would be no significant risk of negative impact, either alone or in combination with other plans or projects, to the integrity of the Natura 2000 network.
- 10.1.2. The initial KCC Planner's report states that the mitigation measures outlined in the NIS are typical of residential development and provide certainty that the SAC will not be affected; a potential deterioration in ground water quality will be mitigated; and there will be no adverse impacts on the integrity of the SAC. This is supported by a report from the KCC Heritage Officer which outlines that there are no objections subject to conditions. However, in the 'Conclusion of Assessment of EIAR Addendum & NIS following FI response', the final Planner's report highlights outstanding concerns with regard to the robustness of the NIS. This would appear to relate mainly to impacts on surface water and groundwater as a result of the aforementioned concerns about SuDS/drainage and flood risk.
- 10.1.3. Having reviewed the documents, drawings and submissions included in the appeal file, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European Sites.
- 10.1.4. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development would have any possible interaction that would be likely to have significant effects on a European Site(s).

## 10.2. Description of the development and site

10.2.1. A detailed description of the development is outlined in section 2 of this report. In summary, it includes the construction of 285 no. residential units, a creche, a multifunctional space, and all associated site works and services. As outlined in section 8.3 of this report, surface water would be collected, attenuated, and infiltrated on site as part of a SuDS strategy. Foul effluent will be disposed to the Irish Water system and water supply will be via the Irish Water system.

10.2.2. The site has a gross area of 10.3 hectares (net area 8.8 ha) and is located on the eastern edge of Kildare Town. The site consists mainly of 'improved agricultural grassland' of low ecological value, although it does include key ecological receptors in the form of hedgerows and treelines. The proposed development will see the removal of 25 trees and approximately 302 linear metres of hedgerow. The proposed landscape plan will include the planting of 146 street trees, 129 medium/small trees, 70 semi mature trees, 105 trees planted along the Curragh Buffer zone, non-invasive ornamental species of shrubs, and formal hedging and shrubs along the treelines.

## 10.3. Submissions and Observations

10.3.1. The submissions and observations received during the application and appeal process have been outlined in sections 4.4 and 7.2 of this report. The issue of European Sites or AA Screening has not been raised.

## 10.4. European Sites

10.4.1. The applicant's AA Screening Report considers a Zone of Influence (Zoi) generally based around a 15km radius. The relevant sites and their QI's/SCI's are outlined in the following table.

<b>European Site (Code)</b>	<b>Distance (km)</b>	<b>Qualifying Interests / Special Conservation Interests (*Priority Annex I Habitats)</b>
Pollardstown Fen SAC [000396]	c.3.9 km north-east	7210 Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i> * 7220 Petrifying springs with tufa formation ( <i>Cratoneurion</i> )* 7230 Alkaline Fens 1013 Geyer's Whorl Snail <i>Vertigo geyeri</i> 1014 Narrow-mouthed Whorl Snail <i>Vertigo angustior</i> 1016 Desmoulin's Whorl Snail <i>Vertigo moulinsiana</i>

Mouds Bog SAC [002331]	c.6.5 km north-east	7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion
River Barrow and River Nore SAC [002162]	c.7.6 km south-west	1016 Desmoulin's whorl snail <i>Vertigo moulinsiana</i> 1029 Freshwater pearl mussel <i>Margaritifera margaritifera</i> 1092 White-clawed crayfish <i>Austropotamobius pallipes</i> 1095 Sea lamprey <i>Petromyzon marinus</i> 1096 Brook lamprey <i>Lampetra planeri</i> 1099 River lamprey <i>Lampetra fluviatilis</i> 1103 Twaite shad <i>Alosa fallax</i> 1106 Atlantic salmon <i>Salmo salar</i> (only in fresh water) 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1310 <i>Salicornia</i> and other annuals colonizing mud and sand 1330 Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritimae</i> ) 1355 Otter <i>Lutra lutra</i> 1410 Mediterranean salt meadows ( <i>Juncetalia maritimi</i> ) 1421 Killarney fern <i>Trichomanes speciosum</i> 1990 Nore freshwater pearl mussel <i>Margaritifera durrovensis</i> 3260 Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation 4030 European dry heaths 6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels 7220 * Petrifying springs with tufa formation ( <i>Cratoneurion</i> ) 91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles 91E0 * Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> ( <i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i> )
Ballynafagh Lake SAC [001387]	c.14.4km north-east	7230 Alkaline fens 1016 Desmoulin's Whorl Snail <i>Vertigo moulinsiana</i> 1065 Marsh Fritillary <i>Euphydryas aurinia</i>

