



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319304-24

#### Development

Retention for cantilevered extension to external licenced terrace, raised decking over terrace to permit wheelchair access, resurfacing of external grassed terrace to an area of concrete terracing. Construction of a new lower level external licenced terrace, bar servery on terrace to be retained, replacement steps from terrace to beach, outdoor shower stand, kitchen extractors, associated site development works.

#### Location

One the Waterfront, Gallweys Hill,  
Tramore Co Waterford, X91 XE64

#### Planning Authority

Waterford City and County Council

#### Planning Authority Reg. Ref.

21/786

#### Applicant(s)

Wfhtp Limited.

#### Type of Application

Permission

#### Planning Authority Decision

Split decision

<b>Type of Appeal</b>	First Party against conditions and Third Party
<b>Appellant(s)</b>	Wfhtp Limited Fergal and Jai Bonner
<b>Observer(s)</b>	Donncha and Deirdre O'Maidin Joe Conway Breda Clarke
<b>Date of Site Inspection</b>	22 <sup>nd</sup> July 2024
<b>Inspector</b>	Sarah Moran

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## 1.0 Site Location and Description

1.1. The development site is located on the seafront at Tramore, Co. Waterford. It comprises an existing bar/restaurant/ guesthouse premises, known as One the Waterfront, at the junction of Gallwey's Hill and Lower Strand Street, with frontages to both streets. The existing building has a total stated floor area of 1,029 sq.m. The rear of the premises overlooks the beach. The red line site boundary includes the following existing areas and structures, as observed at site inspection and as detailed in the documentation on file, stated total area 0.24 ha:

- Three storey building at the junction of Gallwey's Hill and Lower Strand Street with frontages to both streets;
- Large, split level two/three storey flat roof extension to the rear of the original three storey building;
- Single storey conservatory extension to the side/rear of the three storey building with associated surface car parking area, all accessed from Gallwey's Hill;
- Pedestrian connection to the rear of the premises from Gallwey's Hill, at the western end of the overall site;
- Two storey building with signage 'The Waterfront Bar' with frontage to Lower Strand Street;
- Various other smaller single storey additions to the rear of the above buildings;
- Large area of external decking at the rear / beachfront elevation of the site, part of which is cantilevered over the cliff edge, which has a stepped pedestrian connection to the beach, described as the upper terrace in the documentation on file;
- Smaller, lower area of external decking at the rear, connected to the upper deck by steps, also overlooking the beach, described as the lower terrace in the documentation on file;
- Concrete staircase connecting the upper and lower external terraces with the beach, with gated access to the beach.

- 1.2. The three storey building at the junction of Gallwey's Hill and Lower Strand Street is listed in the National Inventory of Architectural Heritage (NIAH), ref. no. 22816091, where it is described as follows:

*End-of-terrace three-bay three-storey hotel, c.1870, on a corner site retaining some original fenestration with two-bay three-storey side elevation to north-west.*

*Renovated and part refenestrated, c.1995, with replacement frontage inserted to ground floor. Roof not visible behind parapet. Painted rendered walls with channelling to ground floor, rendered piers to corners, moulded rendered cornice, and rendered parapet having moulded rendered coping extending into semi-circular panel to centre containing clock face. Square-headed window openings with rendered sills. 1/1 timber sash windows with some replacement uPVC casement windows, c.1995. Replacement frontage, c.1995, to ground floor with square-headed door openings having inscribed surrounds and glazed timber panelled doors, square-headed window openings having inscribed surrounds and 6/6 timber sash windows, and fascia over incorporating curvilinear panel with dentilated detailing. Road fronted on a corner site with concrete footpath to front.*

The NIAH appraisal rates the building as of regional architectural importance and comments that later additions to rear (south-west) of the site (not included in record) are of little architectural distinction, and do not contribute positively to the appearance of the site. The two storey building fronting onto Lower Strand Street is also listed in the NIAH, ref. no. 22816093, where it is described as follows:

*Terraced three-bay two-storey house, c.1865, retaining some early fenestration with single-bay single-storey canted oriel window to first floor. Extensively renovated, c.1990, with replacement shopfront inserted to right ground floor. Now disused to right ground floor. Pitched slate roof with clay ridge tiles, rendered chimney stacks, rendered coping, and cast-iron rainwater goods. Painted rendered walls. Square-headed window openings with rendered sills (moulded rendered base to canted oriel window). Replacement uPVC casement windows, c.1990, retaining one early 4/4 timber sash window. Replacement timber shopfront, c.1990, to right ground floor with pilasters, fixed-pane timber display window, glazed timber panelled double doors, and fascia over having consoles. Road fronted with concrete footpath to front.*

The NIAH appraisal rates the building as of regional architectural importance. Another adjoining two storey house outside the red line site boundary, known as Kasket House, is also listed in the NIAH, ref. 22816092, where it is rated as having Regional architectural importance.

## **2.0 Proposed Development**

2.1. Permission is sought to construct / retain the following, as per the notices and documentation on file, total stated area 243.3 sq.m. Permission for retention of:

- Cantilevered extension to existing terrace to provide an additional 31.7 sq.m. floor area and associated guardrails / glazed balustrades, stated area 31.7 sq.m.;
- Construction of an area of raised decking over a section of the existing terrace to permit wheelchair access, stated area 42.7 sq.m.;
- Resurfacing of existing grassed terrace to an area of concrete hardstanding;
- Construction of a new lower level external licenced terrace and associated guardrails, stated area 114.2 sq.m.;
- One no. bar servery on existing bar terrace to be retained;
- Upgrade and improvements to existing external public side entrance including handrails;
- Replacement steps from the original external licenced terrace and their realignment in places leading to the beach, including a new section at lower external terrace and associated handrails, guard rails, security gate and an access gate to the lower external terrace, stated area 40.7 sq.m.;
- Retention of outdoor shower stand;
- Retention of two no. wall mounted kitchen extractors and
- Associated site works.

2.2. Permission is sought for:

- Realignment of steps to the beach, including new section at lower external terrace and associated handrails, guardrails, security gate and access gate to the lower licenced terrace, stated area 23.3 sq.m.;

- All associated site works including landscaping/ screen planting as per drawing no. 21649-2-101 submitted with the application.

2.3. The subject application includes the following particulars:

- Planning Report;
- Engineering Report detailing existing structures at the site;
- Design Statement for development proposed / retained;
- Landscape Strategy;
- Details of the historical usage of areas of the subject site including signed affidavits from local residents.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. Waterford City and County Council (WCCC) issued a split decision on 7<sup>th</sup> October 2021. Permission was granted for the following elements of the development:

- Retention of cantilevered extension to existing external licensed terrace to provide an additional 31.7 sq.m. of floor area and associated guardrails/glazed balustrades;
- Retention of an area of raised decking over a section of the existing licensed terrace to permit wheelchair access;
- Retention of new lower level external licenced terrace and associated guardrails, stated area 114.2 sq.m.;
- Retention of one no. bar servery on existing terrace;
- Retention of upgrade and improvements to existing external public side entrance including handrails;
- Retention of replacement steps from the original external licenced terrace and their realignment in places leading to the beach, including a new section at lower external terrace and associated handrails, guard rails, security gate and an access gate to the lower external terrace, stated area 40.7 sq.m.;
- Retention of outdoor shower stand;

- Retention of two no. wall mounted kitchen extractors;
- Resurfacing of eternal grassed terrace to an area of concrete terracing;

3.1.2. Condition 1(b) of the permission specified:

*The lower deck, associated servery and concrete steps, steel railings, steel gate and guard rails and outdoor shower stand are expressly omitted from this grant of retention permission. Within three months of the date of grant of this retention permission a demolition management plan detailing the removal of these structures including a report from a suitably qualified structural engineer confirming the necessary works to remove same will not undermine the structural integrity of the cliff, a timetable for the works to be carried out and completed and for the rehabilitation of this area shall be submitted for the written agreement of the Planning Authority.*

