



An
Bord
Pleanála

Inspector's Report

ABP-318753-23

Development	10 year permission for the demolition of outhouses/sheds and construction of 235 no. residential units, a creche, a retail unit, and all associated site and ancillary works (www.lislooseplanning.com)
Location	Lisloose, Tralee, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	23/60201
Applicant	Ned O'Shea & Sons (Rock) Ltd.
Type of Application	Large-Scale Residential Development (LRD)
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party v Grant of Permission
Appellant	1. Peter Barry
Observer	1. The Grove Residents Association & Ors

Date of Site Inspection

26th February 2024

Inspector

Anthony Kelly

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1.0 Site Location and Description

- 1.1. The site is located in the northern area of Tralee. The site generally comprises a number of fields with hedgerow and tree line boundaries. The western section of the southern site boundary is along Bracker O'Regan road opposite Monavalley Industrial Estate while the north east site boundary is along a local road (L6903/Bullock Hill).
- 1.2. There are fields to the north, west, and south east of the site. There is a housing development (Sunday's Well) also to the south east where there is a short area of shared boundary. The Hospital Tralee is also along this boundary. Ground levels generally rise from Bracker O'Regan road towards the north of the site, from approx. 34 metres OD (ordnance datum) along the road to approx. 58 metres OD in the north east corner.
- 1.3. Running in a westerly direction through the site from Bullock Hill there is a narrow roadway which serves two houses which are not included within the site or landownership boundaries. The roadway is indicated as a right-of-way for a distance of approx. 150 metres from the Bullock Road junction. There is a third-party house (the appellant's) immediately south of the access point of this roadway which is also served by it. There is a section of paved roadway within the south west area of the site from the junction with Bracker O'Regan road.
- 1.4. The site has an area of 9.2 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for a ten year permission comprising:
 - demolition of disused agricultural outhouses/sheds and ancillary structures,
 - construction of 235 no. residential units comprising:
 - 129 no. houses (8 no. four-bed two storey, 83 no. three-bed two storey, 34 no. two-bed two storey, and 4 no. two-bed single storey) in a mix of semi-detached and terraced units,
 - 106 no. apartments (76 no. one-bed and 30 no. two-bed) in 12 no. two-storey and 3 no. four-storey apartment blocks,

- a 93.1sqm retail unit in four storey block J3,
- a 226.4sqm creche in four storey block J3,
- all associated car and bicycle parking, roads, paths, landscaping, boundary treatments etc.

2.2. The following tables set out some of the key aspects of the proposed development.

Table 1 – Key Figures

Site Area (Gross / Net)	9.2 hectares / 8.6 hectares
Number of Units	235 no.
Building Heights	Single storey to four storeys
Density / Dwellings Per Hectare (dph)(Gross / Net)	Approx 25.5dph / approx. 27.33dph
Plot Ratio	0.27 (net)
Site Coverage	Approx. 11.5%
Dual Aspect	86% (50 no. / 58 no.) of apartments in blocks J1-J3 All 48 no. apartments in the 12 no. two-storey apartment buildings are triple-aspect
Open Space / Amenities	<u>Public Open Space</u> 1.29 hectares (15% of net site area) <u>Communal Open Space</u> 0.2945 hectares <u>Amenities</u> Creche and retail unit
Part V	47 no. units
Pedestrian / Cyclist Infrastructure	Footpaths through site. Limited permeability to other areas.
Car and Bicycle Parking	<u>Car (477 no. spaces)</u> Residential – 394 no. spaces

	Visitor – 65 no. spaces Creche – 12 no. spaces Block J3/shop/creche – 6 no. spaces <u>Bicycle (327 no. spaces)</u> Residential – 273 no. spaces Visitor – 54 no. spaces
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Table 2 – Unit Breakdown

Type	Bedroom Number				Total
	1-Bed	2-Bed	3-Bed	4-Bed	
House	0	38	83	8	129 (54.9%)
Apartment	76	30	0	0	106 (45.1%)
Total	76 (32.3%)	68 (29%)	83 (35.3%)	8 (3.4%)	235 (100%)

- 2.6. The proposed development comprises a mix of houses and apartments with some commercial development. There are several structures which are in the centre of the site, but outside of the red line site and blue line landownership boundaries. These are accessed via the existing roadway from Bullock Hill which is retained as part of the proposed development.
- 2.7. The proposed vehicular access is off Bracker O'Regan Road. There are two blocks, J1 and J2, to the west of the short stretch of access road perpendicular to Bracker O'Regan road, and one apartment block, Block J3, to the east. Block J3 contains the proposed retail unit and creche with car parking to the east of the block. The three blocks would provide a four storey presence to Bracken O'Regan Road. 12 no. two storey apartment blocks each containing four apartments are distributed throughout the site. The houses are generally laid out in an east-west orientation rather than a north-south orientation. There are several public open space areas, including one dominated by a ring fort in the west centre area of the site. The applicant has sought a ten-year permission. A standard five-year permission is the normal length for

residential development of this scale. However, this is not an issue raised by the Council or by the appellant.

2.8. In addition to standard plans and particulars the planning application was accompanied by a number of supporting documents. These include (but are not limited to):

- a 'Planning Report and Statement of Consistency' prepared by Malachy Walsh and Partners (MWP) dated September 2023,
- an 'Architectural Design Statement' prepared by Wrkshop Architects (undated),
- a 'Housing Quality Assessment Phase 1 Apartments' prepared by Wrkshop Architects (undated) and a 'Housing Quality Assessment Phases 2-4 Apartments' prepared by Brendan Williams Architects (undated),
- an 'Ecological Impact Assessment' (EclA) prepared by MWP dated September 2023,
- a 'Landscape Design Report' prepared by Cathal O'Meara Landscape Architects dated September 2023,
- an 'Arboricultural Impact Assessment' prepared by Arbor-Care Ltd. (undated),
- 'Lisloose Archaeological Overview' prepared by Laurence Dunne Archaeology Ltd. dated September 2023 and an 'Archaeological Impact Assessment Report' written by Laurence Dunne and Tony Bartlett dated July 2011,
- a 'Screening for Environmental Impact Assessment Report' prepared by MWP dated September 2023,
- an 'Appropriate Assessment Screening Report' prepared by MWP dated September 2023,
- a 'Stage 1 Road Safety Audit' (RSA) prepared by Traffico dated June 2023,
- a 'Traffic and Transport Assessment' (TTA) prepared by MWP dated September 2023,
- a 'Preliminary Construction Environmental Management Plan' (CEMP) prepared by MWP dated September 2023, and,
- a 'Flood Risk Assessment' (FRA) prepared by MWP dated September 2023.

3.0 Planning Authority Pre-Application Decision

- 3.1. An LRD meeting took place on 23rd March 2023 between the applicant and representatives of Kerry County Council following an earlier section 247 meeting on 20th November 2022.
- 3.2. In the LRD opinion issued on 19th April 2023 the planning authority was of the opinion that, having had regard to a number of issues, the proposed development would constitute a reasonable basis on which to make an application for the proposed LRD. The planning authority did not notify the applicant that any specified additional information should be submitted with any application for permission.

4.0 Planning Authority Decision

4.1. Decision

- 4.1.1. Kerry County Council granted permission for the proposed development subject to 32 no. conditions. Conditions include:

Condition 6 – This requires a special contribution under section 48 (2)(c) of €252,000 for upgrading active travel infrastructure.

Condition 13 – This requires, inter alia, a 20 metres buffer zone around the ring fort, submission of a management plan, and archaeological monitoring.

Condition 14 – This requires revised proposals making provision for an access to the lands to the south which may require omission of houses between proposed nos. 97 and 118, or other suitable alternative.

Condition 15 – Phases 3 and 4 may not commence until a revised and updated TTA is submitted to the satisfaction of the planning authority.

Condition 16 – This requires a fully completed stage 1 RSA and submission of a drawing containing all recommendations, and the carrying out of a stage 3 RSA.

Condition 17 – The applicant shall engage with the planning authority about the provision of a right turning lane or other suitable junction treatment on Bracker

O'Regan Road, to also include for a suitably controlled crossing of the road for pedestrians/cyclists.

Condition 19 – Prior to commencement of development detail shall be approved for a pedestrian/cycle link from the estate road at no. 166 to Bullock Hill.

Condition 32 – This requires, inter alia, side bedroom windows to two houses, incorporation of open space into two domestic curtilages, and provision of a pathway along the Hospital Tralee stream.

4.2. Planning Authority Reports

- 4.2.1. The planning authority decision to grant permission was based on a Planning Report dated 23rd November 2023. Permission was granted within the eight-week statutory period.
- 4.2.2. The Planning Report contains, inter alia, a site location and description, the planning history, planning policy, a summary of reports and referrals, a summary of third party submissions, and an assessment of the proposed development. The assessment section of the report can be briefly summarised as follows using the same headings as per the report, though not all sections are summarised.

Principle of development – The site represents a sustainable location for housing.

Density – The proposed density of less than 30dph is considered acceptable.

Development standards – The standard of the proposed apartments is satisfactory.

Private open space – Requirements have been met.

Public open space – The 1.29 hectare area provided meets requirements and it does not include the archaeological buffer zone. Open areas adjacent to proposed nos. 165 and 166 should be incorporated into those curtilages due to inadequate overlooking.

Impact on residential amenity – The proposed development would not be injurious to the residential amenity of the area.

Transportation and access – Traffic issues are outlined. Car parking provision is considered to be satisfactory. No cycle stands have been provided for the creche or retail unit. EV charging proposals are satisfactory. An access should be provided to the adjacent residentially zoned land to the south to avoid the requirement for a future

additional access off Bracker O'Regan Road. This can be facilitated by a minor amendment to the development. A pedestrian/cycle link should be provided from proposed no. 166 to Bullock Hill. These two measures (access to south and pedestrian/cycle link) would encourage active modes of travel to local retail and educational facilities.

Water / wastewater / surface water – Though the Uisce Eireann submission raises an issue with wastewater connection this can be addressed by a condition. Surface water proposals are in line with current requirements.

Appropriate assessment (AA) / Environmental impact assessment (EIA) – Neither Stage 2 AA nor an environmental impact assessment report (EIAR) is required.

Childcare facilities – The proposed creche is satisfactory.

- 4.2.3. The Planning Report concludes that 'the proposed development would not be visually obtrusive, would not seriously injure the amenities of the area or be otherwise contrary to the proper planning and sustainable development of the area'.

Other Technical Reports

Tralee Municipal District Office (Roads, Transportation & Marine Department) –

A report dated 15th November 2023 recommended further information relating to the TTA and stage 1 RSA.

A subsequent report dated 20th November 2023 identified conditions to be applied should permission be granted.

Environment Section – Conditions recommended to be attached to any grant of permission.

Environmental Assessment Unit – In relation to AA, the proposed development, by itself or in combination with other plans or projects, will not have a significant effect on European sites and stage 2 AA is not required. In relation to biodiversity, the proposed development is unlikely to have significant ecological impact. Conditions are recommended.

County Archaeologist – Recommends conditions to be attached to any grant of permission.

Housing Estates Unit – Some concerns are expressed re: drainage proposals, and commentary is provided on other issues related to estate development and management.

Flooding and Coastal Protection Unit – Issues identified that require clarification or to be conditioned if permission is granted e.g. operation and maintenance of the drainage systems and further development of the CEMP.

North Kerry Active Travel – A number of comments have been provided.

Fire Services Department – No objection to the planning application. Additional commentary is also provided.

4.3. **Prescribed Bodies**

Uisce Eireann – No objection. Observations made¹.

Inland Fisheries Ireland – Measures outlined for the protection of fishery habitat.

4.4. **Third Party Observations**

- 4.4.1. Seven observations were received from local residents and resident's associations. The issues raised are generally covered by the grounds of appeal and observations in sections 7.1 and 7.4 of this inspector's report, though I note the additional commentary on the impact of the proposed development on the existing preschool at the appellant's property.

5.0 **Planning History**

- 5.1. There is no current relevant planning permission on site.
- 5.2. Planning permission for 46 no. detached houses, largely on the site subject of the current application, expired in 2021 without being acted upon. Planning application reference numbers 11/99 (outline permission), 14/748 (permission consequent), and

¹ Though the Kerry Co. Co. Planning Report states that the submission from Uisce Eireann 'raises some issues with regards to wastewater connection', the Uisce Eireann submission on this application received by the Board from Kerry Co. Co. states no objection with standard observations made.

11/9999 (extension of duration) refer. Planning permission for four houses adjacent to the east of the site with access from the south of the roadway running through the site expired in 2018 without being acted upon. Planning application reference numbers 07/4153 (outline), 11/505 (permission consequent), and 07/94153 (extension of duration) refer.

6.0 Policy Context

6.1. Project Ireland 2040 National Planning Framework (NPF)

6.1.1. The NPF is a high level strategic plan to shape the future growth and development of the country to 2040. It is focused on delivering 10 National Strategic Outcomes (NSOs).

