Inspector's Report

ACP-324475-26

Development	Construction of 240 residential units. An Environmental Impact Assessment Report and a Natura Impact Statement have been prepared.
Location	Coolfadda and Kilbrogan (townlands), Bandon, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	26/1129
Applicant(s)	Wayleaf B Limited
Type of Application	Largescale Residential Development
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	First Party and Third Party
Appellant(s)	Wayleaf B Limited Jacintha Warren
Observer(s)	None
Date of Site Inspection	10th September 2026
Inspector	Phillippa Joyce

Contents

1.0 Site Location and Description 3

2.0 Proposed Development 3

3.0 Planning Authority Opinion 6

4.0 Planning Authority Decision 7

5.0 Planning History 13

6.0 Policy Context 15

7.0 The Appeal 27

8.0 Planning Assessment 32

9.0 Environmental Impact Assessment 62

10.0 Water Status Impact Assessment 65

11.0 Appropriate Assessment 66

12.0 Recommendation 67

13.0 Recommended Draft Order 67

Appendix 1: Appropriate Assessment – Stage 1 and Stage 2 71

1.0 Site Location and Description

1.1. The appeal site is located in the townlands of Coolfadda and Kilbrogan, c.1km to the northwest of Bandon town centre. The site is in an outer suburban area of the town which is presently undergoing developmental changes. The site is rectangular in configuration and indicated as measuring c.9.59ha.

1.2. The site is greenfield in nature, comprised of grasslands (western portion) and dense tree and shrub vegetation (eastern portion). There is a prefabricated structure and hardstanding area located at the main access point into the site, from Convent Hill to the south.

1.3. The site's northern boundary is formed by established residential estate (Inis Orga, Inis Alainn) and agricultural fields. To the northeast of the site is an historic detached residence, Riverdale Farm (appellant's property), served by a private laneway which accesses onto Kilbrogan Street (local public road L-2039). The eastern site boundary comprises part of Kilbrogan Street, abuts a utility site (Uisce Eireann pumping station with paladin fencing) and the rears of residential properties fronting onto the street. To the southeast of the site are a number of historic residential properties and greenfield infill sites which front on Convent Hill (L-2011). The southern part of site has direct road frontage onto Convent Hill, on the opposite side of which are newly constructed residential estates (The Tannery, Cedar Mews, Cedar View). Finally, the western boundary of the site is formed by Curryclough Road (L-2033) onto which several detached residences access.

1.4. A watercourse, Kilbrogan Stream extends across the northern portion of the site, flowing in an easterly direction. The stream is a tributary of the Bandon River, which flows to the south/ southeast through the town. The topography of the site is notable, with ground levels falling steeply in northerly and easterly directions across the site from Convent Hill to Kilbrogan Stream, and from Curryclough Road to Kilbrogan Street.

2.0 Proposed Development

2.1. The proposed development consists of the construction of 240 residential units, comprising 156 dwelling houses (detached, semi-detached pairs, terrace rows,

single and 2 storeys), 84 apartments (four blocks, 3 storeys), and a childcare facility (detached, single storey, capacity for 60 children).

2.2. The proposed development also includes for new vehicular and pedestrian accesses, a variety of open space/ amenity/ ecological areas, landscaping, boundary treatments, footpaths and cycle lanes, bicycle and car parking, two bridges over the existing stream (vehicular and pedestrian), drainage infrastructure, bin and cycle storage, public lighting, and all other ancillary development.

2.3. The proposed access arrangements include for two main vehicular entrances. Firstly, to the east of the site, is a new entrance onto Kilbrogan Street (L-2039). The access comprises a raised table and footpath (on the public roadway) to connect with existing footpath infrastructure and to provide connectivity to the town park further to the east. Secondly, to the west of the site there is an entrance onto Curryclough Road (L-2033).

2.4. The eastern and western entrances serve the respective portions of the proposed development as vehicular access through the scheme is restricted by an area of open space aligned north to south (i.e., each portion is designed as a cul-de-sac). In addition to several houses, the eastern portion accommodates the childcare facility, and the west accommodates three of the four apartment blocks. A number of dwellings located in the south of the scheme are accessed via two entrances (one way system, shared surface) onto Convent Hill (L-2011).