*Reason: To clarify the documents to which the retention permission relates and in the interests of proper planning and sustainable development.*

3.1.3. The planning authority refused permission for the realignment of steps to the beach for the following stated reason:

1. *Having regard to the location of the proposed wastewater treatment system upgradient of a neighbouring private well where minimum separation distances are not achieved in accordance with the recommended standards contained in Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. <10) Environmental Protection Agency, 2009, the proposed development would create a risk of contamination of a private water supply and would therefore be prejudicial to public health.*

### 3.2. Planning Authority Reports

- 3.2.1. The planning report on file dated 29<sup>th</sup> September 2021 notes the outcome of the previous application relating to the subject site, ref. 21/70 (see planning history below), which was refused permission, and refers to pre-planning discussions between the applicant and the planning authority subsequent to that decision. Relevant planning policy is referred to as per the Waterford County Development Plan 2011-2017, which was in force when the application was lodged. The report



considers that no substantive change has been submitted with the subject application that would warrant a deviation from the previous refusal issued under reg. ref. 21/70. Recommends refusal on this basis.

3.2.2. AA Screening Assessment report dated 5<sup>th</sup> October 2021 screens out AA.

3.2.3. There are no other technical reports on file from the planning authority.

### 3.3. **Prescribed Bodies**

3.3.1. There are no submissions on file from prescribed bodies.

### 3.4. **Third Party Submissions to Planning Authority**

3.4.1. The planning authority received a total of 11 no. third party submissions, also a representation was made by Cllr. Joe Conway. All are summarised in the planning report on file dated 29<sup>th</sup> September 2021. They generally object to the development, on grounds similar to those stated in the third party appeals and in the observations submitted on foot of the appeals, as summarised below.

## 4.0 **ABP-311844-21**

4.1. The subject development and decision of WCCC reg. ref. 21/786 are the subject of a previous appeal to the Board ref. ABP-311844-21. The Board issued a split decision on that case on 15<sup>th</sup> March 2023 as follows.

### 4.2. **ABP-311844-21 Grant of Permission**

4.2.1. The Board granted permission for retention of the following elements of the overall development:

- Cantilevered extension to existing external licenced terrace to provide an additional 31.7 sq.m. floor area and associated guardrails/glazed balustrades;
- Construction of an area of raised decking over a section of the existing licenced terrace to permit wheelchair access;
- Resurfacing of eternal grassed terrace to an area of concrete terracing;
- One no. bar servery on existing bar terrace;

- Upgrade and improvements to existing external public side entrance including handrails;
- Two no. wall mounted kitchen extractors and,
- All associated works.

4.2.2. This permission was subject to six no. conditions including the following:

- Condition no. 2 required 2m high boundary treatments along the western site boundary, to be agreed with the planning authority;
- Condition no. 3 required the implementation of landscaping proposals as per drawing no. 21649-2-101 submitted at application stage, within 12 months of permission.

#### 4.3. **ABP-311844-21 Refusal of Permission**

4.3.1. The Board refused permission for the following elements of the development:

- Retention of construction of a new 114 sq.m. lower level external licenced terrace and associated guardrails, replacement steps from the original licenced terrace and their replacement in places leading to the beach, including new section at lower external terrace and associated handrails, guardrails, security gate and an access gate to the lower external licensed terrace, outdoor shower stand, and permission for realignment of the lower section of steps as constructed, leading to the beach.

4.3.2. Permission was refused for the following stated reasons and considerations, as per the Board Order of ABP-311844-21:

1. *The proposed development is located on lands subject to the Open Space zoning under the Tramore Local Area Plan 2014-2020 and, as they represent an extension of the commercial business operating on the subject site, constitute a material contravention of the zoning objective. Further, the proposed development which is located on the cliff face represents an incongruous addition to the cliff face, which otherwise has a natural, weathered character, contrary to policy CZM 3 of the local area plan, which seeks to protect landward and seaward views along the coastline and to manage development so it will not materially detract from the visual amenity of the coast. The development would,*

*therefore, seriously injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.*

2. *The proposed development includes the provision of steps leading down to the beach which are outside of the red line application site boundary and which are shown to be outside of the applicant's landholding. In such circumstances, and in the absence of written consent to undertake the proposed works, the Board is precluded from granting permission.*

#### **4.4. Judicial Review**

- 4.4.1. The applicant commenced Judicial Review proceedings seeking to quash the refusal part of the Board Order of ABP-311844-21. By order of the High Court (perfected on the 9<sup>th</sup> November, 2023), the refusal part was quashed and remitted back to the Board for fresh determination. The grant part of the Board's decision was not subject to Judicial Review and remains valid.

### **5.0 Planning History**

- 5.1. The documentation on file refers to various historic applications dating back to the 1980s and 90s, refer to the WCCC planning report on file. The subject retention application and the previous application relating to the site under reg. ref. 21/70 have been made on foot of enforcement action by the planning authority, which is also detailed in the documentation on file. The following recent applications relating to the subject site and to an adjacent site are considered relevant.

#### **5.2. Reg. Ref. 21/70 ABP-309976-21 Development Site**

- 5.2.1. WCCC refused permission to retain development at the subject site comprising:
  - Cantilevered extension to existing external licenced terrace to provide an additional 31.7 sq.m. floor area and associated guardrails/glazed balustrades;
  - Construction of an area of raised decking over a section of the existing licenced terrace to permit wheelchair access;
  - Construction of a new 114 sq.m. lower level external licenced terrace and associated guardrails;

- One no. bar server on existing bar terrace and one no server on the lower terrace;
- Upgrade and improvements to existing external public side entrance including handrails;
- Replacement steps from the original external licenced terrace to the beach and leading to Lady's Slip and associated handrails, guard rails, security gate and an access gate to the lower external licenced terrace;
- Outdoor shower stand;
- Two no. wall mounted kitchen extractors;
- All associated works

5.2.2. Retention permission was refused for four no. reasons relating to:

1. *Having regard to the visually sensitive location of the site overlooking Tramore Bay and in a visually vulnerable area, as designated in the Waterford County Development Plan 2011-2017 (as extended and varied), and design, scale and finishes of the development to include inter alia the concrete steps, timber decking, timber sheds, metal railings and the cantilevered structure over the cliff edge, it is considered that the development would constitute a visually obtrusive form of development at this location, would seriously injure the amenities of the area and result in an inappropriate development pattern adjacent to Tramore Beach which it is an objective of the Planning Authority to protect as per Objective CP4 of the Waterford County Development Plan 2011-2017 (as extended and varied). The proposed development would therefore be contrary to the provisions of the Waterford County Development Plan 2011-2017 (as extended and varied) with regard to landscape, coastal protection and general amenities of the area and would therefore be contrary to the proper planning and sustainable development of the area.*
2. *The proposed development the subject of this retention application located on lands zoned Open Space would conflict with the zoning objective of the Planning Authority, as expressed in the Tramore Local Area Plan & Waterford County Development Plan 2014-2020 (as extended and varied), "to preserve and enhance Open Space areas and Amenity Areas for passive and recreational*

*uses...” It is therefore considered that the proposed development to include the concrete steps, timber decking, bar area and cantilevered structure all located on lands designated open space adjacent to Tramore Beach would contravene the provisions of the Tramore Local Area Plan & the Waterford County Development Plan 2011-2017 (as extended and varied) and would be contrary to the proper planning and sustainable development of the area.*

- 3. The Waterford County Development Plan 2011-2017 (as extended and varied), and Tramore Local Area Plan recognise the necessity that future management and development of coastal areas is carried out in a manner that protects coastal functions and values including natural coastal defences, habitat value and landscape /seascape character. On the basis of the information submitted with this application, and given the significant construction works undertaken on site the planning authority is not satisfied that the proposed development would not compromise the structural stability of this area of cliff face along with existing coastal defences. Furthermore, having regard to the Waterford Climate Change Adaptation Plan 2019 and the information submitted with the planning application, the planning authority is not satisfied that the proposed development would not result in further erosion and/or impacts of climate change. The proposed development would therefore be contrary to the Waterford County Development Plan 2011-2017, as varied and extended, and Tramore Local Area Plan and the proper planning and sustainable development of the area.*
- 4. The provision of concrete steps directly onto Tramore beach represents a visually discordant and undesirable development pattern in itself, negatively impacting on the visual amenities of the area and by reason of precedent it could establish with respect to other properties adjoining a public beach. Furthermore, the works the subject of this application extend onto the foreshore where the developer has no legal entitlement or estate to carry out such works and in such circumstances the planning authority is precluded from granting permission for the proposed development. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

This decision was the subject of a first party appeal to the Board, ref. ABP-309976-21, which was withdrawn on 3<sup>rd</sup> June 2021.