6.1.2. Relevant National Policy Objectives (NPOs) include:

NPO 4 – Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

NPO 33 – Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

6.2. Project Ireland 2040 National Development Plan 2021-2030 (NDP)

6.2.1. The NDP sets out the Government's over-arching investment strategy and budget for the period 2021-2030. It balances the significant demand for public investment across all sectors and regions of Ireland with a major focus on improving the delivery of infrastructure projects to ensure speed of delivery and value for money.

6.3. Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024)

6.3.1. The Guidelines set out policy and guidance in relation to the planning and development of urban and rural settlements, with a focus on sustainable residential development and the creation of compact settlements. There is a renewed focus in

the Guidelines on the renewal of existing settlements and on the interaction between residential density, housing standards, and quality urban design and placemaking to support sustainable and compact growth.

- 6.3.2. The site is in an urban extension location of this Key Town (as per section 6.6 of this inspector's report). Residential densities in the range 30dph to 50dph (net) shall generally be applied.

6.4. Urban Development and Building Heights Guidelines for Planning Authorities (December 2018)

- 6.4.1. These Guidelines are intended to set out national planning policy guidelines. Reflecting the NPF strategic outcomes in relation to compact urban growth, there is significant scope to accommodate anticipated population growth and development needs by building up and consolidating the development of our existing urban areas.

6.5. Sustainable Urban Housing: Design Standards for New Apartments (2023)

- 6.5.1. The overall purpose of these Guidelines is to strike an effective regulatory balance in setting out planning guidance to achieve both high quality apartment development and a significantly increased overall level of apartment output. They apply to all housing developments that include apartments that may be made available for sale, whether for owner occupation or for individual lease.

6.6. Regional Spatial and Economic Strategy for the Southern Region (2020) (RSES)

- 6.6.1. This is a strategic regional development framework which establishes a broad framework for the way in which society, environment, economy, and the use of land should evolve. Tralee is designated as a Key Town, and it is described on pages 60-63 of the RSES.

6.7. Kerry County Development Plan 2022-2028 (KCDP)

- 6.7.1. The subject site is just to the north of the Tralee Town Plan boundary in an area identified as Tralee Environs. The Tralee Town Development Plan is contained in volume II (Town Development Plans) of the KCDP.

- 6.7.2. The site is in an area zoned 'R2 Existing Residential'. The objective is to 'Provide for residential development and protect and improve residential amenity'. There is a recorded monument within the site boundary and an indicative Northern Relief Road route running through the western area of the site connecting Bracker O'Regan Road to the Forge Cross roundabout approx. 1.5km to the east of the proposed site.
- 6.7.3. A 'residential unit' is permitted in principle under the zoning matrix. Both a 'creche', and a 'shop (class 1)' are open to consideration.
- 6.7.4. The Plan does not outline a density range.

6.8. Tralee Municipal District Local Area Plan 2018-2024 (MDLAP)

- 6.8.1. The site is located within the Tralee Municipal District which includes the wider area of e.g. Tralee, Ardfert, Fenit, Brosna, and Blennerville. The LAP was adopted on 17th September 2018.
- 6.8.2. The zoning matrix on page 39 of the LAP is the same as that set out in paragraph 6.7.3 of this inspector's report insofar as it relates to residential development, creche, and a shop (class 1).
- 6.8.3. Page 41 of the Plan states 'The appropriate density for applications for housing developments will be considered by the Planning Authority on a case by case basis'.

6.9. Natural Heritage Designations

- 6.9.1. The nearest designated area of natural heritage to the site is Tralee Bay Complex special protection area (SPA, site code 004188) approx. 2.85km to the south west of the subject site. This SPA partially overlaps with Tralee Bay and Magharees Peninsula, West to Cloghane special area of conservation (SAC, site code 002070), the boundary of which is approx. 2.95km to the south west of the subject site.

6.10. EIA Screening

- 6.10.1. Paragraph 10(b) of Part 2 of Schedule 5 of the Planning & Development Regulations, 2001 (as amended), and s.172 (1)(a) of the Planning & Development Act, 2000 (as amended), provides that EIA is required for infrastructure projects that would equal or exceed, inter alia:

- construction of more than 500 dwelling units, or,
- 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. A business district means a district within a city or town in which the predominant land use is retail or commercial use.

6.10.2. Paragraph 15 of Part 2 provides that EIA is required for 'Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7'.

6.10.3. The proposed development of 235 no. residential units (129 no. houses and 106 no. apartments), a creche, and a retail unit on a site of 9.2 hectares on residentially zoned greenfield land on the edge of the town is significantly below the applicable numerical threshold for mandatory EIA, but it is 92% of the area threshold i.e. a 9.2 hectare site with a 10 hectares threshold.

6.10.4. Article 109 (2B)(a) of the 2001 Regulations states 'Where a planning application for sub-threshold development is not accompanied by an EIAR but is accompanied by the information specified in Schedule 7A and sub-article (2A) ... the Board shall carry out an examination of, at the least, the nature, size or location of the development for the purposes of a screening determination'.

6.10.5. In my opinion, the application includes the information specified in Schedule 7A of the 2001 Regulations, informing on the characteristics of the proposed development and its likely significant effects on the environment. The application was accompanied by a number of relevant supporting assessments and documents such as a Screening for Environmental Impact Assessment Report, AA Screening Report, EclA, Preliminary CEMP, Archaeological Impact Assessment Report, TTA, and FRA, and I have had regard to same in my EIA screening.

6.10.6. I note that the appellant's original submission to Kerry Co. Co. stated, 'Given the particular sensitivities of the site a full EIAR is wholly justifiable'. Sensitivities cited included the anticipated four and a half year construction period, construction practices, impact on biodiversity, impact on groundwater and surface water, the presence of sensitive noise receptors, and archaeology. A number of these issues are

addressed elsewhere in this inspector's report. However, as set out in the following paragraph, I do not consider a sub-threshold EIAR is required.

6.10.7. Having regard to the nature, size, and location of the proposed development and to the provisions of Schedule 7A of the 2001 Regulations (as amended), I have concluded that the proposed development is not likely to have significant effects on the environment, as set out in appendix 1 to this inspector's report. EIA, therefore, is not required. In this regard I note that the proposed development is residential in nature, the number of units proposed is well below the applicable numerical threshold, the site area is below the applicable area threshold, my screening for Appropriate Assessment in section 9 of this inspector's report concludes that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European sites, archaeological and biodiversity issues are addressed in sections 8.8 and 8.9 of the Planning Assessment in this inspector's report, and the development location on a greenfield site surrounded primarily by agricultural land and roads infrastructure, with limited existing residential development, does not have any particular environmental sensitivity.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. Grounds of appeal have been received from Peter Barry, Lisloose, Tralee, Co. Kerry V92 FTX8 (the property at the junction of the roadway through the site and Bullock Hill). The appellant has submitted specific grounds of appeal following the Kerry Co. Co. decision, in addition to those issues contained in the submission to the Council in the first instance, and to which the appellant refers in the appeal. The main issues raised in the grounds of appeal are summarised in paragraph 7.1.2, while the issues raised in the submission to Kerry Co. Co. are summarised in paragraph 7.1.3.

7.1.2. Grounds of Appeal

- Condition 16 of the planning authority grant requires the recommendations of the RSA to be submitted to the planning authority. This includes restricted access to the right-of-way by which the appellant's house is accessed. This is to be

developed and detailed without any public consultation. It is requested that any restricted access includes gates at the laneway entrance to L6903 preventing access to/from the laneway/proposed development with the exception of existing residents who must have control of all restricted access measures.

- Condition 19 requires a pedestrian/cycle link from the estate road at proposed no. 166 to the L6903, again to be agreed without public consultation. This will directly impact the appellant's property if the existing pathway is to be joined to the proposed link. There is no footpath or lighting at the link point. The appellant queries how the proposed link will be joined to existing infrastructure and whether it would require landtake from the Barry property.

7.1.3. Submission to the Planning Authority

Overlooking and visually overbearing – The north eastern area is significantly elevated above the appellant's house and pre-school business and would have a direct line of sight into the private open space and preschool outdoor space. It would also be visually overbearing, impacting amenity and privacy and depreciating the value of the property. There is also overlooking of the appellant's house and adjacent greenfield space from houses along the eastern boundary.

Right of way security and trespass – The private right of way will be used as a shortcut by residents in the eastern area of the proposed development which would affect the appellant's amenity, privacy, security, and property value as the property is exposed. Concern that the non-illuminated laneway will attract anti-social behaviour. No detail is provided of access control measures mentioned. The appellant has a number of queries in this regard and this RSA issue has not been addressed.

Potential future connectivity to Bullock Hill – Future connectivity points identified have inadequate sightlines and footpath connectivity.

Access to greenfield areas and antisocial activity – Concern that the appellant's green area between the subject site and appellant's house, and other similar areas, could be used for antisocial activity e.g. fly tipping, trespass, and animal activity.

Noise and vibration – No noise and vibration impact assessment was undertaken. There are houses and two childcare facilities in very close proximity. The intensity and length of exposure to construction noise is unacceptable.

Air quality – There is potential for significant negative air quality effects during construction and operation which have not been assessed.

Traffic and transport report – The TTA baseline survey was carried out during school holidays and there are schools at either end of Bracker O'Regan road. No traffic survey on the junction at either end of the road was carried out. Construction phase traffic is not referenced. There is no pedestrian crossing proposed across Bracker O'Regan road which has an 80kph speed limit.

Archaeology – Concern about the impact of the proposed development on archaeology and the setting of the ring fort.

Ecological impact assessment report – The removal of hedgerows, treelines, and habitats of value contravenes objectives of the KCDP and would affect bats and badgers. The layout fails to adapt to the physical attributes of the site. The habitat map does not identify the watercourse in the eastern site area which is used by various fauna and where there is a distinct, established habitat. Photographs attached as an appendix. Development is proposed on this watercourse.

Bat report – A number of observations are made in relation to bats. It is considered the survey was below minimum requirements.

Badgers – Two badgers setts are to be destroyed and the location of the replacement sett is in the line of the Northern Relief Road. If expansion to the west is carried out as envisaged by the applicant this will be destroyed and the proposed mitigation is not fit for purpose. It has not been shown that badgers will not be significantly negatively affected.

Geology and hydrology and water quality – Basement car parks may require excavation below the groundwater table. No groundwater impact detail is provided. Several parts of the site are permanently waterlogged which will impact gardens and drainage. The extent of any rock on site is unknown. There is significant potential for contamination of ground and surface water.

Landscape and visual impact – The proposed development is not integrated into the existing surroundings as required by the KCDP because of the removal of the majority of trees, hedgerows, and habitats.

AA screening and stage 2 appropriate assessment – There are hydrological links to two Natura 2000 sites with significant potential for pollutants to enter this pathway. The CEMP and EclA rely heavily on construction phase mitigation measures to prevent deterioration of this hydrological link. No detail is provided for settlement ponds, construction compound, fuel storage areas, construction in waterlogged areas etc. If the potential for significant effects cannot be excluded and mitigation measures are relied upon stage 2 AA must be carried out.

EIAR screening – The site is 92% of the EIAR threshold and given the outlined sensitivities of the site an EIAR is justified.

Sustainable development – The NPF seeks to develop compact urban growth, not the outward expansion into rural areas. Houses in the north east corner are 500 metres walk from the site entrance. The area lacks public amenity space, supermarkets, lighting, cycle lanes, pedestrian infrastructure, and public transport and there is heavy reliance on cars.

7.2. Applicant's Response

7.2.1. The applicant submitted a 'Planning Appeal Response' document and a 'Traffic and Transport Assessment' (TTA), both prepared by MWP and dated January 2024. They can be summarised, using the applicant's subheadings as appropriate, as follows:

7.2.2. Planning Appeal Response

Condition 19 – As no discussion on the matter has taken place with the planning authority the applicant cannot comment, though the appellant's concerns are understood.

Overlooking and visually overbearing – The four proposed houses in the north east area, nos. 166-169, are single-storey. This, the garden depth, and 2 metres high boundary will ensure no overlooking. Proposed tree planting between the rear boundary wall and the right of way will also assist in screening. Two-storey houses along the northern area of the site are approx. 92 metres from the appellant's property. Houses west of the appellant's property are a minimum 12 metres from the boundary (proposed nos. 130-135) and the appellant's house is a further 49 metres from the boundary. A proposed first floor stairs/landing window will be removed from the

eastern elevation of proposed no. 129. The proposed development is designed to prevent overlooking and it will not be visually overbearing to the appellant's property.

Right of way security and trespass – The section of the existing private right of way within the application site is in the ownership of the applicant. The appellant has the benefit of access to their property from the right of way. There are two other houses accessed via the right of way. The design intention was to avoid using the laneway to serve the proposed development. To avoid traffic exiting onto Bullock Hill the estate road has to cross the laneway to serve phase 4. To avoid residents/others using the laneway a two gate system is proposed in the locations shown on the site layout plan. They will be 1.8 metres high, electronically controlled, remain closed, and operated by a remote control/keypad.

The management company and its assignees will have control of the gates and the management company will be responsible for them and their maintenance. The applicant is open to agreement with the appellant and is prepared to locate the first gates at the junction with Bullock Hill.