2.5. A suite of plans and documents, including an Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS), accompany the application (full list, applicant's Cover Letter, pgs. 3-4). The application also includes letters of consent from the planning authority (PA) (in respect of the works on Kilbrogan Street) and the landowner, Northview Properties Ltd (reference to Folio No. CK148713F).

2.6. The following tables present a summary of the key statistics and characteristics of the proposed scheme. These are extrapolated from the plans and particulars as lodged with the application.

Table 2.1: Key Statistics

Site Area	Gross Site Area (GSA): 9.59ha Net Developable Area (NDA): 7.23ha
Floor Areas (gross floor spaces)	Total Floor Area: c.25,499sqm Residential: c.25,176sqm Childcare facility: c.323sqm
Residential Component	Total: 240 residential units 156 houses (65%) 84 apartments (35%)
Net Density	c.33dph
Building Height	Houses: 1 and 2 storeys Apartments: 3 storeys
Dual Aspect	Apartments: 84 (100%)
Open Space	Public: c.1.47ha (15.3% of GSA, 20.3% of NDA) Communal: c.770sqm Private: gardens, terraces, balconies (various sqm)
Part V Provision	Total: 48 units (c.20%) 12 houses and 36 apartments
Car Parking	Total: 417 spaces Residential: 409 spaces (houses: 304 spaces, apartments: 105 spaces (inclusive of visitors: 21 spaces)) Childcare: 8 spaces
Bicycle Parking	Total: 382 cycle spaces Residential: 374 spaces (houses: 188 spaces inclusive of 156 spaces per dwelling unit and 32 visitor/ short stay spaces); and apartments: 186 spaces

	(inclusive of 144 resident/ long stay spaces (propriety double stacked) and 42 visitor/ short stay spaces (Sheffield stands)) Childcare: 8 spaces (inclusive of 4 cargo spaces)

Table 2.2: Summary of Residential Unit Mix

Unit Type Bed	1 bed	2 bed	3 bed	4 bed	Total
Houses		1	126	29	156
Apartments	24	60			84
Total Unit Type	**24**	**61**	**126**	**29**	**240**
c. % Total Unit Type	**10%**	**25%**	**53%**	**12%**	**100%**

2.7. Unsolicited further information was received by the PA from the applicant on 26th May 2026. This comprised amended floor plan and elevation drawings for six house types, described as necessary to address minor discrepancies identified in the initially submitted drawings. The PA had regard to same in its assessment; for the Commission's clarity, I too have had regard to same in this assessment.

3.0 Planning Authority Opinion

3.1. A pre-application meeting, under section 247 of the Planning and Development Act 2000, as amended (2000 Act), is indicated to have taken place between the applicant and the PA on 6th May 2025. This was followed by a pre-application LRD meeting (as per section 32C of the 2000 Act) on 11th November 2025.

3.2. In accordance with section 32D of the 2000 Act, the PA issued its LRD Opinion on 12th December 2025. A copy of the LRD Opinion is appended to the Area Planner's report.

3.3. The Opinion indicates that the documentation, submitted as part of the pre-application consultations, requires further consideration and amendment to constitute a reasonable basis for an application for permission for the proposed LRD.

3.4. The applicant was notified that the following headed items would require further consideration and amendment as part of an LRD application:

- Archaeology
- Conservation
- Traffic and Transport
- Sustainable Transport
- Estates
- Public Lighting
- Architecture, Site Layout and Design
- Ecology
- Environment
- EIA
- ESB

3.5. The application includes a 'Response to Cork County Council LRD Opinion' report which details specific responses to the points of information requested by the PA.

4.0 Planning Authority Decision

4.1. Summary of Decision

4.1.1. The application was lodged with the PA on 1st May 2026 (supplemented by the unsolicited further information). On 25th June 2026, the PA issued a Notification of Decision to Grant Permission for the proposed development subject to 78 conditions.

4.2. Planning Authority Reports

4.2.1. Planners' Report

The Area Planner's report includes an assessment of the proposed development under the following headed items:

- Environmental Impact Assessment
- Principle of Proposal and Conformity with Zoning Objectives

- Density
- Housing Mix
- Design, Layout and Placemaking
- Compatibility with Design Standards
- Traffic, Transport and Connectivity
- Surface Water, Water and Wastewater Infrastructure
- Flood Risk Assessment & Surface Water Management
- Ecology/ NIS/ Green Infrastructure
- Boundary Treatments
- Environment
- Part V
- Archaeology
- Phasing
- Relevant Planning issues raised via Public Submission

The Senior Planner's report includes further commentary on and assessment of the proposed development under issues of design, layout, boundary treatment, residential amenity, biodiversity, landscaping, waste, soil, traffic, and flood risk.