### **5.3. ABP-309970-21 Adjacent Site at Gallwey's Hill**

- 5.3.1. Relating to an adjacent site to the northwest of the development site, further up Gallwey's Hill and with similar views over Tramore Bay. Permission sought for two no. semi-detached houses. WCCC refused permission and this decision was the subject of a first party appeal. The Board refused permission on 18<sup>th</sup> August 2022 for one no. reason relating to (i) excavations proposed would compromise the structural stability of the cliff face and (ii) the Board is not satisfied that the development would not result in coastal erosion and/or impacts of climate change.

## **6.0 Policy Context**

### **6.1. Development Plan**

- 6.1.1. The previous Waterford County Development Plan 2011-2017 was in force when the subject application was lodged. The new Waterford City and County Development Plan 2022-2028 was adopted on 7<sup>th</sup> June 2022 and took effect on 19<sup>th</sup> July 2022. The development plan includes zoning objectives within the settlement boundary of Tramore, which supersede the previous Tramore Local Area Plan 2014-2020. The following zoning objectives apply at the development site:

- Most of the site, including the built premises and most of the upper outdoor terrace to the rear, is subject to the zoning objective 'TM Tourism' with the stated objective 'To provide for tourist uses'.
- A strip of land at the beachfront end of the site is zoned 'OS Open Space and Recreation' with the stated objective 'Preserve and provide for open space and recreational amenities'.

### **6.2. Natural Heritage Designations**

- 6.2.1. The subject site is not located within or adjacent to any designated European site. The nearest designated sites are Tramore Back Strand SPA (Site Code 004027) and Tramore Dunes and Backstrand SAC (Site Code 000671), which are located approx. 1.25 km to the east. Tramore Dunes and Backstrand is also a proposed Natural Heritage Area (Site Code 000671).

### 6.3. EIA Screening

6.3.1. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

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

The development that is the subject of the overall application for permission / retention under reg. ref. 21/786 comprises elements proposed for retention associated with the established use of the site (including a c. 32 sq.m. cantilevered extension, 114 sq.m. lower terrace and replacement steps leading to the beach) and proposed realignment of steps leading to the beach, on a site of 0.24 ha. It falls well below both of the applicable threshold for mandatory EIA, as set out above. The development that is under consideration in this assessment, following the outcome of Judicial Review proceedings, is only that refused permission under the Board decision ABP-311844-21:

- Retention of a new 114 sq.m. lower level external licenced terrace and associated guardrails;
- Retention of replacement steps from the original external licenced terrace and their realignment in places leading to the beach, including new section at lower external terrace and associated handrails, guardrails, security gate and an access gate to the lower external licensed terrace, stated area 42.7 sq.m.;
- Retention of outdoor shower stand; and
- Realignment of the lower section of steps as constructed, leading to the beach, stated area 23.3 sq.m.

These, as a subset of the originally proposed / retained development, are also well below the applicable threshold for mandatory EIA, as set out above.

6.3.2. In respect of sub-threshold EIA, having regard to the limited nature and scale of the development, it is considered that there is no real likelihood of significant effects on

the environment. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **7.0 The Appeal**

### **7.1. Grounds of First Party Appeal**

7.1.1. The first party appeal is made under section 139 of the Planning and Development Act 2000 (as amended) and relates only to condition 1 (b) of the permission granted under reg. ref. 21/786, as set out above. The main points made may be summarised as follows:

- Clarification of the status of the previous planning application relating to the subject site, reg. ref. 21/70. The planning authority issued a decision to refuse permission on 25<sup>th</sup> March 2021. This decision was appealed to ABP on 19<sup>th</sup> April 2021. The application to the planning authority was withdrawn on 1<sup>st</sup> April 2021 and this was confirmed in correspondence from ABP on 8<sup>th</sup> June 2021. The withdrawal of the planning application was never acknowledged by the planning authority and its website still has the planning authority decision noted as under appeal.
- The applicant has several concerns regarding the consideration by WCCC of the subject fresh application for retention and permission, reg. ref. 21/786, which may be summarised as follows:
  - The Senior Planner involved at the pre-planning consultations appears not to have been involved in the decision making process. It is submitted that the planning authority did not adequately record pre-planning discussions with the applicant, as is statutorily required under section 247(5) of the Planning and Development Act 2000 (as amended).
  - The planner's report notes that reg. ref. 21/70 was refused when it was actually withdrawn by the applicant.
  - The planning report on file does not refer to various particulars submitted with the application including the Planning Report, Design Report, comprehensive landscape proposals and testimonies from local residents



about the history of the existing steps at the site. It is submitted that the planning authority did not adequately have regard to information relating to the application as required under section 34(3)(a) of the Act.

- The planning report did not consider the proposed development *de novo* following the previous refusal of reg. ref. 21/70. This is fundamentally flawed on the basis that the previous proposal was not refused and it is unclear on what legal basis the application should not be considered in its entirety.
- The planning report refers to a servery which was included in the retention application of reg. ref. 21/70 but does not form part of the subject application. It is submitted that the planning assessment has intertwined the two applications, has not considered the current proposal in its entirety and did not have full regard to all the application documents.
- It is submitted that Condition 1(b) is a flawed attempt to refuse permission for works. No proper and full consideration was given to the technical merits of the retention and the justification for the retention, as presented in the documents submitted with the application. The split decision issued by WCCC granted permission for certain aspects of the development. Condition 1(b) does not regulate these works or the use of the structures it has permitted and is not in accordance with section 34(4) of the Act. It is ultra vires and should be deleted. The applicant would have no objection to a revised condition 1(b) requiring the removal of the lower deck after a specified period, e.g. 15 years, this would be appropriate under section 34(4).
- The lower deck was constructed on an area that was unmaintained, overgrown, inaccessible and was strewn with discarded waste, with an unsightly palisade fence. The deck is below the line of the top of the Council owned palisade fence and is only partially visible. The most prominent feature is the timber servery, which was excluded from the retention application and is to be removed in any event.
- It is submitted that the Senior Planner supported a re-application for the lower deck at pre-planning stage, considered its design and layout appropriate and did not consider that it detracted from the amenities of the area.

- It is an objective of the Open Space zoning to preserve and enhance open spaces and amenity space areas for passive and active recreational uses. It is submitted that the development does not conflict with this policy objective as it will make a positive contribution to the public realm and café culture promoted by the Council and will provide passive surveillance over the adjoining beach. The removal of the servery would remove any conflict with the Open Space zoning and this issue is not raised in the planner's report.
- The planning authority did not take account of testimonies from local residents submitted with the application regarding the historic presence of the steps from the beach to the hotel at the subject site. These provide access to the beach as well as to the lower deck and would be present even if the lower deck was removed. The cliff face and the applicant's land on which the lower deck was constructed was not accessible to the public until the applicant created an opening in the Council owned palisade fencing. The concrete steps and handrails and palisade security gate tie in with the recent concrete sea defence walls and slipway reinstatement undertaken by the Council. They are not out of keeping or out of character with their surroundings. The final flight of steps, which are on the foreshore and are in line with the Council's sea defence wall, were omitted from the planning application and their realignment within the application site is not being appealed.
- The outdoor shower is located on the upper level and is an insignificant and inoffensive structure. There was no visual appraisal of the structure in the planning authority assessment of the application.