Noise and vibration – Construction works will be away from residential properties for long periods due to phasing. The CEMP contains mitigation measures.

Air quality – The CEMP outlines specific dust monitoring and mitigation measures.

Traffic and transport – Bracker O'Regan road is a modern road with entrances designed to current standards. Baseline traffic figures have been updated in the accompanying TTA and a junction survey is included. Construction traffic will be coordinated to ensure the network impact is kept to a minimum. A Kerry County Council Active Travel Scheme proposed for the site is referenced.

Geology and hydrogeology and water quality – The construction of the apartments to the front is standard construction. Site investigation works were undertaken in September 2023. Rock and groundwater was not encountered. Construction phase water quality will be managed in accordance with the CEMP.

Archaeology – A licence to excavate the archaeological features has been granted. A description of the brick clamp is provided. Mitigation by record has been recommended. There is currently a physical 20 metres buffer around the ring fort and a management plan will be prepared.

AA screening – The two European sites are approx. 3.7km downstream. No qualifying interest (QI) is groundwater dependant. Though runoff of sediment was noted the sustainable urban drainage system (SuDS) features proposed would greatly reduce the potential for impact so as to effectively remove the pathway for impacts to occur entirely. SuDS are standard features, not devised with the aim of reducing negative effects. Planning authority conditions e.g. 25 and 29, also apply.

Environmental impact assessment report (EIAR) – There is no requirement for mandatory EIA and its characteristics would not be such to warrant a sub-threshold EIA. All environmental mitigation measures set out in support of the application will be fully implemented. An environmental manager will be appointed.

Ecological concerns – In relation to habitat loss, all habitats on site are locally important. All perimeter hedgelines and trees are retained and as much internal hedgerow and trees as practicable. Loss of hedgerow and treeline will be fully reinstated and there will be an overall increase in tree cover. In terms of watercourses the site layout had regard to IFI guidelines in relation to the watercourse along the south east boundary. A minor drainage feature running toward the stream is described by the applicant. It does not appear as a watercourse on EPA/OSI mapping. It is considered to be an old artificial field drain, occasionally holding some standing water when the water table is sufficiently high rather than being a natural watercourse.

In relation to bats the Bat Habitat Suitability Index indicates the site is of ‘low-moderate’ value to bat species, not high value. Overall bat activity levels were medium for soprano and common pipstrelle and low for all other species. The approach to the surveys was taken on a site-specific basis. The level of bat data captured as part of baseline surveys was sufficient to allow for an assessment of the potential impacts. No bat roosts were identified on site and a pre-construction survey will be carried out. Mitigation for loss of potential roosting habitat includes a bat box scheme.

In relation to badgers, an artificial sett in the far north west of the landholding will have a minimum 30 metres buffer to the nearest development area with landscaping in the vicinity.

Appendices – Appendix 1 contains four trial pits data from 8th September 2023². Appendix 2 comprises a copy of the stage 1 RSA prepared by Traffico and dated September 2023 with the Feedback Form completed and signed.³

7.2.3. Traffic and Transport Assessment

This incorporates a second survey carried out on Tuesday 16th January 2024 and a junction survey at the roundabout to the east. The conclusion is identical to that in the original TTA where the applicant concludes that there are no traffic or transportation related reasons that should prevent the granting of permission.

7.3. **Planning Authority Response**

7.3.1. None.

7.4. **Observations**

7.4.1. One observation was received from Con O'Connor and Brendan Harty on behalf of The Grove Residents Association (RA). The Grove is a housing development approx. 1km to the west of the subject site. The observation was countersigned by Eileen O'Sullivan on behalf of The Orchard RA (on the south side of Bracker O'Regan road immediately opposite The Grove), Edward O'Connor on behalf of Sunday's Well RA (the housing development immediately south east of the subject site), and Andrew Sheil on behalf of Quarryvale RA (immediately to the west of The Grove).

7.4.2. The observation raises some issues that are covered by the grounds of appeal as set out in paragraph 7.1.3 of this inspector's report e.g. traffic issues (though I acknowledge the additional commentary), TTA and RSA. Other issues raised can be summarised as follows:

- The density created by one and two bed houses and apartments is not in keeping with the area which is a rural area outside the town boundary. There are no apartments in the locality. The number of one bed apartments is contrary to

² The locations of the trial pits are not identified on any accompanying location plan.

³ It appears that certain recommendations were addressed in the application submitted to the planning authority e.g. problem 2.3 (footpath), problem 2.4 (geometry), and problem 2.6 (laneway access control). It is unclear from the layouts if problem 2.1 (car park access) has been addressed. Problem 2.2 is to be agreed with the planning authority.

specific planning policy (SPPR) 1 of the Design Standards for New Apartments Guidelines.

- Reference is made to a number of previous planning applications in the town.
- No retail unit of any kind should be granted until existing vacant units are occupied.
- The site is located where proposed Northern Relief Road meets the Bracker O'Regan road. No allowance has been made for this road. While indicative, the location of the proposed road is shown opposite Monavalley Industrial Estate. It only makes sense for a roundabout at this location but if the proposed development is permitted it would require a dangerous or inefficient staggered junction.
- Concern is expressed about the way the planning authority decision was made and to certain practices of the planning authority.
- The proposed development does not meet the aims of the Tralee Local Area Plan.
- Uisce Eireann requested further information be sought.
- An email is attached from the chair of Mercy Mounthawk Parents Council which includes reference to traffic issues around the school.

7.5. Further Responses

7.5.1. None.

8.0 Planning Assessment

Having examined the application details and all other documentation on file, including the grounds of appeal and the applicant's response to same, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal, other than those set out in detail within the EIA Screening and AA section, are as follows:

- Zoning
- Density

- Conditions 16 and 19 of the Planning Authority Decision
- Roads and Traffic
- Apartments
- Site Layout and Residential Amenity for Future Residents
- Impact on Adjoining Properties
- Biodiversity
- Archaeology

8.1. Zoning

- 8.1.1. Third parties comment on the location of the site, its rural nature, and the principle of compact growth rather than outward expansion. Notwithstanding, the site is in an area zoned 'R2 Existing Residential' under the KCDP. As per the zoning matrix, residential development is permitted in principle.
- 8.1.2. A creche and a shop (class 1) i.e. use as a shop, are open for consideration. R2 zoning is described as '... May also include a range of other ancillary uses for residential, particularly those that have the potential to foster the development of residential communities. These are uses that benefit from a close relationship to the immediate community, such as crèches, some schools and nursing homes. A limited range of other uses that support the overall residential function of the area may also be considered' (section 2.3.1 of volume VI of the KCDP).
- 8.1.3. The Childcare Facilities Guidelines for Planning Authorities (2001) states that 'in new communities/new housing areas, planning authorities should require the provision of at least one childcare facility for new housing areas ... a benchmark provision of one childcare facility per 75 dwellings is recommended' (appendix 2). Therefore, I consider that the proposed creche is appropriate.
- 8.1.4. A retail unit could be considered as a use that could foster the development of the residential community and support the overall function of the area. I consider the proposed retail unit to be acceptable at this location. The planning authority had no objection in this regard.

8.1.5. Having regard to the foregoing, I consider that the principle of development is acceptable, subject to the detailed considerations below.

8.2. Density

8.2.1. Third parties consider that the proposed density is not in keeping with the area, with particular reference to the number of one and two-bedroom houses and apartments.

8.2.2. It is proposed to provide 235 no. units. The site area is 9.2 hectares with a net site area of 8.6 hectares. The net site density is approx. 27.33 units per hectare. The applicant illustrates on drawing no. 945/202 that the net site area excludes the ring fort, northern boundary tree line area, and buffers from the proposed artificial badger sett in the north west corner and the watercourse in the south east.

8.2.3. Neither the KCDP nor the Tralee MDLAP outline a density range for particular locations. Page 41 of the MDLAP states 'The appropriate density for applications for housing developments will be considered by the Planning Authority on a case by case basis'. As noted, the planning authority Planning Report considers the proposed density to be acceptable.

8.2.4. Of particular relevance to this application are the section 28 'Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities' (2024). These have replaced the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (2009), which were in place at the time the planning application was prepared and the planning authority made its decision. Section 3.3.3 of the 2024 guidelines refers to key towns. Tralee is designated as a key town in the RSES.

8.2.5. I consider the subject site is an 'urban extension' location in the town as set out in table 3.5 of the Guidelines i.e. 'greenfield lands at the edge of the existing built-up footprint area that are zoned for residential or mixed-use (including residential) development'. The Guidelines state '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 suburban and urban extension locations of Key Towns ...' Therefore, the proposed density, rather than being excessive, is below the standard range normally appropriate for an urban extension location.

8.2.6. Notwithstanding, section 3.2.1 of the Guidelines offers flexibility so that planning authorities can take the circumstances of an individual site into account as part of the decision making process. The Guidelines note that 'It may be ... appropriate in some exceptional circumstances to permit densities that are ... below the ranges set out in Section 3.3. In such circumstances, the planning authority (or An Bord Pleanála) should clearly detail the reason(s) for the deviation ... as part of the decision-making process for a planning application, based on considerations relating to the proper planning and sustainable development of the area.

8.2.7. In my opinion, having regard to the foregoing, I consider that a below standard density can be accepted on this site for the following reasons:

- the site is a greenfield site on the edge of the built-up area with no urban development to the north or within approx. 1km to the west,
- though zoned, the site is outside the boundary of Tralee town. There is no zoned area to the north or west, or immediately adjacent to the east.
- it is stated on page 54 of the applicant's Planning Report and Statement of Consistency that the adjoining Sunday's Well estate has a density of approx. 25 dwellings per hectare and Cuil Fuin (adjacent to Sundays Well) has a density of approx. 29 dwellings per hectare,
- Kerry County Council considered the proposed density to be acceptable.

8.2.8. Therefore, despite the shortfall in the density from that normally required at an urban extension location, in the specific circumstances of this planning application, I consider the proposed density of approx. 27.33 units per hectare to be acceptable.

8.3. **Conditions 16 and 19 of the Planning Authority Decision**

8.3.1. The grounds of appeal are focused on two conditions attached to the Council's grant of permission; conditions 16 and 19. These are separately considered as follows.

Condition 16

8.3.2. Condition 16 states (in full),

- (a) A fully completed and signed copy of the Road Safety Audit dated June 2023 (inclusive of fully completed and signed Road Safety Audit Feedback Form)*

shall be submitted to Kerry County Council within 4 weeks of any Grant of Planning Permission.

(b) All recommendations of the Stage 1 Road Safety Audit (June 2023) for the proposed development shall be implemented and detailed drawings clearly indicating the measures introduced following feedback on this Road Safety Audit shall be submitted to the satisfaction of Kerry County Council within 3 months of any Grant of Planning Permission and in advance of any Commencement Notice being submitted.

(c) A Stage 3 Road Safety Audit shall be carried out upon completion of the proposed development with all recommendations of this Road Safety Audit being fully acted upon. The applicant shall submit records of this Road Safety Audit to the Planning Authority once completed in full.

Reason: In the interests of traffic safety and orderly development.

- 8.3.3. The particular issue relates to 'Problem 2.6' in the RSA which recommends physically limiting access to the development via the right of way because neither Bullock Hill nor the right of way are suitable for development access. The appellant's house is accessed off the right of way, at the junction with Bullock Hill, and the appellant notes that proposed measures are to be developed without any public consultation. The appellant requests that gates are placed at the laneway access to prevent access to non-residents.
- 8.3.4. Notwithstanding that the RSA feedback form was not completed the application shows two gates proposed on the right of way in locations illustrated on site layout plan drawing no. 945/211 (site layout plan part F). The applicant states that it was the intention from the outset to avoid the use of this laneway by non-residents of the laneway. The gates will be electrically controlled 1.8 metres high hardwood clad gates. Control of the gates will be with the management company and its assignees according to the applicant's response to the grounds of appeal. The applicant states the location illustrated maximises the security of the laneway and avoids interference with the appellant's access. The applicant is open to moving the first set of gates to the junction of Bullock Hill if the appellant wishes.
- 8.3.5. I note initially that this is a private right of way. I consider that the proposed location of the eastern gate is appropriate as it would prevent egress from the site to the right of

way in the first instance. Placing this gate at the junction with Bullock Hill would result in residents being able to walk down the right of way, which has no facility for pedestrians or cyclists, but not being able to get out onto Bullock Hill. In addition it may severely restrict drop-off and pick-up activity at the preschool. The proposed gate locations would have limited impact on the current operation of the right of way. Future residents would know that there is no access to the development via the right of way and the design and the condition of the right of way access point is not such that a visitor unfamiliar with the proposed development would mistake it for an access point.

- 8.3.6. I do not consider it appropriate that the proposed eastern gate be relocated as requested. Notwithstanding, this would not preclude an additional gate on the right of way being provided by the applicant in agreement with the appellant, subject to planning permission if required. I do not consider it to be a matter for the Board to involve itself as it relates to a private right of way and it is a matter between the relevant parties.