10.4.2. Consistent with the applicant's subsequent assessment of potential effects, I would concur that Pollardstown Fen SAC (Site Code 000396) is within the zone of influence due to distance and the potential link via groundwater. I would also note that there is no direct hydrological link between the appeal site and Ballynafagh Lake SAC or Mouds Bog SAC. In addition to the 4 sites mentioned in the table above, the

applicant also confirms that there is no direct hydrological link with Ballynafagh Bog SAC (located to the east of Ballynafagh Lake SAC).

10.4.3. However, while the applicant's AA screening exercise discounts a hydrological connection between the development site and the River Barrow and River Nore SAC, I note that wastewater will be treated at the Kildare Town WwTP, prior to discharge to the Tully Stream and then to the downstream environment of this SAC. And while I note the significant separation distance of 7.6km, I consider that the potential impacts should be considered on a precautionary basis.

10.4.4. In conclusion, I consider that further screening assessment is required in relation to the River Barrow and River Nore SAC, and the Pollardstown Fen SAC. I am satisfied that the potential for impacts on any other European Sites can be excluded at preliminary examination stage.

#### 10.5. **Potential effects on European Sites**

##### Habitat loss/fragmentation

10.5.1. The site is not within any European Site, and it does not support any fauna species linked with the QI/SCI populations of any relevant European sites. Therefore, there is no potential for habitat loss or fragmentation.

##### Disturbance to Protected Habitats and Species

10.5.2. It is not envisaged that protected species would be adversely impacted by noise as the site is located within an urban setting at a significant separation distance and fauna in the area would be accustomed to human generated noise. Construction works will be mainly carried out during daylight hours away from the Natura 200 sites and would not cause significant disturbance to foraging species. Earthworks would be confined to the site. Potential disturbance due to dust during the construction phase would not be considered significant given the transient nature of the works and the scale of the proposed development.

##### Invasive Species

10.5.3. There are no high impact invasive species within or adjacent the site boundary. The risk of invasive species being introduced onto the site is considered to be low, with no import of materials with the potential to contain invasive flora species.

## Water Quality

- 10.5.4. There is potential for hydrological connections with Pollardstown Fen SAC as a result of surface water discharges to groundwater at the operational stage. However, the design of the drainage system will include attenuation tanks and ponds, and there is a significant separation distance (3.9km) and hydrological buffer between the appeal site and the SAC. As outlined in section 8.3 of this report, I am satisfied that surface water drainage proposals are satisfactory and any flood risk will be satisfactorily addressed through standard drainage design measures. And even in the event of an accident or malfunction relating to the drainage system, I am satisfied that any impacts would be localised and would not be likely to result in significant effects on the SAC.
- 10.5.5. Foul water will be treated at the Kildare Town WwTP, prior to discharge to the Tully Stream and then to the downstream environment of the River Barrow, designated as the River Barrow and River Nore SAC. The River Barrow has a 'Good' WFD status. The most recent information from the Irish Water Wastewater Treatment Capacity Register (2023) indicates that the plant is operating below its capacity of 28,000 P.E. The 2021 IW Annual Environmental Report indicates that there is an 'Organic Capacity (PE) – Remaining' of 17,125.
- 10.5.6. Having regard to the available WWTP capacity and the 'good' WFD status of the River Barrow, it is considered that foul water discharges from the proposed development would equate to a minor percentage of the overall discharge volumes sent to Kildare WwTP for treatment and would not impact on the overall water quality status of the River Barrow. Therefore, there is no possibility of the proposed development undermining the conservation objectives of any of the QIs or SCIs of the European sites in, or associated with, the River Barrow as a result of foul water.
- 10.5.7. The applicant's AA Screening exercise highlights that during the construction phase a deterioration in water quality can arise through the release of suspended solids during soil disturbance works, the release of uncured concrete and the release of hydrocarbons (fuels and oils). It concludes that a deterioration in water quality has the potential to have an adverse impact upon the qualifying interests of Pollardstown Fen SAC and, therefore, that an NIS is required.