7.1.2. The first party appeal is accompanied by copies of enforcement correspondence with the planning authority relating to the development site, ref. no. 3061, also details of pre-application discussions between the applicant and the planning authority.

## **7.2. Grounds of Third Party Appeal**

7.2.1. The third party appeal is submitted by/ on behalf of local residents with an address to the immediate west of the development site. The main points made in the grounds of appeal may be summarised as follows.

### 7.2.2. Third Party Appeal Decision Making of Planning Authority

- It is submitted that the pedestrian access to the development site from Gallwey's Hill, on the western side of the site, was never used as a public access but was previously occupied by a fire escape from the first floor of the building. The door on the first floor where the fire escape was located is still visible and is located between the two extractor fans to the site of the development.
- Refers to the planning reports on files reg. ref. 21/70 and the subject application reg. ref. 21/786. The planning report on 21/786 states an opinion that there is no substantive change submitted with the current application that would warrant deviation from the previous decision issued by the planning authority. The report also refers to discussions with the Senior Planner and permits aspects of the development on foot of this unrecorded discussion. It is submitted that there is no clear policy justification for granting this aspect of the development.
- It is not reasonable to grant permission to retain a structure on the basis of compromise or that refusal could result in a greater issue in terms of remedial works, these are not considerations of proper planning and development.
- It is submitted that the decision making process of the planning authority is fundamentally flawed, inconsistent with previous decisions from the same proposal, unreasoned, unjustified in terms of policy and lacking in transparency.
- The planning authority has not adequately carried out enforcement action but has instead facilitated unauthorised development by facilitating two retention applications for the same development.
- The applicant has no legal entitlement to access the beach. The proposed steps will set an undesirable precedent and are visually unacceptable.

### 7.2.3. Third Party Appeal Impacts on Residential Amenities

- It is submitted that the development has had a profound impact on the appellants' enjoyment of their property to the immediate west of the development.
- The development generates noise pollution associated with the use of and access to the terrace and the cantilevered deck extension and lower deck and also the use of the side access from Gallwey's Hill and the extractor fans on the gable facing the appellants' property. There is no evidence of the stated previous

use of the premises for live music. The overall area of the terrace has more than doubled resulting in intensification of use and significant additional noise impacts. The terrace is used for late night entertainment including live music with general crowd noise, resulting in significant adverse impact on the appellants' amenities. The position of serveries along the shared boundary between the site and the appellants' property encourages the concentration of people at those locations and increases the noise nuisance further. There are no acoustic barriers between the development and adjoining properties, which would reduce noise impacts.

- There are no available details of noise monitoring at the development. There should be a Noise Impact Assessment of the development and the use of the terrace for live music should be regulated appropriately, noting the observations on file which express serious concerns regarding noise pollution. It is requested that appropriate noise conditions are attached if permission is granted by the Board.
- The planning authority did not give adequate consideration of noise issues in their assessment of the development and has not included enforceable noise conditions or mitigation in the permission issued.
- There are other extractor fans in the gable wall of the property facing the appellants' property, which are not included in the subject application, which also cause adverse impacts to amenities due to noise and odour.

#### 7.2.4. Third Party Appeal Contrary to Development Plan Policies

- Refers to the Tramore Local Area Plan 2014-2020 and related Town Centre and Open Space zoning objectives at the development site. The development conflicts with development plan policies on Coastal Zone Management, protection of the scenic value of the Coastal Zone, scenic routes and climate change adaptation, also the Water Climate Adaptation Plan 2019, it is submitted that the development conflicts with same due to significant alterations to the appearance of the cliff, coastline and landward views, introduction of two distinctive levels, unsympathetic materials, unacceptable visual impact and undermining the natural integrity of the cliff face.

- The applicant advertises the lower terrace as a café. It is not an amenity space but is a defensible commercial floor space open for use by the public and therefore represents a material contravention of development plan policy for open space zoned lands. The Board is requested to uphold the planning authority decision to refuse permission to retain this aspect of the development.

7.2.5. The third party appeal is accompanied by photographs of views of the development site from the appellants' adjoining property and other photographs of the development.

### **7.3. Applicant Response to Third Party Appeal**

7.3.1. The main points made in the applicant's response to the third party appeal may be summarised as follows.

#### **7.3.2. Applicant Response to Appeal Pre-Planning Issues**

- The applicant did not receive formal minutes of a pre-planning meeting with the planning authority, as required under section 247 of the Act.
- The applicant should not be penalised for any failure on the part of the planning authority to publish pre-planning meeting records, or for lack of reference to same in the planning report on file.

#### **7.3.3. Applicant's Response to Appeal Residential Amenity Issues**

- The licenced premises and rear terraces pre-date the appellants' dwelling house. There was commercial activity both inside and outside the premises historically. The current licence was bought with the property and at no time was the licenced premises abandoned.
- The original terrace had partially collapsed along the seaward edge before the property was renovated (photo of same is submitted). The only new area of terrace is the cantilevered extension of the upper terrace, measuring 31.7 sq.m.. The lower terrace would not be visible from the appellants' property. The remainder of the upper terraces and garden go back decades and were refurbished and resurfaced since 2019, including introducing wheelchair ramps.

- The appellants have only lived in their house for c. five years and would not have experienced the premises when they were previously occupied.
- There has always been a side access to the property, and this has served as a wheelchair access. It is a long-standing requirement of the premises fire certificate, dating back to over 30 years ago, that the side entrance and gates remain open when the premises are in operation. The owner has encouraged additional use of the side entrance since Covid, to reduce movements inside the premises. The side access is only one of three wheelchair accesses to the overall premises.
- The side access lane is significantly below the level of the appellants' house and the applicant has erected screen fences at the boundary to provide a visual buffer for the appellants. In addition, there are no gable windows on the appellants' property.
- The appellants' property is located on 'town centre' zoned land. It is submitted that noise levels associated with town centre uses at the development site and at other nearby commercial premises and the public beach are to be expected at such locations, along with traffic noise from vehicles on the adjoining public road.
- The new enclosed kitchen extractor fans on the gable facing the appellants' property replaced previous extractors which were flush with the walls and expelled fumes into the laneway. The new fans expel above eaves level. The two flush wall-mounted extractors referred to in the grounds of appeal are historic. One is an air vent and the other is a vent for a steam oven.
- The applicant seeks to provide high quality hospitality at the subject site and has submitted a video clip which provides details of the type of entertainment offered.

#### 7.3.4. Applicant's Response to Appeal Noise Issues

- The applicant is willing to enter into an agreement with the planning authority regarding noise monitoring and music volumes, which can be regulated by amplification limiters and can implement a noise management plan prepared by professional acoustic consultants. However, the application of noise levels limits is unreasonable given the town centre zoned location with significant background

noise levels and would put the applicant at a commercial disadvantage relative to other premises in the vicinity.

- Refers to sections 107 and 108 of the Environmental Protection Agency Act 1992 in this context. The Council already has powers to regulate the hours of operation and noise levels at the premises.
- Section 7.7 of the Development Management Guidelines for Planning Authorities (2007) advise against planning conditions that duplication regulation provided for and enforced under other codes.
- The additional 31.7 sq.m. area of cantilevered terrace does not add significantly to overall noise impacts at the subject site.