Condition 19

- 8.3.7. Condition 19 states,

A pedestrian/cycle link shall be provided from the estate road network at house no. 166 onto the L-6903 Bullock Hill. Details shall be submitted for the written approval of the Planning Authority prior to the commencement of development.

Reason: In the interests of traffic safety and orderly development.

- 8.3.8. The appellant again notes that this is to be agreed between the applicant and Kerry County Council without any public consultation. The appellant queries the absence of public infrastructure to connect into and whether landtake will be required from their property. The applicant states that they cannot comment as no discussion regarding the matter has taken place.

- 8.3.9. The condition requires an extension link of the proposed estate road by approx. 15 metres to connect to Bullock Hill. Bullock Hill is relatively narrow at this location and it has a relatively steep gradient rising to the north. The proposed link would access Bullock Hill at a location where there is no footpath or public lighting. The public footpath currently ends immediately south of the Barry property. A footpath extension of approx. 100 metres would be required to connect to the proposed link.

- 8.3.10. While I consider that the principle of the condition is appropriate i.e. increasing permeability, I do not consider that the link should be provided until such time as there is appropriate facilities for users. I consider the wording of the condition should be revised to ensure that the extension link is provided to the boundary to facilitate future connection.
- 8.3.11. It is likely that landtake between the existing footpath and the proposed link would be required to facilitate the construction of a footpath extension, should the footpath be extended on the western side of Bullock Hill. This is not proposed as part of this planning application. Any extension of this footpath is a matter for the County Council and relevant landowners as part of a separate process.

8.4. Roads and Traffic

- 8.4.1. The grounds of appeal and the observation include reference to a number of road and traffic-related issues such as current traffic levels, the TTA, construction traffic, the RSA, the absence of a pedestrian crossing across Bracker O'Regan road, and the proposed Northern Relief Road.
- 8.4.2. I note initially that Bracker O'Regan road is an approx. 2km long, well-engineered, single-carriageway urban road that was officially opened in 2007. It has a limited number of access points and outside of the carriageway it incorporates grass verges with tree planting, a footpath, additional verging and public lighting. The fence line of the site is set back approx. 10 metres from the road edge. Of significance is the fact that there is an existing access point serving the subject site which was granted under a previous planning application, and there is no concern in relation to sightlines. While the road may experience congestion at times, this is a common occurrence in urban areas at particular times of the day.
- 8.4.3. The application can be considered under the following sub-headings.

Traffic & Transport Assessment (TTA)

- 8.4.4. Condition 15 of the Kerry Co. Co. decision stated that phases 3 and 4 of the proposed development were not to proceed until such time as a revised TTA was submitted for the satisfaction of the Council. The reason for this condition was because the TTA originally submitted was based on a survey carried out during school holidays and therefore did not provide an appropriate baseline.

- 8.4.5. As part of the response to the grounds of appeal a revised TTA was received. This is very similar to the original version but includes a second survey carried out on 16th January 2024, a Tuesday, and detail on the roundabout to the east.
- 8.4.6. In my opinion, and taking into consideration the issues mentioned in paragraph 8.4.2 of this inspector's report, the proposed development is acceptable at this location. Although a residential development of this scale would add to the amount of traffic on the road, I do not consider that it would have such a significant impact that a refusal of permission is reasonable, particularly given its zoned status, and indeed the relatively low density proposed. The only other area of zoned residential land on Bracker O'Regan road, apart from an area adjacent to the roundabout at the western end, is adjacent to the south/south east of the site. As set out in the first bullet point of paragraph 8.6.3 of this inspector's report, it is possible that this zoned area, should it be developed, could be accessed through the proposed development, therefore avoiding the creation of another vehicular access onto Bracker O'Regan road.

Construction traffic

- 8.4.7. Construction phase traffic is cited as a concern in the grounds of appeal. It is clear that the proposed development would have an impact on traffic conditions locally. However, the generation of construction phase traffic is unavoidable. I consider that the road network is capable of accommodating construction phase traffic activity. A construction management plan should be submitted for agreement with the planning authority prior to commencement of development should permission be granted. This would address issues such as detail of the timing and routing of construction traffic and measures to obviate queuing on the adjoining road network, as is standard.

Road Safety Audit (RSA)

- 8.4.8. The stage 1 RSA submitted with the application identified six 'problems' with the site layout. However, the feedback form, which outlines the designer's response to the identified problems, was not completed. Condition 16 (a) and (b) of the grant of permission required submission of a fully completed RSA and all recommendations to be implemented.
- 8.4.9. A fully completed feedback form was received as appendix 2 to the 'Planning Appeal Response' which formed part of the applicant's response to the grounds of appeal. It states that all six problems were 'accepted'. I note that some of the measures had

been incorporated into the original planning application e.g. footpath (problem 3), skewed alignment (problem 4), and problem 6 (access control to the right of way (as addressed in section 8.3 of this inspector's report)).

8.4.10. Problem 1 was the location of the entrance to the underground car park/Block J2 and its proximity to the junction with Bracker O'Regan road. The feedback form states that the entrance has been moved slightly to the north. However, it is unclear from a comparison of the RSA drawing and the site layout plan whether this access has been moved. Problem 5 relates to the steep gradients on site and the feedback form states that appropriate control measures are included where reasonably practical. Problem 2 is addressed under the following sub-heading.

8.4.11. I am satisfied that a fully completed RSA has been provided as required by Condition 16 (a) and (b) and that the road layout within the development generally complies with the Design Manual for Urban Roads and Streets (DMURS).

Pedestrian crossing

8.4.12. Problem 2 identified in the stage 1 RSA is the absence of a pedestrian crossing across Bracker O'Regan road to facilitate the demand for same from future residents. The applicant stated this would be provided subject to agreement with Kerry Co. Co.

8.4.13. I agree that a suitable crossing would be required to accommodate the desire of future residents to cross the road to access Tralee town via sustainable modes of transport. The issue was noted by the District Engineer who recommended a condition requiring a 'Right Turn Lane or other suitable junction treatment ... (to) also include for a suitably controlled crossing point/points of the Bracker O'Regan Road for pedestrians and cyclists'. This was included as condition 17 of the grant of permission.

8.4.14. I consider that a condition requiring the applicant to agree a junction layout with Kerry Co. Co., to include provision for vulnerable road users to cross the road, is appropriate, whether that be a right turn lane as referenced, or a signalised junction should the Council consider that to be more appropriate considering the possibility for intensification of use of the access in future. This junction layout should include the access to the underground car park/Block J2 as per the previous sub-heading of this inspector's report.

Northern Relief Road

- 8.4.15. The proposed Northern Relief Road is briefly referenced in both the NDP and the RSES. The Tralee Town Zoning Map shows the 'Indicative Northern Relief Road' through the western area of the site from a location at the junction of Bracker O'Regan road and Monavalley Industrial Estate and travelling north and east to connect to the Forge Cross roundabout approx. 1.5km to the east. Table 14.3 of the KCDP lists it as one of the priority roads infrastructure projects over the plan period and beyond. Objective 14-27 is 'Provide, or facilitate the sustainable provision of all road infrastructure projects set out in Table 14.3 with priority given to infrastructure serving the Key Towns'. Objective TR-RI-02 of the Tralee MDLAP states it is an objective to 'Facilitate the development of the Tralee Northern Relief Road ...'
- 8.4.16. The proposed road was cited in Kerry Co. Co.'s LRD opinion dated 19th April 2023 among the issues that it had regard to in coming to the recommendation that the proposed development constituted a reasonable basis to make the planning application i.e. 'The most recent information regarding the route of the proposed Tralee Northern Relief Route Section B'. I have not been able to access any documentation showing this route. Apart from this reference in the opinion, the proposed road is not referenced anywhere in either the application documentation or in the Kerry Co. Co. Planning Report, which is surprising given its indicative routing.
- 8.4.17. Notwithstanding, the critical issue is that the County Council took the proposed Northern Relief Road into consideration in the pre-planning process and is clearly of the opinion that the proposed development would not interfere with an appropriate routing. Therefore, I am satisfied that the proposed development would not unduly affect or preclude the provision of the proposed Northern Relief Road.

8.5. Apartments

- 8.5.1. Whereas the 12 no. two-storey apartment buildings located throughout the site are similar in height and design to the semi-detached houses and do not necessarily present as apartments, the three apartment blocks along Bracker O'Regan road are clearly apartment buildings. Blocks J1 and J2 are to the west of the site vehicular entrance while J3 (with the retail unit and creche) is to the east. Third parties express a concern about the apartments, in terms of the principle of their provision at this

location, the four storey height, and the unit mix. A number of previous planning applications are referenced in terms of apartment developments. However, each planning application is assessed on its own merits in line with the specifics of the subject site and the relevant planning framework at the time the decision is made.

Principle of apartments at this location

- 8.5.2. In relation to the principle of apartments at this location I note that the 2023 Apartment Guidelines (section 2.4 (3)) state that peripheral and/or less accessible urban locations are generally suitable for residential development of any scale that will include a minority of apartments at low-medium densities. Section 2.5 of the Guidelines states that apartments can allow for greater diversity and flexibility in a housing scheme, whilst also increasing overall density, and they may be considered as part of a mix of housing types in a given housing development at any urban location. Without the apartment blocks, in my opinion the density would likely fall below an acceptable density.

Proposed heights

- 8.5.3. In relation to the four storey height, section 1.9 of the Building Height Guidelines (2018) state 'these guidelines require that the scope to consider general building heights of at least three to four storeys, coupled with appropriate density, in locations outside what would be defined as city and town centre areas, and which would include suburban areas, must be supported in principle at development plan and development management levels'. In terms of surrounding development, there are some large structures in Monavalley Industrial Estate including the Dillon Waste and Recycling building on the opposite side of Bracker O'Regan road approx. 100 metres to the south west of proposed J1. While the proposed apartment blocks have a maximum height of approx. 14.6 metres (as taken from the contiguous elevation drawing), the planning permission (22/411) for the Dillon site indicates a building height of 12.873 metres. Notwithstanding the differences in ground levels, this demonstrates that there are buildings of the general height proposed in the immediate vicinity.

Sustainable Urban Housing: Design Standards for New Apartments (2023)

- 8.5.4. An issue raised by third parties is the number of one-bedroom apartments proposed. SPPR 1 of the above Guidelines states,

Housing developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence-based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s)

- 8.5.5. The SPPR refers to 'housing developments' rather than 'apartment developments'. Therefore, while one bed apartments comprise 71.7% (76/106) of all apartments proposed, they only comprise 32.3% (76/235) of all units in the overall 'housing development' as described in SPPR 1 i.e. less than 50% of all units in the housing development.
- 8.5.6. SPPR 4 requires a minimum of 50% dual aspect apartments given the site location in a suburban location, not 33% as claimed in section 2.3 of the applicant's Housing Quality Assessment for the three apartment blocks. It is stated that 86% (50 no.) of the apartments in Blocks J1-J3 are dual aspect. The 48 no. apartments in the 12 no. apartment buildings are dual aspect.
- 8.5.7. SPPR 5 requires 2.7 metres floor to ceiling heights in ground floor apartments. The relevant section drawings show this is provided for every ground floor apartment. SPPR 6 (maximum of 12 apartments per floor per core) is achieved.
- 8.5.8. The applicant submitted two Housing Quality Assessments for the apartments. I am satisfied that the various floor areas set out are adequate to ensure an appropriate level of residential amenity in line with the Apartment Guidelines.

Conclusion

- 8.5.9. Having regard to the foregoing, I consider that the principle of apartments at this location is acceptable, the proposed height would be consistent with the Building Height Guidelines (2018) and would not be out of character with the existing building heights in the immediate vicinity, and an adequate standard of residential amenity would be provided.

8.6. Site Layout and Residential Amenity for Future Residents

8.6.1. This section summarises relevant aspects and standards of the proposed development that would affect the amenity of future residents. Some of these issues were raised in the grounds of appeal e.g. housing mix and open space.

Site layout

8.6.2. The site layout is affected by, inter alia, the shape of the site, the increase in ground levels from Bracker O'Regan road towards the north, and the presence of the ring fort. Three four storey apartment blocks are proposed along the roadside boundary. This would provide activity to the roadside and create a more urban streetscape. Twelve two-storey four-unit apartment buildings are located throughout the development. The proposed houses are all semi-detached or terraced typologies.

8.6.3. I consider the proposed layout to be acceptable. There are a number of open space areas throughout the site and longer, straight stretches of internal roads are largely avoided. The site layout plan indicates that the two internal access roads on the western boundary can be extended to connect to future development. I consider this is acceptable in principle. The planning authority included a number of conditions that would affect the site layout.