- 10.5.8. The NIS outlines that there is potential for significant effects on the qualifying habitats of Pollardstown Fen SAC (i.e., Cladium fens, Petrifying springs, Alkaline fens) due to a potential deterioration in water quality. However, it concludes that there is no potential for impacts on qualifying species (i.e., Geyer's Whorl Snail, Narrow-mouthed Whorl Snail, Desmoulin's Whorl Snail) given that water quality is not listed as a threat to these species.
- 10.5.9. The NIS outlines a range of mitigation measures that would be employed to ensure that there would be no significant impacts to the habitats of the Pollardstown Fen SAC due to a potential deterioration in groundwater quality. The measures include proposals for silt control, stockpiling of topsoil, excavation management, surface water run-off control, dewatering, plant/machinery maintenance, fuel/oil storage and management, concrete supervision, traffic/vehicle management, and wastewater disposal. Subject to the proposed design and measures, the NIS concludes that there would be no adverse impact to groundwater quality and the protected habitats and species of the Pollardstown Fen SAC during the construction phase. In principle, I would concur with this conclusion.

## 10.6. **In combination or Cumulative Effects**

- 10.6.1. Section 9 of the NIS outlines a range of plans and projects that were reviewed and considered for in-combination / cumulative effects with the proposed development. These have been considered in section 10.5 (above) and I would concur that there is no potential for any such in-combination/cumulative impacts.

## 10.7. **Mitigation Measures**

- 10.7.1. I note that the applicant's AA Screening exercise concluded that there was a need for mitigation measures and Appropriate Assessment to address construction stage groundwater impacts. These mitigation measures were subsequently incorporated into the Natura Impact Statement to satisfactorily address the risks.
- 10.7.2. However, I consider that the measures proposed in respect of surface water and groundwater (construction and operational stage) are best practice standard measures which have not been designed or intended to avoid or reduce any harmful effects of the project on a European Site. Therefore, I am satisfied that these measures can be considered in the AA Screening process. I would also highlight that the proposed mitigation measures are satisfactorily incorporated elsewhere in the

application documents and drawings, including the EIAR. Therefore, I consider that the NIS (Stage 2 Appropriate Assessment) can be discounted, and the development would still not be likely to give rise to significant effects on European Sites.

## 10.8. AA Screening Determination

10.8.1. The proposed development was considered in light of the requirements of section 177U of the Planning and Development Act 2000 (as amended). Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project, individually, or in combination with other plans or projects, would not be likely to give rise to significant effects on Pollardstown Fen SAC (000396) and River Barrow and River Nore SAC (002162), or any European Sites, in view of the sites' conservation objectives, and Appropriate Assessment (Stage 2), including the submission of Natura Impact Statement is not, therefore, required.

10.8.2. This determination is based on the following:

- The nature and scale of the proposed development and the location of the site on serviced lands;
- The distance of the proposed development from European Sites and the limited potential for pathways;
- The incorporation of best-practice construction management, surface water management, and operational design measures; and
- The available capacity of the Kildare Town WWTP to facilitate future development in compliance with the provisions of the Water Framework Directive.