Recommendation

The PA concluded that having regard to the development plan objectives and pattern of development, the development would not seriously injure the amenities of the area nor be prejudicial to public health and would be in accordance with the proper planning and sustainable development of the area.

4.2.2. Other Technical Reports

Area Engineer: No objection subject to condition.

Senior Executive Architect: No objection subject to (amending) condition.

Architectural Conservation Officer: No objection subject to (amending) condition.

Estates Engineer: No objection subject to condition.

County Archaeologist: No objection subject to condition.

Ecology Officer: No objection subject to condition.

Environment: No objection subject to condition.

Environment Waste Regulation: No objection subject to condition.

Sustainable Travel: No objection subject to condition.

Housing: No objection subject to condition.

Public Lighting: Further information requested.

Fire Officer: No comment.

4.2.3. Planning Conditions

The PA's Notification of Decision to Grant Permission for the proposed development is subject to 78 conditions. These arise primarily from the reports of internal technical sections and prescribed bodies, and there are both bespoke (including Condition 4 making minor amendments to the unit number (total number of units increased by one to 241), unit mix, design and layout of the scheme) and standard conditions.

Due to the nature of the appeal, I identify the following conditions as being of relevance to the grounds of appeal:

Condition 25

Prior to the commencement of development, the developer shall enter into a Connection Agreement(s) with Uisce Éireann to provide for a service connection(s) to the public water supply and/ or wastewater collection network.

Reason: In the interest of public health and to ensure adequate water/ wastewater facilities.

Condition 29

Notwithstanding the submitted details, full details of all boundary treatments as well as the finishes proposed for the houses, apartments and childcare facility shall be submitted for the written agreement of the Planning Authority prior to the

commencement of development. In this regard, stone samples shall be erected onsite for examination and agreement by the Planning Authority. All stone finishes shall be of a type and colour that are native to the area unless otherwise agreed in writing with the Planning Authority.

Reason: In the interests of residential and visual amenity.

Condition 33

Surface water shall not be permitted to enter the foul sewer.

Reason: To retain capacity in the infrastructure network and encourage nature based SuDS.

Condition 51

The disposal of surface water shall comply with the requirements of the Planning Authority for such works and services. A hydro carbon interceptor shall be provided at every water course outfall point and storm water attenuation in accordance with the design submitted with the application shall be provided.

Reason: To prevent flooding and in the interests of sustainable drainage.

Condition 56

You shall submit a revised layout demonstrating enhanced pedestrian connectivity along Kilbrogan Street for the written agreement of the Planning Authority. This revised layout shall be prepared in consultation with, and agreed in advance with, the Area Engineer. The submitted design shall ensure that the proposed pedestrian route is fully accessible and free from steps over its entire extent, forming an integral part of the overall street redesign on approach to the entrance to the proposed development. The applicant shall undertake all necessary works, the extent of which shall be increased where required, to achieve a safe, continuous, and universally accessible pedestrian route to the satisfaction of the Planning Authority.

Reason: To provide the necessary pedestrian facilities.

Condition 57

On Kilbrogan Street, traffic approaching the proposed entrance shall operate under a yield arrangement on the northbound carriageway only, with priority afforded to southbound (townbound) traffic, unless otherwise agreed in writing by the Planning Authority.

Reason: In the interest of road safety.

Condition 58

The applicant shall provide for all necessary additional public lighting to the satisfaction of the public lighting engineer around the Kilbrogan Street entrance and new pedestrian routes to be provided.

Reason: In the interest of road and pedestrian safety.

Condition 77

At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a special contribution of €540,100 to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out, for the provision of road widening and ancillary works required to facilitate the proposed development, between the proposed site entrance on Kilbrogan Street and Lovells Cross along the L-2039-0, L-6055-0 and L-95892-1, and between the Kilbrogan Cemetery Junction and the Macroom Road along the L-95892-1.