- Condition 14 requires provision of an access to land to the south in the area between proposed nos. 97-118. I agree with the planning authority that provision should be made for a vehicular/permeability link to the south. However, I consider that the proposed road in front of proposed no. 122 can be extended up to the site boundary to facilitate extension in future. I consider a similar condition can be applied to proposed no.1 to facilitate future connectivity into the central area of the site should appropriate circumstances arise.
- Condition 19 provides for a pedestrian/cycle link from the development to Bullock Hill. This condition is addressed in the section 8.3 of this inspector's report.
- Condition 32 (c) requires the open space adjacent to proposed nos. 165 and 166 to be incorporated into the curtilages of those houses. I agree that these open space areas are of limited quality as they are poorly located with limited passive surveillance. Allocating the areas to nos. 165 and 166 would result in these houses having private open space areas substantially larger than other houses. As the

building line to Bullock Hill is a minimum 20 metres (section 1.20.1 of volume 6 of the KCDP) there is effectively no scope for distributing the open space area along the line of houses of which nos. 165 and 166 form part because nos. 165 and 166 cannot be moved closer to the road to facilitate this.

- 8.6.4. The future use of the area to the west is unclear. The site layout plan indicates it could be developed in future but equally it could be required for the proposed Northern Relief Road. There are communal open space areas for apartment buildings 1, 2, and 5 between the sides of the buildings and the western site boundary. Increased passive surveillance over these side areas should be provided above what is currently proposed such as an appropriately sized first floor side elevation bedroom window or a terrace as suggested by the planning authority. Similar amendments should be required for buildings 3, 4, 6, 7, 8, 9 (both side elevations), and 10 to overlook the respective internal circulation roads and open space areas. For the proposed houses, I consider that proposed nos. 96, 119, 122, and 136 should be redesigned to a dual frontage unit to provide additional passive surveillance over the adjacent public open spaces and internal circulation roads.
- 8.6.5. I consider that these site layout amendments would facilitate permeability to other land outside the current site should the opportunity arise in the future and would remove poorly located public open space areas. The alterations to the apartment buildings and houses would improve the visual amenity of the area and passive surveillance over internal circulation roads and public open spaces.

Design and external materials

- 8.6.6. The proposed houses comprise semi-detached and terraced units. The 12 no. apartment buildings each contain four one-bed apartments. There are external finishes of render with some ground floor front elevation brickwork with dark grey/black roof slates/tiles. The houses and apartment buildings all follow a consistent design type.
- 8.6.7. The apartment blocks are to be externally finished in render with some light grey brickwork around the lower levels. They are of contemporary design and are visually interesting. The third floors are generally set back. Additional activity would be created around block J3 from the proposed ground floor creche and retail unit.
- 8.6.8. Some rendered images have been provided showing indicative views within the finished development in section 3.13 of the Architectural Design Statement. Each

house type drawing also provides an image of the proposed house type. These are beneficial in terms of visualising the proposed development.

8.6.9. I consider that the design and external finishes of the proposed development are acceptable.

Housing mix

8.6.10. Concern has been expressed by third parties about the number of one and two bed houses and apartments proposed. This has also been referenced in section 8.5 of this inspector's report. The housing mix is set out in table 2 of this inspector's report. Combined, there are 76 no. one-bed units, 68 no. two-bed units, 83 no. three-bed units, and 8 no. four-bed units.

8.6.11. Objectives KCDP 6-17 and KCDP 7-9 of the KCDP are to 'Promote integration of social housing and ensure a housing mix within developments in order to promote a socially balanced and inclusive society'. Section 7.3 (Housing Policies) of the KCDP states that 'It is a policy of Kerry County Council to ... Encourage and foster the creation of attractive mixed-use sustainable communities which contain a variety of housing types and tenures with supporting community facilities, public realm and residential amenities'.

8.6.12. I consider that the housing mix proposed complies with the provisions of the KCDP and is acceptable.

Public, communal, and private open space provision

8.6.13. The KCDP requires public open space to be provided at a minimum 15% of the total site area. The area provided as public open space is 1.29 hectares which is 15% of the net site area. This 1.29 hectares excludes the ring fort area, the buffer from the Hospital Tralee stream, and a public open space area (1,348sqm) in the south west corner which may be developed in future. The public open space areas are illustrated on drawing no. 945/202. The 1.29 hectares includes the areas east of proposed nos. 165 and 166 which, like the planning authority, I do not consider to be quality public open space and should be taken into the respective house curtilages as referenced in the third bullet point of paragraph 8.6.3. Notwithstanding, I consider that the overall public open space provision, in a number of different locations and of different sizes, is acceptable.

- 8.6.14. Section 1.5.4.4 also states that communal space must be provided for apartments in accordance with the Apartment Guidelines. Appendix 1 of the Guidelines requires 5sqm communal amenity space per one-bed apartment and 7sqm communal amenity space per two-bed apartment. Blocks J1 and J2 share the communal amenity space between the blocks. This has an area of 450sqm as per section 3.4 of the Housing Quality Assessment. The required area is 254sqm (20 no. one-bed units x 5sqm + 22 no. two-bed units x 7sqm). The communal amenity space provided for block J3 is 164sqm. 96sqm is required (8 no. one-bed units x 5sqm + 8 no. two-bed units x 7sqm). Therefore, more than adequate communal amenity space is provided for blocks J1-J3.
- 8.6.15. Each of the 12 no. two-storey apartment buildings contain four one-bed units. Therefore 20sqm communal amenity space is required per building. Communal amenity space provision ranges between the minimum 20sqm to 376sqm. Provision is generally significantly above the minimum requirement. I consider that more than adequate communal amenity space has been provided for each building.
- 8.6.16. In terms of private open space for the houses, the Compact Settlement Guidelines 2024 were introduced since the decision was made by Kerry Co. Co. SPPR 2 of the Guidelines reduced private open space areas to 30sqm for a two-bed house, 40sqm for a three-bed house, and 50sqm for a four-bed house. Each house has adequate private open space. A number of rear garden areas have stepped levels which reduces their use to a degree. Notwithstanding, I note that the ground level differences on site are significant and the site is zoned for residential development. All apartments achieve the required 5sqm (one-bed unit) or 7sqm (two-bed unit) areas.
- 8.6.17. Having regard to the foregoing, adequate public, communal, and private open space is achieved on site.

Car parking

- 8.6.18. SPPR 3 of the Compact Settlement Guidelines, subsection (iii) states that in intermediate and peripheral locations 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. SPPR 3 also states that 'The maximum car parking standards do include provision for visitor parking'.

8.6.19. Table 4 (Parking Requirements) of volume 6 of the KCDP also sets out maximum car parking standards. The subject site is located in area 3 of the three areas cited i.e. it is not in a core retail area or a town centre rather it is in 'all other areas'. The maximum standard is:

- for a house it is 2 car parking spaces per house plus 0.5 visitor space.
- for an apartment it is 1 space per bedroom.
- for a childcare facility it is 1 space per four children and 1 per staff member.
- for a shop it is 3 spaces per 100sqm plus 1 per staff member.

8.6.20. 477 no. spaces are provided in a mixture of in-curtilage, on-street, basement, and set-down/drop-off spaces, and includes a surface car park adjacent to the east of block J3. The provision is broken down as: 258 no. for the houses (129 no. x 2), 65 no. visitor spaces (129 no. x 0.5), 76 no. for the one-bed apartments (76 no. x 1), 60 spaces for the two-bed apartments (30 no. x 2), 12 no. spaces for the creche which has a capacity of 46 children (the number of staff depends on the ages of the children being looked after), and the applicant states that there are 6 no. additional spaces to serve the creche and the retail unit. The 91.3sqm retail unit would require 3 no. spaces plus one per staff member, the number of which is unknown.

8.6.21. It appears that an excessive number of car parking spaces is proposed. Given the relative complexity of car parking provision involving, inter alia, on-street parking, visitor parking, a basement car park, and a surface car park, and the requirement of SPPR 3, I consider that a Parking Management Plan and a revised site parking plan be agreed with the planning authority prior to commencement of development which shows parking provision compliant with the maximum standards of the Guidelines and KCDP.

8.7. Impact on Adjoining Properties

8.7.1. The grounds of appeal (submission to the planning authority) references overlooking and overbearing impact, trespass and antisocial behaviour, and construction nuisance. These issues can be addressed as follows.

Overlooking

- 8.7.2. No overlooking of residential property would occur from the majority of the proposed development site as most of the site boundary is adjacent to fields or public roads. There are three areas where there is existing residential development: the appellant's property, Sundays Well to the south east, and the two detached houses which are surrounded by the proposed site.
- 8.7.3. In relation to overlooking I note initially that SPPR 1 of the Compact Settlements Guidelines (2024) states, inter alia, 'When considering a planning application for residential development, a separation distance of at least 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained'.
- 8.7.4. I do not consider any undue overlooking impact would occur to the appellant's property, notwithstanding the ground level difference as referenced in the following subsection (Overbearing impact), below. The four closest houses to the appellant's house (proposed 166-169) are single storey houses and there is a separation distance of approx. 20 metres to no. 166. There is an approx. 13 metres rear garden length and a 2 metres high concrete post and timber panel fence with existing vegetation to be retained (a typical section at this location is shown on boundaries layout drawing no. 2255). The houses to the west (proposed nos. 130-135) are at a similar or lower ground level to the appellant's house. These houses have rear garden lengths of a minimum approx. 13 metres and there is an undeveloped area between the houses and the appellant's house. I do not consider any undue overlooking would occur from these proposed houses. In the applicant's response to the grounds of appeal the removal of the first floor side elevation landing window to proposed no. 129, adjacent to the undeveloped land, is proposed. I consider that the window could be omitted or replaced by a high level horizontal window which would allow light but remove overlooking.
- 8.7.5. The closest houses to Sundays Well are a minimum 36 metres from the common boundary as a result of the buffer from the watercourse. No undue overlooking would occur.
- 8.7.6. There are two houses within the central area of the site, accessed from the right of way, but which are not part of the proposed site. The ownership of these properties

has not been identified and no submission or observation has been received from the respective owners or occupiers. The more westerly single storey house is quite prominent on site and is also visible from Bracker O'Regan road. Proposed houses are set back approx. 25 metres from this existing house. A 2 metres high block wall boundary is proposed around it. I consider that the first floor side elevation landing window to proposed no. 1 should be omitted or replaced by a high level horizontal window which would allow light but remove overlooking to the rear of the existing house.

8.7.7. The more easterly 1 ½ storey house has proposed public open space to its front/south and side/east. Houses to the rear/north are at a significantly higher finished floor level. The rear elevations of proposed nos. 136-143 would overlook the rear of the existing 1 ½ storey house though it is constructed close to the shared boundary. Rear garden lengths of a minimum 11 metres are provided to a 2 metres high fence. The landscape layout shows vegetation to be retained along the shared boundary of this house and proposed planting to the south.

8.7.8. Overall, I consider that undue overlooking would not occur to adjacent residential property.

Overbearing impact

8.7.9. There would be a significant alteration to the receiving environment as a result of the proposed development. Notwithstanding, I do not consider that there would be any undue overbearing impact from the proposed development on the appellant's property. The single storey houses to the north (proposed nos. 166 and 167) have finished floor levels of 46.90. The right of way has a ground level of approx. 45.00. The ridge of the appellant's house is cited as 49.766. The ridge height of proposed nos. 166 and 167, given house heights of 5.153 metres, would be 52.053. This would be a difference of 2.287 metres over a distance of approx. 20 metres. While the proposed houses would be higher, I do not consider this to be unduly overbearing such that it would result in a significant adverse impact on the appellant's property. Two storey houses along the northern boundary are significantly removed from the appellant's property and views of these would be obscured by the single storey houses.

Trespass

- 8.7.10. The appellant is concerned about the potential for trespass and anti-social behaviour. The use of the right of way has been addressed previously. There would be no access to the proposed development from the right of way or vice versa, other than by existing residents. There would be no additional activity on this right of way as a result of the proposed development. I do not consider the proposed development itself would have any impact in this regard.

Construction nuisance

- 8.7.11. The construction phase of any development has a degree of nuisance to nearby receptors. The size of the site is such that construction activity would not always be taking place adjacent to residential property. A construction management plan and CEMP would be included, as standard, in any grant of permission which would include mitigation measures to reduce the impact of the proposed development on neighbouring areas.

Daylight and sunlight

- 8.7.12. Given the distances involved and the fact that the closest proposed houses are generally to the north of existing houses, thereby significantly reducing any potential shadowing impact, I do not consider that there is any likelihood of significant daylight or sunlight impact on existing properties.

8.8. Biodiversity

- 8.8.1. Concern about the impact of the proposed development on biodiversity was raised in the appellant's original submission to Kerry Co. Co. This is a common concern when the development of a greenfield site is proposed.
- 8.8.2. The planning application was accompanied by a comprehensive Ecological Impact Assessment (EclA). Separate reports which inform the EclA are bat and badger survey reports, and an aquatic ecology report. A desktop study was undertaken as well as multiple field surveys between February and August 2023. The site mainly comprises agricultural fields, with minor pockets of woodland/scrub, and a second order stream in the south east corner (Hospital Tralee Stream). The northern boundary is delineated

by a mature treeline and many internal field boundary hedgerows contain mature trees.