## 11.0 Recommendation

Having regard to the foregoing assessments, I recommend that permission be **refused** for the proposed development for the reasons and considerations set out in the following Draft Order.

## 12.0 Recommended Draft Board Order

### Planning and Development Acts 2000 to 2022

**Planning Authority: Kildare County Council**

**Planning Register Reference Number: 23/510**

**Appeal** by MRP Oakland Limited, c/o McGill Planning, 63 York Road, 22 Wicklow Street, Dublin 2, against the decision made on the 9<sup>th</sup> day of November 2023, by Kildare County Council to refuse permission for the proposed development.

### **Proposed Development:**

The proposed development will comprise the construction of 295 no. residential units along with a two storey creche facility measuring c.472.7sqm. The residential units will include:

- 15 no. single storey, semi-detached/terraced houses (12 no. 1 beds and 3 no. 2-beds) provided as "age-friendly housing".
- 206 no. two storey, semi-detached/terraced (10 no. 2 beds, 160 no. 3 beds 36 no. 4 beds)
- 74 no. three storey duplexes/apartments (37 no. 2 beds, 37 no. 3 beds) arranged within 6 no. blocks.

All residential units will be provided with associated private gardens / balconies / terraces facing to the north/south/east/west.

New vehicular and pedestrian/cyclist accesses will be via Dublin Road (R445) and Ruanbeg Avenue and a pedestrian only access via Ruanbeg Park, with upgrade to existing public road as necessary.

All associated site development works, including 571 no. car parking spaces (including EV parking), 236 no. cycle parking spaces, public and communal open spaces, landscaping, SuDS features, boundary treatment, plant areas, waste management areas/bin stores, and services provision (including ESB substations, pumping station) are also proposed.

An Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS) have been prepared in respect of the proposed development.

Revised by Significant Further Information which consists of Replacement of 3. no. three duplex apartment blocks in the northeast corner of the site with two storey housing and the inclusion of a new multifunctional space within the "age friendly housing block". This results in a reduction in no. of residential units to 285 no. residential units. Made up of 14 no. single story, semi detached/terraced houses (12 no. 1-beds and 2 no. 2 beds) provided as "age friendly housing", 231 no. two storey, semi-detached/terraced houses (20 no. 2 beds, 173no.3 beds, 38 no .4 beds); and 40 no. duplexes/apartments. (20 n. 2 beds, 20 no. 3 beds) arranged within 3 no. three storey blocks. Along with an associated reduction in parking provision to 560 no, car parking spaces (including EV parking) and 138 no. cycle parking spaces and the inclusion of a signalised junction in the Dublin road.

## **Decision**

**Refuse permission for the above proposed development based on the reasons and considerations set out below.**

## **Reasons and Considerations**

1. Having regard to the 'New Residential Phase 2' zoning of the site as per the Kildare Town Local Area Plan 2023 - 2029, the objective of which is to protect future development lands from inappropriate forms of development which would impede the sequential expansion and consolidation of the town in terms of providing for new residential development for future plans, it is considered that the proposed development would contravene materially the said zoning objective and would undermine the housing and population targets for the town as outlined in the Core Strategy of the Kildare County Development Plan 2023 – 2029. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the peripheral location of the site at a significant walking distance from the town centre, the absence of definitive proposals for the provision of cycle connections and traffic calming measures, and the absence of suitable public transport services, it is considered that the proposed development would be excessively car-dependent and would not facilitate the safe movement of all vulnerable road users. Accordingly, the proposed development would be contrary to Policy TM P1 of the Kildare County Development Plan 2023 – 2029, which promotes sustainable development through facilitating movement that is accessible to all and prioritises walking, cycling and public transport, and would be contrary to the proper planning and sustainable development of the area.

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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Stephen Ward  
Senior Planning Inspector  
4<sup>th</sup> March 2024