#### 7.3.5. Applicant's Response to Appeal Visual Impact and Development Plan Policy

- It is submitted that the development does not significantly alter the appearance of the cliff, coastline or landward views.
- The applicant has renovated a dilapidated commercial premises and terrace, which has improved the appearance of the area.
- The proposed new finish to the cantilevered terrace will enhance its attractiveness.
- The replacement steps constructed by the applicant are prominent at present due to their recent construction, but their visual impact will lessen as they weather over time. The steps are the only practical means of accessing the lower part of the property from the upper terrace.
- It is submitted that the existing and proposed works will enhance views of the coastline overall.
- The entire site is behind rock armour and will not be subject to coastal erosion or contribute to it.
- The issue of the visually vulnerable designation in the development plan is not considered to be relevant in an urban context. The proposals do not interfere with the scenic route passing the site at Gallwey's Hill.
- The land at the lower terrace is not publicly owned. There is no conflict between the zoning and the current use at this location.

- It is current national and local planning policy to support and encourage the hospitality industry in developing outdoor eateries. The development will complement current WCCC proposals to enhance the town centre in Tramore.

#### 7.3.6. Applicant's Response to Appeal Decision Making Process

- It is not disputed that the decision-making process was flawed, with issues arising from the use of conditions to refuse aspects of the development, failure to include pre-planning meeting minutes, failure to consider the application in its entirety and not considering all of the information provided with the application.
- The stated refusal reason refers to a wastewater treatment plant, which formed no part of the subject development. This is seen as a lack of care and attention in assessing and determining the application.
- It is submitted that the development should be granted except for the lower section of concrete steps which have not been appealed by the applicant.

#### 7.4. **Planning Authority Response to Appeals**

7.4.1. The planning authority submitted a response to the appeal on 18<sup>th</sup> November 2021, and makes the following points:

- Condition 1(b) was attached by way of clarity and to remove any ambiguity regarding the extent of the retention permission being granted. It is reinforced by the refusal reason. The planning authority is wholly within its rights to issue a split decision and to regulate development by way of condition.
- The application was fully and properly assessed by the planning authority. The planning report notes the previous retention refusal under reg, ref, 21/70 and the current application was assessed against the previous decision of the planning authority.
- Any pre-planning discussions held by the planning authority shall not prejudice its performance in carrying out its functions under the Planning and Development Act 2000 (as amended) and cannot be relied upon in the formal planning process.



## **7.5. Observations on Foot of First and Third Party Appeals**

7.5.1. Three no. observations have been submitted on foot of the first and third party appeals, which may be summarised as follows.

### **7.5.2. Observation of Breda Clarke**

- The observer owns a holiday home at 10 Strand Chalets, Strand Street, Tramore and has spent holidays in the area for over 40 years.
- The cantilevered extension would block out most of the light in one of her rooms overlooking the area.
- The bar terrace and servery to be retained cause noise and disturbance due to the high volume of people in the area and can be overwhelming in the summer months, especially when there is live music.
- The outdoor shower stand directly overlooks the observer's bedroom window and causes a loss of privacy.

### **7.5.3. Observation of Joe Conway**

- Concerns about the integrity of the coastline and safety. The EU has identified the Waterford coast as one of those most prone to erosion. Refers to an incident of unstable cliffs in Norway, states that similar conditions exist at the subject site. It is submitted that the cliffs in the area are eroding and unstable and could be further destabilised by extreme weather events such as those seen in recent years.
- There should not be any development on the cliffs in Tramore between the strand and the pier, much unauthorised development has already taken place at this location.
- Current planning law to permit retention should only be used in bona fide cases of errors or omission, not to forgive unauthorised development of this scale. Retention permission for this development would set an undesirable precedent.
- The submission refers to various discrepancies between pre-planning meeting minutes and the planning assessment on file.

- The submission is accompanied by photographs of cliffs in the area and of existing development at the subject site.

#### 7.5.4. Observation of Donncha Ó Maidín and Déirdre Ó Maidín

- The development is visually obtrusive and would seriously injure the amenities of the area and result in an inappropriate form of development adjacent to Tramore beach, contrary to development plan objective CP4.
- The concrete steps to the public beach and the cantilevered terrace on open space zoned lands set an undesirable precedent contrary to development plan and LAP policy.
- The development compromises the structural stability of the cliff face along with coastal defences, contrary to the Waterford Climate Change Adaptation Plan 2019. The clay cliff will continue to erode and will be impacted by more severe weather expected due to global warming.
- Photographs of existing erosion of the cliff are submitted including the uprooting of trees.
- The observer knew Tramore in the 1940s and 1950s and the steps to the beach did not exist at that time. Any existing steps at the site would date to the 1970s at the earliest. There is no evidence of any planning permission for the steps. There is no justification for treating the applicant's steps as a continuation of an approved earlier structure. Permission for same would set an undesirable precedent.
- Historic photographs and postcards of Tramore are submitted.
- The locations of the three site notices were not adequately legible. The newspaper notice was adequately advertised.
- The terrace will result in overlooking and an invasion of privacy, including overlooking of a secluded beach area traditionally frequented by young families.
- The proposal to exclude alcohol use from the lower terrace is impossible to implement or enforce.
- Outdoor music at the development will have an adverse impact on the amenities of the area.

- The enlargement of the existing premises will worsen existing parking problems in the area.
- The applicant has had little regard for the proper planning process by applying for retention.

## **7.6. Further Responses to Appeals**

7.6.1. None.

## **7.7. Prescribed Bodies**

7.7.1. The appeal was circulated to An Taisce, the Minister for Culture, Heritage and the Gaeltacht and The Heritage Council. No responding submissions were received.

## **7.8. Further Responses to Remitted Case**

7.8.1. Following the order of the High Court quashing the refusal part of the Board decision of ABP-311844-21, the Board sought further submissions / observations on the remitted refusal part of the Board's decision from the participants in the appeal. The responses received may be summarised as follows.

### **7.8.2. Response of Applicant to the Remitted Case**

- The refusal element of the Board decision ABP-311844-21 relies on policy objectives of the Tramore Local Area Plan 2014-2020 relating to open space zoning and Policy CZM3 for the protection of landward and seaward views along the coastline. This LAP has since been superseded by the new County Development Plan.
- The zoning objectives relating to the subject site have changed under the new County Development Plan. Most of the site is now zoned for Open Space and Recreation with the zoning objective "OS Preserve and provide for open space and recreational amenities". The zoning matrix provided in development plan Table 11.2 includes the use "café / tea shop" as "open to consideration" under this zoning objective. This use was not permitted under the "open space" zoning objective under the previous Tramore LAP.
- The terrace use in this area under the subject application is to be used by patrons of the overall premises. While the refreshments serverly on the lower terrace is no

longer proposed, patrons will be able to bring drinks from the bar/restaurant above onto the terrace. This use will contribute positively to the public realm and the café culture promoted by WCCC and provides passive surveillance to the adjoining beach.

- It is submitted that the change in the terms of the OS zoning objective addresses the reasons for refusal of reg. ref. 21/786 and those set out in the Inspector's Report of ABP-211844-21, which refers to the lower deck as being an 'extension' of the commercial premises. The new OS zoning objective allows for a café / tea shop commercial use.
- The lower terrace is used by a more elderly clientele than the rest of the premises and serves as an amenity for the wider area.
- The Board is requested to note that the applicant has acquired the adjacent O'Shea's Hotel complex on the opposite side of Lower Strand Street. The subject site and O'Shea's Hotel are the only hotels in Tramore that have beach frontage. Both premises are to operate in conjunction with access from the public road/ footpath or beach and steps.
- The LAP policy CZM now does not have any effect since the LAP was superseded.
- The applicant refers to the development permitted under reg. ref. 12/122 PL.241174, a sports, leisure and retail facility with car parking and associated site works at the former Hydro Site on Tramore seafront. This was permitted by the Board and was not considered to detract from the visual amenities of the area.
- The applicant also refers to ABP-309970-21 relating to an adjacent site at Gallwey's Hill, which was also considered under policy CZM. That site is located at elevated lands to the west of the development site, which are particularly visually prominent in views of the area from Tramore. It is submitted that views of Tramore beach and Tramore Bay are not impacted by the subject development, also that there is no impact on views from the beach, and that views of the site have actually been enhanced as the development is an improvement on the previous overgrown and littered nature of the area, enclosed by palisade fencing. In addition, the lower terrace and steps to be retained cannot be seen from any

point along Gallwey's Hill. The submission includes photographs of the site and views from the beach and Gallwey's Hill.