- 8.8.3. The site is used by badgers and two setts were identified. No otter holts or signs of activity were recorded. One stoat was recorded on camera. Fox, rabbit, wood mouse, and bank vole were recorded [I saw a fox in the north western field on my site inspection]. Bird species noted on site are set out. No frog or smooth newt was recorded. The bat habitat suitability index (BHSI) for all bat species is 28.44 (ranging from 0-100) with the rating for individual species ranging from 4 to 44. 'Overall, the BHSI index indicated that the proposed development site is 'low-moderate' value to bats of all species' (page 48). A summary of bat survey results and freshwater aquatic survey results are provided.
- 8.8.4. The important ecological features (IEFs) are identified. For habitats they are scrub, wet grassland/scrub, wet willow-alder-ash woodland, hedgerows, trees, and eroding/upland river. No rare or protected flora was recorded. Fauna species IEFs are hedgehog, stoat, otter, red squirrel, pygmy shrew, badger, pine marten, Irish hare, birds, amphibians and reptiles, and bats. Many of these were not recorded but the precautionary principle was applied because of widespread species distribution and/or there is suitable habitat on site.
- 8.8.5. Potential construction and operational phase impacts are set out in section 7 of the EclA i.e. habitat loss, water quality, and disturbance/displacement, and the significance of the unmitigated impacts of these on the IERs are assessed in section 8. Unmitigated construction phase impacts to IERs range between 'imperceptible' (habitat loss to otter) and 'moderate to significant' (loss of potential roosting habitat for bats (though no bat roosts were identified one structure and approx. 34 no. mature trees, will be lost)). Potential operational phase unmitigated impact on IEFs is assessed as ranging between 'imperceptible' (impact to habitats and water quality impacts) and 'moderate to significant' (on bats through lighting and potential alteration to prey biomass).
- 8.8.6. Construction phase mitigation includes, inter alia:
- Mitigation by design (retention of perimeter hedgerow and trees and a 20 metres setback buffer from the Hospital Tralee stream),

- Development of a detailed CEMP detailing construction practices and environmental management measures,
- Monitoring of all works by a suitably qualified ecologist/ecological clerk of works with main responsibilities identified,
- Provision of a mixture of bat boxes prior to tree felling and employment of appropriate lighting,
- Pre-construction badger survey and provision of an appropriately designed artificial sett outside the site boundary to the north west within the applicant's ownership with a 30 metres buffer to the nearest part of the proposed development footprint. This will replace two setts to be destroyed.

Operational phase mitigation includes appropriate lighting and maintenance of the drainage system.

- 8.8.7. No significant cumulative effects are predicted⁴ and no significant residual effects are predicted on the IEFs. The EclA concludes that the mitigation and protection measures 'will ensure that no significant residual ecological impacts, either alone or cumulatively with other plans or projects, will arise from the project'.
- 8.8.8. I note that no observation was received from the Department of Housing, Local Government and Heritage/National Parks & Wildlife Service (NPWS) in relation to this application, despite the application having been referred by Kerry Co. Co. The Council's Environmental Assessment Unit report includes a biodiversity impact assessment which interrogates the applicant's EclA in some detail. It concludes that the proposed development is unlikely to have significant ecological impact and elements of the proposed development 'would likely make a positive contribution to biodiversity in the area'.
- 8.8.9. While I acknowledge the concerns expressed by the appellant in relation to biodiversity, there is inevitable impact when a development of this type is undertaken on previously undisturbed land. However, it must be borne in mind that the subject site is suitably zoned for residential development and, therefore, such development is permitted in principle. Notwithstanding, suitable mitigation measures must be in place

⁴ From an inspection of the Board's website and Kerry Co. Co.'s online planning enquiry system on 15th March 2024 I am satisfied that no planning application has been made in the area since the submission of the planning application that could result in a significant in-combination impact on biodiversity.

to ensure that such development does not have an unacceptable impact on biodiversity and, notwithstanding, the granting of a permission does not remove any obligations on a developer under other legislation. I am satisfied that the EclA, and other separate associated reports, have been prepared by suitably qualified individuals and provide a comprehensive assessment of the proposed development and its impact on the receiving environment. I am satisfied that the various mitigation measures, including those directed specifically at badgers and bats, are appropriate and sufficient to adequately mitigation potential impacts.

8.8.10. Therefore, having regard to the zoned nature of the site and the mitigation measures proposed, I am satisfied that the proposed development would not have any undue adverse on biodiversity at this location.

8.9. **Archaeology**

8.9.1. There is a recorded monument (a ring fort (KE 029-080)) located within the site boundary and the site layout allows for its preservation with a 20 metres buffer zone around it. A copy of an Archaeological Impact Assessment Report from 2011, which formed part of a previous planning application, was also submitted with the current application. Significant test trenching took place under this earlier application though two previously unknown areas of archaeology were not excavated (a fulacht fiadh and a brick clamp). An updated overview document was prepared for the current application.

8.9.2. A report from the County Archaeologist noted the previous site testing and recommended conditions to be attached to a grant of permission. These related to maintenance of a buffer zone, submission of a management plan, recording the brick clamp, archaeological excavation of all features uncovered, and archaeological monitoring.

8.9.3. Having regard to the previous grants of planning permission on site, the archaeological testing already undertaken, and the recommendation of the planning authority's County Archaeologist I am satisfied that the archaeology of the area can be appropriately preserved or recorded subject to appropriate conditions, should permission be granted.

9.0 **Appropriate Assessment (AA)**

Appropriate Assessment (AA) Screening

Compliance with Article 6(3) of the Habitats Directive

- 9.1. The requirements of article 6(3), as related to screening the need for AA of a project under part XAB, section 177U of the Planning & Development Act, 2000 (as amended) are considered fully in this section.

Background on the Application

- 9.2. The applicant submitted an Appropriate Assessment Screening Report as part of the planning application. It was prepared by MWP and is dated September 2023.
- 9.3. The AA screening report 'has been undertaken to determine whether the proposal is likely to have a significant effect on any Natura 2000 Site, in view of the sites' conservation objectives' (page 5) and it is stated that it was undertaken in accordance with European and Irish guidance. A desk study was carried out as were a number of ecology surveys. A site location and description is provided and eleven European sites within a possible zone of influence (Zol) are identified. Eight of these were subsequently excluded from further assessment and the potential for impact on three of the sites is examined. An in-combination assessment is carried out and a conclusion is reached.
- 9.4. The applicant's AA screening report concludes that 'It has been objectively concluded that the sites considered are not likely to be significantly affected by the proposed works and can therefore be screened out for Appropriate Assessment'.
- 9.5. Having reviewed the documents and submissions I am satisfied that the information allows for a complete examination and identification of potential significant effects of the development alone, or in combination with other plans and projects, on European sites.

Submissions and Observations

- 9.6. Kerry Co. Co.'s Environmental Assessment Unit considered that the proposed development would not have a significant effect on European sites and stage 2 AA was not required.

- 9.7. The appellant's original submission to Kerry Co. Co. expresses concern about the hydrological links to two European sites and the potential for impact on same. Comment is made about construction phase works. The appellant notes that if the potential for significant effects cannot be excluded at screening stage, stage 2 AA is required.

Screening for AA – Test of Likely Significant Effects

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

Brief Description of the Development

- 9.10. The proposed development is described in section 2 of this inspector's report and in sections 2 and 4.2.1 of the applicant's AA screening report. The development involves the construction of 235 no. residential units (129 no. houses and 106 no. apartments) as well as circulation roads, public open spaces, boundaries etc.
- 9.11. The site generally comprises agricultural fields with some residential development adjacent to the south east and public roads to the south west (Bracker O'Regan road) and north east (Bullock Hill).

European Sites

- 9.12. The development site is not located in or immediately adjacent to a European site. The nearest European site is Tralee Bay Complex SPA approx. 2.85km to the south west of the subject site on the opposite side of Tralee. This SPA partially overlaps with Tralee Bay and Magharees Peninsula, West to Cloghane SAC, the boundary of which is approx. 2.95km to the south west of the subject site. There is a hydrological link between the proposed development site and these two European sites.
- 9.13. European sites within the Zol of a proposed development must be evaluated on a case by case basis. The applicant's AA screening report (section 4.6.1) identifies eleven sites which are within a 15km radius of the site or are outside of this radius but may be significantly impacted. The eleven sites are illustrated on figure 4-4 of the screening

report. The applicant considers that there is no tangible source-pathway-receptor link between the proposed development and eight of these European sites. The reasons for screening out the eight sites are, variously:

- no spatial overlap with the SAC and therefore no direct interaction with habitat,
- no hydrological impact pathway / no realistic hydrological connection due to distances across marine waters,
- distance and habitat on site is not considered important for conservation objective (CO) bird species for which the SPA is designated.

9.14. The three sites considered by the applicant to be within the ZOI are Tralee Bay Complex SPA, Tralee Bay and Magharees Peninsula, West to Cloghane SAC, and Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161).

9.15. In my opinion the European sites within the ZOI are those with a realistic hydrological connection or SPAs where the nature of the site, in this case agricultural fields, may provide an ex-situ area for SPA conservation objective (CO) bird species.

9.16. In relation to a realistic hydrological connection I consider that if there is no significant effect on the Tralee Bay sites then there is no possibility of any significant effect on any other hydrologically connected European site such as Akeragh, Banna and Barrow Harbour SAC or Magharee Islands SAC. Given the nature of the proposed development and the hydrological distances involved, any contaminated surface water would likely have been diluted to such a degree by the stage that it reached these sites that it would have a negligible or imperceptible impact.

9.17. In terms of SPA CO species, notwithstanding its relative proximity, Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA is solely designated for the hen harrier which does not generally favour agricultural land. Other SPAs in the wider vicinity are generally designated for wintering/wetland/sea birds. While some CO species may occasionally graze or winter on agricultural grasslands the subject site is not an important habitat for these CO species and there is ample grassland in the wider area.

9.18. Therefore, I consider that two European sites are relevant for AA screening as set out in table 3.

Table 3 – European Sites Relevant for AA Screening

European site (site code)	List of Conservation Objectives (COs)	Distance from and connection to proposed development
Tralee Bay Complex SPA (004188)	Whooper swan [A038] Light-bellied brent goose [A046] Shelduck [A048] Wigeon [A050] Teal [A052] Mallard [A053] Pintail [A054] Scaup [A062] Oystercatcher [A130] Ringed plover [A137] Golden plover [A140] Grey plover [A141] Lapwing [A142] Sanderling [A144] Dunlin [A149] Black-tailed godwit [A156] Bar-tailed godwit [A157] Curlew [A160] Redshank [A162] Turnstone [A169] Black-headed gull [A179]	Approx 2.85km to the south west as the crow flies and approx. 3.6km hydrologically via the Hospital Tralee stream, the Big river, and the Lee river.

	<p>Common gull [A182]</p> <p>Wetland and waterbirds [A999]</p>	
<p>Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070)</p>	<p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows [1330]</p> <p>Mediterranean salt meadows [1410]</p> <p>Embryonic shifting dunes [2110]</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>) [2170]</p> <p>Humid dune slacks [2190]</p> <p><i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p>	<p>Approx 2.95km to the south west as the crow flies and approx. 3.7km hydrologically via the Hospital Tralee stream, the Big river, and the Lee river</p>

	Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0] Otter [1355] Petalwort [1395]	
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Identification of Likely Effects

9.19. The applicant has identified four aspects of the proposed development which could impact on the European sites:

- water quality,
- habitat loss and alteration,
- disturbance and/or displacement of species, and,
- habitat or species fragmentation.

9.20. I agree that these are the relevant potential impacts to be considered. The applicant’s screening report addressed these four issues in section 4.8.2.

Water quality

9.21. The screening report acknowledges that works in proximity to water bodies can potentially result in impairment of water quality e.g. run off of sediment or spills. Pollution of the aquatic environment could occur with downstream impact on European sites i.e. Tralee Bay Complex SPA and Tralee Bay and Magharees Peninsula, West to Cloghane SAC. I note from the Civil Utilities Planning Report/storm drainage layout that it is proposed to discharge the stormwater from the development into an existing network which outfalls to the Hospital Tralee stream adjacent to the south west corner of Cuil Fuine. Foul water is to be discharged to the existing network on Bracker O’Regan road.

9.22. The aquatic survey of the Hospital Tralee stream noted high levels of fine sediment. This, together with extensive reaches of the lower stream being subterranean, can impact the normal functioning of the aquatic environment. Biological water quality was mostly unsatisfactory across the study area with ecological conditions reducing from

upstream to downstream. Due to the construction of impermeable surfaces, increased surface water runoff will be generated on site. The drainage design aims to replicate the current runoff characteristics through sustainable urban drainage systems (SuDS) to limit entry of pollutants to surface waters e.g. dry swales, tree pits, soakaways, and petrol interceptors. SuDS limits the entry of surface water from the development directly to watercourses and greatly reduces the risk of deterioration of water quality.