The payment of the said contribution shall be subject to the following:

(a) where the works in question -

(i) are not commenced within 5 years of the date of payment of the contribution (or final instalment if paid by phased payment), (ii) have commenced but have not been completed within 7 years of the date of payment of the contribution (or final

instalment if paid by phased payment), or (iii) where the Council has decided not to proceed with the proposed works or part thereof, the contribution shall, subject to paragraph (b) below, be refunded to the applicant together with any interest which may have accrued over the period while held by the Council.

(b) Where under sub-paragraphs (ii) or (iii) of paragraph (a) above, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.

(c) payment of interest at the prevailing interest rate payable by the Council's Treasurer on the Council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council.

Reason: It is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development.

Condition 78

At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a contribution of €469,014 to Cork County Council in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority. The value of this contribution is calculated in accordance with the Council's Development Contributions Scheme on 01/03/26 and shall be increased monthly at a rate of 8% per annum in the period between the date on which this value was calculated, and the date of payment.

Reason: It is considered appropriate that the developer should contribute towards the cost of public infrastructure and facilities benefiting development in the area of the Planning Authority, as provided for in the Council's Development Contributions Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act, and that the level of contribution payable should increase at a rate

which allows both for inflation and for phasing in of the target contribution rates, in the manner specified in that scheme.

4.3. Prescribed Bodies Submissions

Inland Fisheries Ireland: Requests confirmation regarding capacity in the public wastewater system to cater for the proposal. No objection subject to condition.

Uisce Eireann: Connections are feasible without necessitating upgrades. No objection subject to condition.

HSE National Environmental Health Service: No objection subject to condition.

4.4. Third Party Observations

4.4.1. The PA indicates observations were received from 20 third parties during the assessment of the application and summarises the key issues raised.

4.4.2. I have reviewed the observations on the case file, including that of the third party (written observation accompanied by a copy of part of the original purchase contract and maps/ drawings). I confirm certain issues raised in the appellant's observation (reserved rights on the application site, redline boundary cutting off an access/ right of way) form the basis of the appeal, as outlined in section 7.0 of this report below.

5.0 Planning History

Appeal Site

PA Ref. 05/4559 (not implemented)

On 18th April 2006, permission was granted to Brady Construction Bandon Ltd for 256 no. dwellinghouses, 5 serviced sites, creche, sports pitch, 2 no. recycling facilities, 2 no. ESB sub-stations, amenity walkway, 2 no. road bridges, pumping station, attenuation system and 2 no. entrances and all associated site works.

PA Ref. 11/6604

On 14th February 2012, permission was refused for the Extension of Duration of PA Ref. 05/4559 to Brady Construction Bandon Ltd. Refusal reason related to the site's

location within an area liable to flooding, the requirement for a flood risk assessment, that the extension of duration legislation prohibited the revisiting of planning matters, and that the PA was precluded from granting an extension of the appropriate period.

Section 48 Development Contribution Appeals

Lands to the East of the Appeal Site

ACP 324173-26, PA Ref. 25/6376

On 23rd June 2026, the Commission removed Condition 53 from the PA decision to grant permission for 212 residential units with ancillary works. Condition 53 was a special contribution for €678,400.00 in respect of junction improvement works at Sean Hales Place (R586) junction and Old Cork Road/ Macroom Road (R589).

Lands to the West of the Appeal Site

ACP 322415-25, PA Ref. 24/5568

On 5th August 2025, the Commission removed Condition 52 from the PA decision to grant permission for 20 dwellings (as revised) with ancillary works. Condition 52 was a special contribution for €66,388.00 in respect of works proposed north of Bandon Bridge to ease town bound traffic congestion and to improve pedestrian connectivity.

Lands to the Southeast of the Appeal Site

ABP 319115-24, PA Ref. 23/4015

On 21st November 2024, the Commission removed Condition 63 from the PA decision to grant permission for 20 apartments with ancillary works. Condition 63 was a special contribution for €21,000.00 in respect of the provision of car parking spaces.

ABP 318036-23, PA Ref. 22/5800

On 19th September 2024, the Commission removed Condition 40 from the PA decision to grant permission for a replacement filling station with ancillary works (and

amended Condition 41 by reducing the general development contribution). Condition 40 was a special contribution for €45,000.00 in respect of the provision of new controlled pedestrian crossing on the N71 Bypass at a suitable location in the locus of the site.