- The application includes a promotional video which, if submitted, provides an account of the minimal and acceptable visual impact of the lower terrace and steps.
- The submission states that the concrete steps from Lady's Slip to the beach were built by the Council but are on land owned by the applicant. In addition, the Council has constructed the palisade fencing on the applicant's lands. The fencing has not been maintained by the Council. The applicant is willing to treat, paint and maintain the fence, which will significantly visually enhance the area.
- It is submitted that the development makes a significant contribution to the local economy in Tramore, employing up to 60 full and part time peak season jobs, also supporting other local businesses. Further employment will be generated when the O'Shea's Hotel premises is fully operational. This matter was not taken into consideration in the WCCC assessment of reg. ref. 21/786 or in the Board's consideration of ABP-311844-21. Refer to Strategic Economic and Tourism development plan objectives including objective ECON 02- Strategic Employment Locations, which specifically refers to Tramore.
- The Board is requested to grant permission for the development.

#### 7.8.3. Response of the Observer Joe Conway to the Remitted Case

- The submission reiterates concerns previously stated by the observer in relation to (i) potential adverse impacts on the integrity of the coastline and (ii) the acceptability of circumstances relating to the granting of retention permission by WCCC, as summarised above.
- It is submitted that the cliffs at this location are eroding and unstable, a situation which is likely to be further exacerbated by climate change. The retention of the development would further endanger this situation.
- It is submitted that retention permission should not be granted to rectify a development that would not have been granted in the first instance, also that the applicant has disregarded the planning process by constructing the development without permission and should not be rewarded for same. The submission refers

to other instances where the same applicant has allegedly carried out works without planning permission.

#### 7.8.4. Response of the Observer Breda Clarke to the Remitted Case

- The submission reiterates the observer's previous objection to the development.
- The observer owns no. 10 the Strand Chalets, which are immediately adjacent to the site at the seafront. She objects to the development on grounds of adverse impacts on residential amenities due to noise, disturbance and lack of privacy. It is also submitted that the development would have an adverse impact on the character of the neighbourhood.

## 8.0 **Assessment**

8.1. Having examined the application details and all other documentation on file, including all of the observations received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Scope of Subject Case
- Principle of Development with Regard to Relevant Planning Policy
- Impacts on Residential Amenities
- Visual Impacts
- Structural Issues / Impacts on Coastal Integrity
- Procedural Matters
- Appropriate Assessment

These issues may be considered separately as follows.

### 8.2. **Scope of Subject Case**

8.2.1. Two separate matters arise regarding the scope of the case before the Board, namely (i) the matters to be considered in the context of the remittal of ABP-301844-21 and (ii) the extent of which the steps to be retained / realigned are located within the red line site boundary.

### 8.2.2. Matters Under Consideration

As noted above, the Board decision issued under ABP-311844-21 has been subject to Judicial Review proceedings, with the outcome that the refusal part of that decision has been quashed and remitted back to the Board for fresh determination. The part of the Board's order granting permission was not challenged and remains valid. This report therefore comprises a fresh consideration of the elements of the development previously refused permission, i.e.:

- Retention of a new lower level external licenced terrace and associated guardrails, stated area 114.2 sq.m.;
- Retention of replacement steps from the original external licenced terrace, stated area 40.7 sq.m.;
- Retention of outdoor shower stand;
- Permission for realignment of steps to the beach, including new section at lower external terrace and associated handrails, guardrails, security gate and access gate to the lower licenced terrace, stated area 23.3 sq.m.

These are the only matters to be decided upon in this instance and only these elements of the development are considered in the following assessment, notwithstanding that the above introductory sections of the report detail the overall development proposed /retained, planning authority decision and appeals, for the purpose of providing context. The assessment is a fresh consideration of these elements of the development, based on a separate site inspection. It does, however, take into consideration all relevant matters raised in the planning and other technical reports on file and in the third party submissions and appeal, as per the documentation on file.

I note the additional submissions received in response to the correspondence issued by the Board seeking further submissions/ observations from participants in the appeal on the remitted refusal part of the Board's decision of ABP-311844-21. Having regard to the submissions received, as summarised above, I am satisfied that they do not raise any significant new issues such as would warrant involving section 131 of the Planning and Development Act 2000 (as amended) in relation to any of the responses received.

### 8.2.3. Provision of Steps Outside the Red Line Site Boundary

There are existing concrete steps at the development site which connect the upper and lower terrace areas and continue to the beach, where there is a gated access. The following elements of the development, as described in the notices on file, relate to the steps:

- Retention of replacement steps from the original external licenced terrace, stated area 40.7 sq.m.;
- Permission for realignment of steps to the beach, including new section at lower external terrace and associated handrails, guardrails, security gate and access gate to the lower licenced terrace, stated area 23.3 sq.m.

The applicant submits that the steps constructed at the site as part of the overall development replaced steps that were previously present at this location. The application includes testimonies from local residents, which state that the steps were historically present at the site. This is disputed by third party submissions, which state that other local residents have no memory of the steps.

The applicant also submits that the steps connecting the upper and lower terrace areas to the beach, part of which are the subject of the application for retention, are all within the red line sight boundary. A final flight of steps, which is located on the foreshore, is omitted from the application on the basis that they are outside the red line site boundary, as stated in the Engineering Report submitted with the application and as indicated in the drawings on file.

The following assessment relates only to the steps inside the red line site boundary, noting that those outside the boundary are not included in the application for retention or the application for permission for the proposed realignment of the lower section of steps, as per the drawings on file, noting in particular drawing no. PP-09.

### 8.3. **Principle of Development with Regard to Relevant Planning Policy**

- 8.3.1. The site is within the development boundary of Tramore and zoning objectives apply under the current Waterford City and County Development Plan 2022-2028. There is no current Local Area Plan for Tramore given that the Tramore Local Area Plan 2014-2020 has been superseded by the new County Development Plan. Development plan section 2.5 provides clarification on this matter, stating that the



Tramore, Portlaw and Lismore LAPs were made to be consistent with the previous 2011-2017 County Development Plan and its core strategy. Section 2.5 states an intention to prepare new LAPs for the urban settlements of Dungarvan, Tramore, Dunmore East, Portlaw, Lismore and for Gaeltacht na nDéise during the lifetime of the development plan, however no specific timeframe for same is provided. A pre-draft consultation Issues Paper is currently available online relating to the new Tramore Local Area Plan 2023-2029. The public consultation period for the Issues Paper expired on 7<sup>th</sup> March 2023, however the draft LAP has not yet been issued for public consultation at time of writing. Correspondence on file from Waterford City and County Council (WCCC), dated 26<sup>th</sup> July 2024, confirms that there are currently no LAPs for settlements in the county. The relevant applicable planning policy at present therefore comprises the 2014-2020 County Development Plan.