- 9.23. The screening report considers that, with the implementation of SuDS, and noting the poor to moderate quality of the Hospital Tralee stream and likely deterioration in quality further downstream, it is unlikely potential significant effects would occur in the downstream European sites.
- 9.24. I agree with the applicant that there is not likely to be a significant effect on European sites in terms of water quality. I note that the vast majority of site works are away from the Hospital Tralee stream, which occurs along an approx. 50 metres length of the overall approx. 1.5km site boundary. There is limited works proposed in proximity to the watercourse and a buffer area is to be provided. The IFI submission requires good site management practices during the construction phase to prevent contamination of surface water.
- 9.25. I note that the KCDP makes a number of references to SuDS. For example, section 6.2.3 (Housing for Sustainable Communities) states it is a policy of the council to 'Promote biodiversity, the use of SuDs and other nature-based solutions in the design, construction and maintenance of residential developments'. Section 11.5 (Land Use & Flood Risk Management) states 'It is an objective of this plan to ensure that surface water runoff from completed developments are restricted to their greenfield rate and that appropriate measures through design or sustainable urban drainage systems (SUDs) are implemented'. Storm water management objective KCDP 13-22 is 'Support the incorporation of Sustainable Urban Drainage Systems (SUDs) in all public and private development in urban areas'.
- 9.26. This indicates that SuDS measures are mandatory for new development other than for reasons of the protection of European sites. In this regard I would draw attention to the judgement in CJEU Case C-721/21 which effectively states that SuDS measures which remove contaminants can be taken into consideration at screening stage where such features have been incorporated into that project as standard features, inherent

in such a project, irrespective of any effect on the European site(s). Having regard to the fact that the wider surface water drainage network is already in place, and the provisions of the KCDP, I am satisfied that the proposed SuDS measures, and the existing/proposed surface water drainage network is for appropriate surface water treatment and discharge rather than for the purpose of protecting European site(s), and therefore can be taken into consideration at screening stage.

Habitat loss and alteration

- 9.27. The applicant's screening report notes that the site is outside any European site and the habitats within the proposed site are not considered to be of ecological importance to CO species. Therefore there will be no direct loss or alteration of any qualifying habitats for which the sites are designated. I agree that there is no relevant CO habitat that could be affected by loss or alteration.
- 9.28. The main issue under this sub-heading is whether the proposed development would affect the relevant CO species i.e. the bird species and otter for which the European sites within the ZOI are designated.
- 9.29. The CO species are generally wintering/wetland/sea birds. While some species may occasionally graze or winter on agricultural grasslands e.g. whooper swan, light-bellied Brent goose, wigeon, oystercatcher, and lapwing, the subject site is not an important habitat for these CO species and there are substantial areas of agricultural grasslands in the area. Therefore, I do not consider that the loss of existing habitat on site would result in any significant ex-situ impact on the relevant bird species.
- 9.30. The applicant's screening report states that otters are unlikely to utilise the Hospital Tralee stream for foraging 'given its low carrying capacity for fish or other prey items and as its disconnected from other nearby rivers by culverts, even the use of the stream as a commuting corridor was determined to be unlikely'.
- 9.31. I consider that the proposed development is not likely to have a significant adverse impact on CO species in terms of the loss or alteration of habitat on the development site.

Disturbance and/or displacement of species

- 9.32. The applicant's screening report identifies the disturbance effects as increased noise and human presence and considers that there is no likelihood of significant impacts

causing direct disturbance or displacement, and I agree. Indirect disturbance/displacement of CO bird species in relation to noise and physical presence is not considered likely due to the intervening distance and the applicant refers to wintering bird surveys for previous applications in the wider area. I note that there is substantial urban infrastructure between the subject site and the Tralee Bay Complex SPA, and I consider that there is no likely significant indirect impact to the bird species from noise or human activity.

- 9.33. In relation to otters, as per paragraph 9.30, above, otters are not likely to occur in this area and no indication of otter was identified during site visits. The applicant's screening report notes that while otters are a relatively mobile species the stream within the site has hard rock boulder banks which impedes resting and sleeping habitat. The area between the SAC and the site is heavily urbanised. I consider that, should any otters occur in the area, given the location adjacent to, for example, existing housing developments and the Bracker O'Regan road, they would have a degree of habituation to noise and human activity.
- 9.34. Overall, I agree with the applicant's screening report that there is no likelihood of a significant impact in relation to disturbance or displacement of species.

Habitat or species fragmentation

- 9.35. The applicant's screening report states that habitat fragmentation has been defined as 'reduction and isolation of patches of natural environment' resulting in spatial separation of habitat areas which had previously had greater continuity. This could increase the isolation of populations of species. The applicant considers that this can be ruled out for the European sites, and I agree. I do not consider the proposed development could be considered to fragment habitats or species in so far as it would affect any European site or ex-situ species population.

In-Combination Effects

- 9.36. Section 4.8.2.5 of the applicant's screening report considers that the proposed development does not overlap with other planned projects, plans, or activities. The proposed Northern Relief Road has not been referenced by the applicant, the indicated route of which traverses the western area of the site. However, as set out under section 8.4 of this inspector's report, the routing of the proposed road is unclear, given the current planning application. As the proposed development would not have

any significant impact on European sites by itself, I do not consider it would act in combination with that project, should it be progressed, to result in likely significant effects.

9.37. A number of specific planning applications are outlined in the screening report. The applicant does not consider that there is any potential for cumulative significant effects to occur to any European site. From an inspection of the Board's website and Kerry Co. Co.'s online planning enquiry system on 15th March 2024 I am satisfied that no planning application has been made in the area since the submission of the planning application that could result in a significant in-combination impact on any European site.

Mitigation Measures

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

Screening Determination

9.39. The proposed development was considered in light of the requirements of section 177U of the Planning & 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 European sites nos. 004188 and 002070, or any other European site, in view of the sites conservation objectives, and Appropriate Assessment (and submission of a Natura Impact Statement) is not therefore required.

9.40. This determination is based on the following:

- The hydrological distance between the subject site and the relevant European sites,
- the absence of any habitat loss or fragmentation to any European site or annex I habitat,
- the discharge of surface water to the Hospital Tralee stream after appropriate sustainable urban drainage system (SuDS) treatment as required by the Kerry County Development Plan 2022-2028, and,
- the disposal of foul water to the public foul sewer system for required treatment.

10.0 Recommendation

10.1. Having regard to the foregoing, I recommend that permission is granted for the Large-Scale Residential Development (LRD) as proposed for the reasons and considerations set out below.

11.0 Reasons and Considerations

In coming to its decision the Board has had regard to the following:

- (a) the nature, scale, and extent of the proposed development,
- (b) the provisions of the Project Ireland 2040 National Planning Framework,
- (c) the provisions of the Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities (January 2024),
- (d) Urban Development and Building Heights Guidelines for Planning Authorities (December 2018),
- (e) Sustainable Urban Housing: Design Standards for New Apartments (July 2023),
- (f) the provisions of the Regional Spatial and Economic Strategy for the Southern Region (2020),
- (g) the provisions of the Kerry County Development Plan 2022-2028 including the 'R2 Existing Residential' zoning for the site,
- (h) the provisions of the Tralee Municipal District Local Area Plan 2018-2024,
- (i) the documentation submitted with the planning application, such as the Appropriate Assessment Screening Report, plus the applicant's response to the grounds of appeal,
- (j) the submissions and observations received on file,
- (k) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects on European sites,
- (l) the planning history of the site and the vicinity of the site, and,
- (m) the report of the Planning Inspector.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment which comprises a greenfield site at the edge of an urban area, the distances to the nearest European sites, the hydrological pathway considerations, the submissions on file, the information submitted as part of the applicant's Appropriate Assessment Screening Report, and the Inspector's report.

In completing the screening exercise, the Board agreed with and adopted the report of the Inspector and that, by itself or in combination with other development, plans and projects in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Screening for Environmental Impact Assessment Report and other relevant assessments and documents submitted by the applicant, which contains information set out in Schedule 7A to the Planning & Development Regulations, 2001 (as amended), identifies and describes adequately the effects of the proposed development on the environment.

Having regard to:

- (a) the nature and scale of the proposed development, which is below the thresholds in respect of Paragraphs 10 (b) (i) and (iv) of Part 2 of Schedule 5 of the Planning & Development Regulations, 2001 (as amended),
- (b) the location of the site on land zoned 'R2 Existing Residential' which has a land use zoning objective to 'Provide for residential development and protect and improve residential amenity' in the Kerry County Development Plan 2022-2028,
- (c) the existing use of the site and the pattern of development in the vicinity,

(d) the availability of public water and foul services to serve the proposed development,

(e) the criteria set out in Schedule 7 of the Planning & Development Regulations, 2001 (as amended) and the content of the applicant's Screening for Environmental Impact Assessment Report, and,

(f) the measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Preliminary Construction Environmental Management Plan

it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an Environmental Impact Assessment Report would not therefore be required.

Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below, the proposed development would be consistent with the zoning objectives and other policies and objectives of the Kerry County Development Plan 2022-2028 and the Tralee Municipal District Local Area Plan 2018-2024, would make efficient use of an appropriately zoned greenfield site on the urban edge of Tralee, would positively contribute to an increase in housing stock in this urban area, would be acceptable in terms of urban design and building height, would be acceptable in terms of pedestrian and traffic safety, and would provide an acceptable form of residential amenity for future occupants. The proposed development would not seriously injure the residential or visual amenities of the area or significantly increase traffic volumes in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require

details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development or as otherwise indicated and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The period during which the proposed development hereby permitted may be constructed shall be ten years from the date of this Order.

Reason: In the interest of clarity.

3. The mitigation measures identified and contained within the Preliminary Construction Environmental Management Plan, Ecological Impact Assessment and other plans and particulars submitted with the application shall be implemented in full, except where otherwise required by conditions attached to this permission.

Reason: In the interests of clarity, and of protecting the environment and public health.

4. (a) Prior to the commencement of development the developer shall submit, for the written approval of the planning authority, a detailed design for the layout of the junction of the internal estate access road and Bracker O'Regan road. This shall include detail relating to right-turning movements into and out of the development, a suitably controlled crossing point(s) of Bracker O'Regan road for pedestrians/cyclists, detail of the pedestrian crossing of the access junction for users of the footpath along Bracker O'Regan road, public lighting, signage, the access location to the underground car park at block J2, and all associated works.
(b) All costs associated with this infrastructure and any improvement works required shall be borne by the applicant.
(c) All works shall be in place in advance of construction commencing on site, or as otherwise agreed in writing with the planning authority.

Reason: In the interests of the safety of vulnerable road users, clarity, and the proper planning and sustainable development of the area.

5. (a) A pedestrian/cycle link shall be provided from the estate road network at house no. 166 to the boundary with the L6903/Bullock Hill road to facilitate future connection to a footpath/cyclepath, should this be provided.
- (b) The internal estate road to the front of house numbers 1 and 122 shall be extended up to the relevant site boundaries to facilitate future extension into the adjoining areas should the opportunity arise.
- (c) Details of these links shall be submitted for the written approval of the planning authority prior to the commencement of development and shall be delivered in line with the agreed phasing plan.

Reason: In the interests of encouraging and facilitating the use of sustainable modes of transport, pedestrian safety, accommodating future permeability, and orderly development.

6. (a) The open space areas adjacent to the east of house numbers 165 and 166 shall be incorporated into the curtilages of those houses.
- (b) Revised floor plan and elevation drawings shall be submitted for house numbers 96, 119, 122, and 136 to provide dual frontage units.
- (c) Revised floor plan and elevation drawings shall be submitted for house numbers 1 and 129 showing the omission of the first floor side elevation landing window or its replacement by a high level horizontal window.
- (d) Revised floor plan and elevation drawings shall be submitted for apartment locations 1-10 (apartment types TC A4 OP1 L) showing an additional habitable room side window and/or balcony to units 3 in locations 1, 4, 5, 6, 7, and 10 and units 4 in locations 2, 3, and 8. An additional habitable room window and/or balcony shall be provided to both sides of location 9.
- (e) Details of these alterations shall be submitted for the written approval of the planning authority prior to the commencement of development.

Reason: In the interest of residential amenity, to ensure public spaces are adequately overlooked, and the proper planning and sustainable development of the area.

7. (a) A 20 metres buffer zone around the ring fort (KE 029-080) shall be preserved, measured from the outermost element of the monument, and shall be established under the supervision of a suitably qualified archaeologist. No works or storage of material shall take place within this buffer zone. Planting of native species along the buffer zone shall be used to screen the monument from the proposed development while facilitating public access.

(b) Prior to commencement of development, a management plan for the ring fort shall be submitted for the written approval of the planning authority. The Plan shall address the integration of the monument into the development, its long-term maintenance, and measures to ensure its monitoring and protection.

(c) The brick clamp shall be fully exposed and recorded and a report shall be prepared by a suitably qualified archaeologist and submitted to the planning authority.

(d) All of the other archaeological features uncovered during archaeological testing shall be fully archaeologically excavated under licence and a report prepared by a suitably qualified archaeologist shall be submitted to the planning authority.

(e) All ground works on site shall be archaeologically monitored, under licence, and on completion a report prepared by a suitably qualified archaeologist shall be submitted to the planning authority.