6.0 Policy Context

6.1. Local Policy Context

Cork County Development Plan 2022-2028

6.1.1. The applicable development plan for the appeal case is the Cork County Development Plan 2022-2028 (CDP), as varied (Adopted Variation No. 1 to the CDP, 31st July 2026).

6.1.2. The relevant CDP map-based designations include:

- The site is zoned as 'Residential (RE)' (Volume 6: Maps).
- The site comprises the majority of the lands subject to Specific Objective 'BD-R-01' (Volume 5: West Cork, Section 1.4 Bandon, pg. 32).
- Flood Zones A and B, associated with Kilbrogan Stream (EPA Ref: Bandon_090), extend through the centre of the site along an east-west route.
- The site is between c.46m-116m of three archaeological monuments including (closest to west) CO110-082 Ringfort, and CO110-021001 Church and CO110-021002 Holy Well (to east).
- The site is located c.75m to the north/ northeast of Barretts Hill Architectural Conservation Area (ACA).
- The site is not subject to any other natural and/ or built heritage designations.

6.1.3. The CDP policy and objectives relevant to the appeal grounds include:

- Chapter 2: Core Strategy
    - Section 2.19 Active Land Management defines Tier 1 lands as:

      Tier 1 comprises lands that are able to connect to existing development services, i.e. road and footpath access including public lighting, foul sewer drainage, surface water drainage and water supply, for which

there is service capacity available, and can therefore accommodate new development. These lands will generally be positioned within the existing built-up footprint of a settlement or contiguous to existing developed lands. Inclusion in Tier 1 will generally require the lands to be within the footprint of or spatially sequential within the identified settlement.

- Chapter 14: Green Infrastructure and Recreation
    - Objective GI 14-2: Green Infrastructure Objectives for Main Towns and Settlements

        a) Ensure that all main towns have an adequate level of quality green and recreational infrastructure (active and passive) taking account of existing deficits, planned population growth as well as the need to serve their surrounding hinterlands. To ensure where possible that this green and blue infrastructure maximises its multifunctional capacity (ecosystem services).

        b) Promote the corridor concept, in particular using rivers and streams as one of the natural foundations for multi-functional green and blue infrastructure corridors.

        c) Seek to create new and improved connections (physical/ ecological corridors) between open spaces/ green infrastructure and other important destinations as part of the enhancement of the overall network.

        d) Where other statutory plans/ masterplans are being prepared it will be a requirement that they include detailed and integrated green and blue infrastructure proposals with a particular focus on nature based solutions to significant infrastructure and climate change challenges.

    - Objective GI 14-9: Landscape

        a) Protect the visual and scenic amenities of County Cork's built and natural environment.

b) *Landscape issues will be an important factor in all land-use proposals, ensuring that a pro-active view of development is undertaken while protecting the environment and heritage generally in line with the principle of sustainability.*

c) *Ensure that new development meets high standards of siting and design.*

d) *Protect skylines and ridgelines from development.*

e) *Discourage proposals necessitating the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments.*

- Chapter 16: Built and Cultural Heritage
    - *Objective HE 16-21 Design and Landscaping of New Buildings*

        a) *Encourage new buildings that respect the character, pattern and tradition of existing places, materials and built forms and that fit appropriately into the landscape.*

        b) *Promote sustainable approaches to housing development by encouraging new building projects to be energy efficient in their design and layout.*

        c) *Foster an innovative approach to design that acknowledges the diversity of suitable design solutions in most cases, safeguards the potential for exceptional innovative design in appropriate locations and promotes the added economic, amenity and environmental value of good design.*

        d) *Require the appropriate landscaping and screen planting of proposed developments by using predominantly indigenous/ local species and groupings and protecting existing hedgerows and historic boundaries in rural areas. Protection of historical/ commemorative trees will also be provided for.*

- Chapter 18: Zoning and Landuse

- Objective ZU 18-11: Residential Areas (including Long Term Strategic and Sustainable Development Sites) and Residential Reserve):

  Promote development mainly for housing, associated open space, community uses and, only where an acceptable standard of amenity can be maintained, a limited range of other uses that support the overall residential function of the area.