- 8.3.2. Most of the overall site, including the built premises and most of the upper outdoor terrace to the rear, is subject to the zoning objective 'TM Tourism' under the current development plan with the stated objective 'To provide for tourist uses'. However, the elements of the development under consideration in this assessment are all located on a strip of land at the beachfront end of the site which is zoned 'OS Open Space and Recreation' with the stated objective to 'Preserve and provide for open space and recreational amenities'. The use types 'bed & breakfast / guesthouse', 'hotel / tourist accommodation', 'restaurant', and 'Night Uses (Nightclub, Pubs, Fast Food Takeaways)' are not permitted under this zoning objective as per the Land Use Zoning Matrix provided in development plan Volume 2 Table 11.2. The use 'café / tea shop' is indicated in the zoning matrix as open for consideration. Development plan section 11.1.2 states that open for consideration uses may be permitted where the planning authority is satisfied that the development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects, and would otherwise be consistent with the proper planning and sustainable development of the area.
- 8.3.3. The issue arises as to whether the lower terrace area to be retained is compatible in principle with the OS zoning objective. I consider that the structure, of itself, is acceptable in principle as an amenity area ancillary to the main premises, subject to further consideration of impacts on residential and visual amenities and other matters. However, the existing premises at One The Waterfront, including the upper

terrace area, clearly operates as a hotel with an associated bar / restaurant licenced premises area that is open to the public. The upper terrace area to be retained includes a bar serverly area and functions as part of the overall licenced premises. The applicant submits that the lower terrace will not be used to serve food or drinks but as an amenity area only, where patrons may bring drinks from the bar/ restaurant area, and that this use is consistent with the 'café / tea shop' use that is open for consideration under the OS zoning objective. The applicant notes in this regard that permission is not now sought to retain a bar serverly area at the lower terrace. Third parties submit that the lower terrace is not an amenity space but is a defensible commercial floor space open to the public. It is open to the Board, if minded to grant permission, to impose a condition limiting the use of the lower terrace to an amenity space only, noting that the layout to be retained does not include a bar serverly area. However, I consider that the proposed use, as defined by the applicant, is not consistent with a standalone 'café/ tea shop' and that the lower terrace area will instead, in reality, operate as an extension of the overall licenced premises. I therefore consider that this use is not consistent with the OS zoning of the lands and is not permitted in principle under the development plan, where the zoning matrix indicates that the uses 'Bed & Breakfast/ Guesthouse', 'Hotel/ Tourist Accommodation', 'Night Uses (Nightclub, Pubs, Fast Food Takeaways)', 'Public House' and 'Restaurant' are Not Permitted under the OS zoning objective.

- 8.3.4. As discussed above, there is some dispute as to the historic existence of steps between the upper terrace, lower terrace and the beach. However, notwithstanding this uncertainty, I consider that the presence of the steps at the OS zoned lands facilitates the extension of the licenced premises into areas of the site outside the 'TM Tourism' zoned area, where the use is not acceptable in principle.
- 8.3.5. Having regard to all of the above, I consider that the lower terrace area and the existing and proposed steps and associated structures including the handrails, guardrails, security gate, access gate and outdoor shower stand are not acceptable in principle under the 'OS Open Space and Recreation' zoning objective and represent a material contravention of the development plan, notwithstanding that the planning authority did not refuse permission on this basis.

#### **8.4. Impacts on Residential Amenities**

- 8.4.1. Third parties submit that the development generates noise pollution, particularly associated with the nighttime use of the premises and with live music. It is submitted that the development should be subject to a Noise Impact Assessment. The lower terrace could also give rise to adverse impacts on residential amenities generally associated with other disturbance due to nighttime activity and loss of privacy due to overlooking of adjacent residential properties and on the beach.
- 8.4.2. While it is likely that noise associated with live music would primarily emanate from the original licenced premises, the associated use of the lower terrace area would increase the overall capacity of the premises and therefore the overall noise impacts. However, the original premises are located on lands zoned for 'TM Tourism' uses and the overall development is therefore considered acceptable in terms of noise impacts, subject to ongoing noise monitoring. I consider on balance that, given its limited area (114.2 sq.m.), the lower terrace, of itself, would not generate significant adverse noise impacts on residential amenities such as would warrant a refusal of permission.
- 8.4.3. Third parties submit that the development will overlook adjacent residential properties and result in loss of privacy. Having regard to the site inspection and to the photographs on file, which include photographs taken from adjacent properties and from the existing lower terrace area, also to the intervening distances to the facades of adjacent dwellings, I consider that the lower terrace area and steps, given their situation at a lower level, will not result in direct overlooking of residential properties such as would warrant a refusal of permission. I note the proximity of the shower stand to the adjacent dwellings at The Chalets to the east of the site, as stated in the observer submission. I consider that this element of the development could be omitted by condition if permission is granted, in order to address this issue. I accept that the lower terrace does overlook the beach, however this area is already part of the public realm and is in clear view from many locations in the surrounding area, including other residential properties. I therefore do not consider that the lower terrace and steps will result in any significant adverse impacts on residential or public amenities by way of overlooking such as would warrant a refusal of permission.

## 8.5. Visual Impact

- 8.5.1. The following assessment of visual impacts is based on the site inspection of 22<sup>nd</sup> July 2024, at which the site was viewed from various vantage points in the immediate vicinity and the wider area, as well as all of the submissions on file, which include photographs of the site taken from adjacent residential properties and historic photographs of the site and surrounding area.
- 8.5.2. Third parties submit that the development has adverse visual impacts on the surrounding area and that the development is not consistent with development plan policies on scenic areas. The applicant submits that the development, in particular the lower terrace, represents an improvement on the previous situation at the site whereby the boundary to the beach was defined by a palisade fence constructed by the Council, which enclosed an area that was not maintained, was overgrown and was strewn with waste.
- 8.5.3. The site is located within the built up area of the settlement of Tramore. It forms part of the urban fabric of the town and is not specifically visible from any designated views or prospects in the wider area, as per the 'Landscape and Seascape Character Assessment, Scenic Routes and Protected Views' set out in Appendix 8 of the development plan. However, notwithstanding, the development does have a prominent location on the seafront and is visible from the beach and the surrounding urban area within Tramore. While the upper deck at the premises is an expansion of a pre-existing terraced area to the rear of the hotel, the lower deck area and associated steps both represent new interventions close to the foreshore, noting that the steps have been expanded even if they already existed in some form at this location. I consider that both the terrace and the steps have significant visual impacts, albeit limited to the immediate locality rather than the wider area. I note the applicant's rationale for the design of the lower terrace area, as set out in the submitted Design Statement, whereby the design and finishes were selected on the basis that they would be compatible with the seaside environment, also the submitted landscaping proposals. However, given the location of the lower terrace and steps close to the rocky foreshore, I do not consider that there are many opportunities to mitigate visual impacts by design or by introducing soft landscaping. I consider that the lower terrace area and steps therefore have a disproportionate visual impact at a highly sensitive location where there is low capacity to absorb

such development. I note in this regard the areas listed as 'high sensitivity' in section 4.2(b) of the development plan landscape and seascape character assessment, include sparsely vegetated areas; beaches, dunes and sands and bare rocks. Tramore Bay is listed in Category 2 'High Sensitivity' in Table A8.3 of the assessment. Such areas are described as having a distinctive character with some capacity to absorb a limited range of appropriate new developments while sustaining existing character. Given the intrusive nature of the lower terrace area on a part of the rocky cliff face, I do not consider that it represents an appropriate intervention at such a sensitive location. I consider on this basis that the development will contravene development plan policy C&M 05 'Scenic Coastal Areas', which is to protect the scenic value of Waterford's Coastal Zone including landward and seaward views and continuous views along the coastline and manage development so it will not materially detract from the visual amenity of the coast.