Reason: In order to conserve the archaeological heritage of the site.

8. The development shall be carried out in accordance with the phasing programme shown on drawing no. 945/204, as submitted with the application.

Reason: In the interest of orderly development.

9. Details of the materials, colours, and textures of all the external finishes to the proposed development shall be as submitted with the application, unless

otherwise agreed in writing with the planning authority prior to commencement of development. Roof tiles or slate shall be dark grey/blue/black.

Reason: In the interest of visual amenity.

10. Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

11.(a) Prior to the completion of Phase 1 of the residential development hereby permitted, the permitted creche and retail unit shall be fully fitted out and suitable for immediate occupation and operation.

(b) Details of all creche and retail unit signage shall be submitted to, and agreed in writing with, the planning authority prior to operation of the creche or retail unit.

Reason: In the interests of orderly development of the site and the visual amenities of the area.

12. All service cables associated with the proposed development (such as electrical, telecommunications, and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

13. Public lighting shall be provided in accordance with a final scheme reflecting the submitted lighting proposals, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. The details shall include measures for the protection of bats. Such lighting shall be provided in each phase prior to the making available for occupation of any residential unit in that phase.

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

14. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

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

15. The developer shall enter into water and waste water connection agreement(s) with Uisce Éireann prior to commencement of development.

Reason: In the interest of public health.

16. The road network serving the proposed development, including turning bays, junction with the public road, parking areas, footpaths and kerbs, signage, shall be in accordance with the detailed construction standards and requirements of the planning authority for such works and with the relevant provisions of the Design Manual for Urban Roads and Streets (DMURS). In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

17. (a) Prior to commencement of development on site the developer shall submit, for the written approval of the planning authority, revised car parking proposals, to include a revised site car parking plan, in line with the standards set out in specific planning policy requirement (SPPR) 3 of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024) and the Kerry County Development Plan 2022-2028.

(b) The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. All car parking spaces shall be assigned permanently for the residential development, creche, and retail unit and shall be reserved solely for that purpose.

(c) A minimum of 10% of visitor/underground/commercial/on-street car parking spaces shall be provided with functioning electric vehicle charging stations or points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points or stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations or points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.

(d) A Parking Management Plan shall be prepared for the development and shall be submitted to, and agreed in writing with the planning authority, prior to the occupation of the development.

(e) Detail of cycle parking shall be prepared for the development and shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The bicycle parking quantity shall be provided as per the bicycle parking standards of the Kerry County Development Plan 2022-2028 and shall comply with SPPR 4 of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024). Resident cycle parking spaces shall be secure, conveniently located, sheltered, and well lit. Key/fob access shall be required to resident bicycle compounds. All cycle parking design including visitor parking shall allow both wheel and frame to be locked. Electric bike charging facilities within the resident cycle parking areas shall be provided. All cycle parking shall be in situ prior to the occupation of the development.

Reason: To ensure that adequate car and bicycle parking facilities are available to serve the proposed development and in the interest of the proper planning and sustainable development of the area.

18.(a) The site shall be landscaped in accordance with the detailed comprehensive scheme of landscaping which was submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.

(b) A 3 metres wide pathway, which links to the development's internal footpath network, shall be provided for the length of the site frontage with the Hospital Tralee stream. Full details of this shall be agreed with the planning authority prior to the commencement of phase 3 of the development.

Reason: In the interests of residential and visual amenity.

19.(a) All areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.

(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

20.(a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

(b) This plan shall provide for screened communal bin stores, the locations, and designs of which shall be included in the details to be submitted.

Reason: In the interest of residential amenity and to ensure the provision of adequate refuse storage.

21. Prior to commencement of development, the developer shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for Preparation of Resource and Waste Management Plans for

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

Reason: In the interest of sustainable waste management.

22. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) Location of access points to the site for any construction related activity;
- (c) Location of areas for construction site offices and staff facilities;
- (d) Details of site security fencing and hoardings. Hoardings shall include a one square metre area on each frontage detailing site management contact details;
- (e) Details of on-site car parking facilities for site workers during the course of construction;
- (f) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (g) Measures to obviate queuing of construction traffic on the adjoining road network;
- (h) Measures to prevent the spillage or deposit of clay, rubble or other debris on the road network;

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

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

23. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, 0800 to 1400 on Saturdays, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

24. A Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The CEMP shall include but not be limited to construction phase controls for dust, noise and vibration, waste management, protection of soils,

groundwaters, and surface waters, site housekeeping, emergency response planning, site environmental policy, and project roles and responsibilities.

Reason: In the interests of environmental protection and orderly development.

25. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning & Development Act, 2000 (as amended), unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning & Development Act, 2000 (as amended), and of the housing strategy in the development plan of the area.

26. (a) Prior to the commencement of any house in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or apartment unit), pursuant to Section 47 of the Planning & Development Act, 2000 (as amended), that restricts all houses permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house unit for use by individual purchasers and/or to those eligible

for the occupation of social and/or affordable housing, including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

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

Reason: To ensure the satisfactory completion and maintenance of the development.

28. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning & Development Act, 2000 (as

amended). The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

29. The developer shall pay a financial contribution to the planning authority as a special contribution under section 48(2)(c) of the Planning and Development Act, 2000 (as amended), in respect of the design and upgrade of active travel infrastructure along Bracker O'Regan road and the public road networks local to the development including, but not limited to, the L6093, R556, and L2069. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought

to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Anthony Kelly

Planning Inspector

15th March 2024

Appendix 1

EIA Screening Determination – ABP-318753-23

A. Case Details		
Development Summary	Construction of 235 no. residential units (129 no. houses and 106 no. apartments), a creche, and a retail unit	
	Yes/ No / N/A	Comment (if relevant)
Was a Screening Determination carried out by the PA?	Yes	Concluded that EIA was not required
Has Schedule 7A information been submitted?	Yes	
Has an AA screening report or NIS been submitted?	Yes	AA Screening Report
Is an IED/IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?	No	
Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA?	Yes	AA Screening Report Development Plans subject to SEA

B. Examination	Where relevant, briefly describe the characteristics of impacts i.e. the nature and extent, and any mitigation measures proposed to avoid or prevent a significant effect (having regard to the probability, magnitude (including population size affected), complexity,	Is this likely to result in significant effects on the environment? Yes/ No/ Uncertain

	duration, frequency, intensity, and reversibility of impact)	
1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)		
1.1 Is the project significantly different in character or scale to the existing surrounding environment?	While this is a greenfield site on the edge of the town there is an existing housing development adjacent to the south east and there is an industrial estate on the opposite side of Bracker O'Regan road.	No
1.2 Will construction, operation, decommissioning, or demolition works cause physical changes to the locality (topography, land use, waterbodies)?	Topographic changes would be negligible. The land use would change from agricultural fields to residential with limited commercial activity. Demolition works involve the removal of a single-storey outhouse/shed structure.	No
1.3 Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals, or energy, especially resources which are non-renewable or in short supply?	Standard construction methods and materials would be used. No significant use of natural resources during the operational phase.	No
1.4 Will the project involve the use, storage, transport, handling, or production of substance which would be harmful to human health or the environment?	Construction activities would require use of potentially harmful materials e.g. hydrocarbons, however these are typical of construction sites. A CEMP is submitted with the application.	No.
1.5 Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?	This is a standard housing development. Typical construction phase activities would be carried out. These would be temporary and localised. A CEMP is submitted with the application. During the operational phase foul effluent would be discharged to the public system.	No
1.6 Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground	No significant risk is identified. No pollutants would enter the surface waters. SuDS is proposed on-site and there are	No

or into surface waters, groundwater, coastal waters, or the sea?	public surface water and foul water systems.	
1.7 Will the project cause noise and vibration or release of light, heat, energy, or electromagnetic radiation?	The development is a standard residential development. Noise would be generated during the construction phase and mitigation measures are contained in the CEMP.	No
1.8 Will there be any risks to human health, for example due to water contamination or air pollution?	Normal construction phase impacts would be mitigated as per the CEMP. No operational phase impacts are anticipated.	No
1.9 Will there be any risk of major accidents that could affect human health or the environment?	No particular risk having regard to the nature and scale of development.	No
1.10 Will the project affect the social environment (population, employment)	The proposed development would result in a change of use of the site and an increase in population though this would be in line with anticipated growth as per the core strategy. There would be an increase in employment during the construction phase with minor operational phase employment in the creche and retail unit.	No
1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?	The proposed development is a greenfield site located in an established urban area. There is limited additional zoned land in the vicinity.	No
2. Location of proposed development		
2.1 Is the proposed development located on, in, adjoining or have the potential to impact on any of the following: a) European site (SAC/ SPA/ pSAC/ pSPA) b) NHA/ pNHA c) Designated Nature Reserve d) Designated refuge for flora or fauna	The nearest designated area of natural heritage to the site is Tralee Bay Complex SPA approx. 2.85km to the south west of the subject site. This SPA partially overlaps with Tralee Bay and Magharees Peninsula, West to Cloghane SAC, the boundary of which is approx. 2.95km to the south west of the subject site.	No

<p>e) Place, site or feature of ecological interest, the preservation / conservation / protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan</p>	<p>Likely significant effects on European sites are screened out in section 9 of this inspector's report</p>	
<p>2.2 Could any protected, important, or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be significantly affected by the project?</p>	<p>An EclA was submitted with the application. The site mainly comprises grazed farmland.</p> <p>No rare or protected species of flora were encountered on site. There are bats and badgers. Mitigation measures are proposed to reduce impact of the proposed development on these species as set out in section 8.8 of the Planning Assessment of this inspector's report.</p> <p>The EclA concludes that residual impacts on biodiversity are not considered significant provided best practice mitigation measures are employed.</p> <p>There is no annex I habitat on site and the site is not considered to be an important ex-situ location for SPA bird species.</p>	<p>No</p>
<p>2.3 Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</p>	<p>The site has been subject of previous archaeological excavation. There is a ring fort on site and some other archaeology. The ring fort is incorporated into an area of open space. Appropriate mitigation is proposed, and the County Archaeologist has recommended conditions to be attached to any grant of permission.</p>	<p>No</p>
<p>2.4 Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?</p>	<p>No such features arise in this zoned location</p>	<p>No</p>

<p>2.5 Are there any water resources including surface waters e.g. rivers, lakes / ponds, coastal or groundwater which could be affected by the project, particularly in terms of their volume and flood risk?</p>	<p>There is a watercourse along a short stretch of the south east site boundary. A buffer zone is to be provided from this.</p> <p>A FRA has been submitted. The site is not located within a flood zone.</p> <p>The applicant states that the water table was not encountered in site investigation works.</p>	<p>No</p>
<p>2.6 Is the location susceptible to subsidence, landslides, or erosion?</p>	<p>There is no evidence of these risks.</p>	<p>No</p>
<p>2.7 Are there any key transport routes e.g. national primary roads, on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?</p>	<p>The site is located on Bracker O'Regan road. This road experiences some traffic congestion at particular times of the day, which is normal for roads in urban areas. No significant contribution to any further traffic congestion is anticipated.</p>	<p>No</p>
<p>2.8 Are there existing sensitive land uses or community facilities (such as hospitals, schools etc.) which could be significantly affected by the project?</p>	<p>There is some residential development adjacent to the south east of the site, including a small childcare facility, and an industrial estate on the opposite side of Bracker O'Regan road. The nature of the proposed development is such that these uses would not be significantly affected, though there would be normal construction phase nuisance. A CEMP has been submitted and a CMP can be conditioned, as standard.</p>	<p>No</p>
<p>3. Any other factors that should be considered which could lead to environmental impacts</p>		
<p>3.1 Cumulative Effects: Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?</p>	<p>No developments have been identified in the vicinity which would give rise to significant cumulative environmental effects.</p>	<p>No</p>
<p>3.2 Transboundary Effects: Is the project likely to lead to transboundary effects?</p>	<p>No</p>	<p>No</p>

3.3 Are there any other relevant considerations?	No	No
C. Conclusion		
No real likelihood of significant effects on the environment	X	EIAR not required
Real likelihood of significant effects on the environment.		EIAR required

D. Main Reasons and Considerations
<p>Having regard to:</p> <ul style="list-style-type: none"> (c) the nature and scale of the proposed development, which is below the thresholds in respect of Paragraphs 10 (b) (i) and (iv) of Part 2 of Schedule 5 of the Planning & Development Regulations, 2001 (as amended), (d) the location of the site on land zoned 'R2 Existing Residential' which has a land use zoning objective to 'Provide for residential development and protect and improve residential amenity' in the Kerry County Development Plan 2022-2028, (c) the existing use of the site and the pattern of development in the vicinity, (d) the availability of public water and foul services to serve the proposed development, (e) the criteria set out in Schedule 7 of the Planning & Development Regulations, 2001 (as amended) and the content of the applicant's Screening for Environmental Impact Assessment Report, and, (f) the measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Preliminary Construction Environmental Management Plan <p>it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an Environmental Impact Assessment Report would not therefore be required.</p>

Inspector: _____

Date: _____