- 8.5.4. The lower terrace area, steps and associated structures are located to the side / rear of several buildings that are listed in the National Inventory of Architectural Heritage (NIAH), as set out in the detailed site description above, comprising the three storey hotel building at the junction of Gallwey's Hill and Lower Strand Street (ref. no. 22816091) and several two storey buildings fronting onto Lower Strand Street (ref. nos. 22816092 and 22816093). The lower terrace area, steps and associated structures are located to the side and rear of these buildings, are situated at a lower level, and are not visible in views of their facades from the street. I therefore consider that they do not have any significant adverse impacts on the settings of the adjacent buildings listed in the NIAH. I note in this regard the comments in the NIAH appraisal of ref. 22816091, relating to the original three storey hotel building at the junction of Gallwey's Hill and Lower Strand Street, which states that the later additions to rear (south-west) of the site are not included in record and are of little architectural distinction.

## **8.6. Structural Issues / Impacts on Coastal Integrity**

- 8.6.1. Third party submissions raise concerns that the lower terrace area will have adverse impacts on the structural integrity of the cliff face and could possibly result in instability and rock fall. The application includes an Engineering Report. This states in relation to the overall development that works have been undertaken to stabilise the cliff face, which should be extended to any remaining elements of the cliff face.

These works, in conjunction with proposed landscaping, will give a suitably robust finish to the cliff face. In addition, the development is situated above the foreshore and is located behind rock armour and palisade fencing and therefore does not contribute to coastal erosion. The report also states that the steps have been constructed to tie in with a concrete retaining wall recently constructed by WCCC. I consider that the Engineering Report adequately addresses potential structural issues and, given that works have been carried out to stabilise the cliff face and that the development is not located on the foreshore, I do not consider that significant concerns arise in relation to structural integrity such as would warrant a refusal of permission.

#### **8.7. Procedural Matters**

- 8.7.1. I note third party concerns about the adequacy of site notices. I accept that the subject application was validated by the planning authority and that third parties have been informed of the proposed development / development to be retained.
- 8.7.2. Third parties raise concerns about the subject application for retention permission, submitting that retention permission should not be granted for a development that would never have been permitted if permission had been sought in the first instance. This assessment has considered the subject development *de novo* on its merits, based on the documentation on file including all submissions, site inspection, relevant planning policy and other matters out set elsewhere in this report, and the Board decision will also be issued on this basis.
- 8.7.3. I note the applicant's comments in the grounds of appeal regarding pre-planning discussions with the planning authority prior to lodging the subject application under reg. ref. 21/786. As per the comments of the planning authority in response to the appeal, any pre-planning discussions held by the planning authority shall not prejudice its performance in carrying out its functions under the Planning and Development Act 2000 (as amended) and cannot be relied upon in the formal planning process.
- 8.7.4. I note that the stated refusal reason in the decision by WCCC issued on 7<sup>th</sup> October 2021 erroneously refers to a "proposed wastewater treatment system", this matter may be rectified by the subject decision to be issued by the Board.

## **8.8. Appropriate Assessment**

8.8.1. The appeal site is not located within or adjacent to any designated European site. The nearest designated sites are Tramore Back Strand SPA (Site Code 004027) and Tramore Dunes and Backstrand SAC (Site Code 000671), which are located approx. 1.25 km to the east. The following designated sites are located within 15 km:

- Mid-Waterford Coast SPA (Site Code 004193), c. 2.5km south-west,
- River Barrow and River Nore SAC (Site Code 002162), c. 11.5km east,
- Lower River Suir SAC (Site Code 002137), c. 10km north.

Having regard to the nature and scale of the proposed development being a 114.2 sq.m. terrace area, replacement steps (stated area 40.7 sq.m.), outdoor shower stand, realignment of steps, new section at lower terrace (stated area 23.3 sq.m.) and associated works including handrails, guardrails, security gate and access gate, and to the intervening distances and to the lack of hydrological connections, I do not consider that the development would be likely to significantly impact the qualifying interests of the above European Sites during either the construction or operational phases of development, with regard to their conservation objectives. As such, I consider that no Appropriate Assessment issues arise. In conclusion, I do not consider that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site. The WCCC Habitats Directive Screening Assessment on file, dated 5<sup>th</sup> October 2021, is also noted in this regard.

## **9.0 Recommendation**

9.1. I recommend that planning permission is refused in accordance with the following reasons and considerations.

## 10.0 Reasons and Considerations

1. The development is located on lands zoned 'OS Open Space and Recreation' with the stated objective to 'Preserve and provide for open space and recreational amenities' under the Waterford City and County Development Plan 2022-2028. The Board considers on the basis of the information submitted with the planning application, application for retention permission and appeal, that the lower terrace area it is proposed to retain, which includes the use of the area by members of the public for the consumption of drinks purchased at the adjacent licenced premises, would effectively represent an extension to the licenced premises and would constitute a material contravention of the 'OS Open Space and Recreation' zoning objective given that the zoning matrix set out in Table 11.2 of Volume 2 of the Plan indicates that the use types 'bed & breakfast / guesthouse', 'hotel / tourist accommodation', 'restaurant', and 'Night Uses (Nightclub, Pubs, Fast Food Takeaways)' are Not Permitted at lands subject to the OS zoning objective. The development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the prominent and sensitive location of the development overlooking Tramore beach and close to the foreshore, it is considered that the lower terrace area, steps and associated structures to be retained and the proposed realignment of steps to the beach including a new section at the lower terrace area and associated handrails, guardrails, security gates and access gate to the lower terrace, would not constitute an appropriate intervention at the cliff face and would have a disproportionate visual impact at a highly sensitive location where there is low capacity to absorb such development. The development is therefore considered to contravene policy C&M 05 'Scenic Coastal Areas' of the Waterford City and County Development Plan 2022-2028, which is to protect the scenic value of Waterford's Coastal Zone including landward and seaward views and continuous views along the coastline and manage development so it will not materially detract from the visual amenity of the coast. The development would, therefore, seriously injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.



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

---

Sarah Moran

Senior Planning Inspector

9<sup>th</sup> September 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	319304-24		
<b>Proposed Development Summary</b>	Retention for cantilevered extension to external licenced terrace, raised decking over terrace to permit wheelchair access, resurfacing of external grassed terrace to an area of concrete terracing. Construction of a new lower level external licenced terrace, bar servery on terrace to be retained, replacement steps from terrace to beach, outdoor shower stand, kitchen extractors, associated site development works.		
<b>Development Address</b>	One the Waterfront, Gallweys Hill, Tramore Co Waterford, X91 XE64		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>		Class.....	EIA Mandatory EIAR required
<b>No</b>	X		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
	<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>

<b>No</b>		N/A		No EIAR or Preliminary Examination required
<b>Yes</b>	X	Class (10)(b) of Schedule 5 Part 5		Proceed to Q.4

4. Has Schedule 7A information been submitted?				
<b>No</b>	X		<b>Preliminary Examination required</b>	
<b>Yes</b>			<b>Screening Determination required</b>	

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

## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	319304-24	
<b>Proposed Development Summary</b>	Retention for cantilevered extension to external licenced terrace, raised decking over terrace to permit wheelchair access, resurfacing of external grassed terrace to an area of concrete terracing. Construction of a new lower level external licenced terrace, bar servery on terrace to be retained, replacement steps from terrace to beach, outdoor shower stand, kitchen extractors, associated site development works.	
<b>Development Address</b>	One the Waterfront, Gallweys Hill, Tramore Co Waterford, X91 XE64	
<p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b></p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>No. The development is located within an existing urban context.</p> <p>No significant waste, emissions or pollutants are envisaged.</p>	<p>No</p> <p>No</p>
<p><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context</p>		No

<p>of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>		No
<p><b>Location of the Development</b></p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>Yes. The site is adjacent to the foreshore.</p> <p>However, given the location of the development within a fenced area, behind rock armour and with regard to the very limited scale of the development, it is considered that no significant ecological issues arise.</p>	
<p style="text-align: center;"><b>• Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required.</p> <p>X</p>	<p><b>• There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</b></p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p><b>There is a real likelihood of significant effects on the environment.</b></p> <p>EIAR required.</p>

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

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