  Normally discourage the expansion or intensification of existing uses that are incompatible with residential amenity.

- Appropriate uses in Residential Areas include residential development and childcare facilities.

- Chapter 19: Implementation and Delivery
  - Section 19.6 Critical Infrastructure includes Table 19.1 Key Infrastructure Costings. For Bandon, a 'settlement infrastructure cost' of c.€500,000 is identified for one service, 'water supply'.
  - Subsection 19.7.13 states 'It is intended to adopt a new development contribution scheme(s) following the adoption of this County Development Plan'.
- Appendix D: Core Strategy Critical Infrastructure
  - Table D3: Residential Lands NPF Tiering (pg. 485) indicates that Zoning Reference: BD-R-01 are Tier 1 lands, located contiguous to existing developed lands, and are fully serviced (in respect of road access, footpath access, public lighting, foul sewer drainage, surface water drainage, and water supply).

<u>Volume 5: West Cork</u>

- Section 1.4 Bandon
  - Specific Objective BD-R-01 applies to the site, which states:

    Medium A Residential Development.

    The site supports habitats of biodiversity value; provision should be made for the retention and protection of the same within any new development where possible. Proposals to demonstrate how the

stream is integrated into the layout from a biodiversity and placemaking approach is required (site area 4.45ha).

- Specific Objective BD-U-01 applies to adjoining lands to the east, which states:

  Develop pedestrian walkway and cycleway from town centre, through BD-X-01, town park (BD-GR-01) and through to BD-R-01. The proposed route traverses habitats of ecological importance including broadleaved woodland, scrub and wet grassland which forms part of the Kilbrogan Stream and Glebe House Local Area of Biodiversity. Ensure protection and enhancement of these habitats where possible.

- Objective BD-GO-03

  Support the phased ongoing delivery of the recommendations of the Bandon Transport and Public Realm Enhancement Plan (TPREP) including new public spaces, road safety measures and revised traffic management arrangements. Opportunities for biodiversity enhancement should be supported.

- Section 1.4.58 Movement and Public Realm

  The Bandon Transport and Public Realm Enhancement Plan (TPREP) has developed a series of comprehensive movement strategies to address congestion and provide a more balanced approach to the needs of pedestrians and cyclists within the town. The recommendations of the Plan are included in specific policy objectives…

<u>Bandon Transportation and Public Realm Enhancement Plan (TPREP), 2016</u>

6.1.4. The Bandon TPREP considers the transport infrastructure improvements and policy measures necessary to accommodate the future development of the town as a result of anticipated growth in volumes of vehicular, pedestrian and cyclist traffic.

6.1.5. Of relevance to the appeal case, two of the junctions considered in the TPREP (as per Figure 5.12, pg. 92) are also analysed in the Traffic and Transport Assessment (TTA) prepared for the proposed development (as per Figure 1.1, pg. 7). The TPREP includes recommendations for junction upgrades to improve operational

performance/ increase capacity (summary of recommendations, Table 8.1, pg. 185+).

- Junction 4 North Main Street/ Watergate Street/ Bandon Bridge in the TPREP is Junction 5 Cork Rd/ N Main St/ St Finbarr's Pl in the TTA.
- Junction 12 Kilbrogan Hill/ North Main Street/ Emmet Row is Junction 4 N Main St/ Kilbrogan Hill Rd.
- Junction 15 Convent Hill/ Kilbrogan Hill is Junction 3 Convent Hill Rd/ Macroom Rd.

Cork County Council: Adopted Development Contribution Schemes, 2004 (as amended on 1st January 2015)

6.1.6. The applicable development contribution scheme (DCS) for the appeal case is the General Scheme adopted by the PA in 2004 (the Supplementary Scheme applies to the Cork Area Strategic Plan Suburban Rail Project). The DCS was adopted for a period of twenty years, stated as being in line with the time periods of the Cork Area Strategic Plan (CASP; note: Bandon is located within) and the North and West Cork Strategic Plan.

6.1.7. In the DCS, there are two types of contribution which are relevant to the appeal; general and special contributions. Of the general contributions, the following is stated:

- General Contributions
    - *Indicates the contribution to be paid in respect of the different classes of infrastructure and facilities which are provided…*
    - *Reflects the objectives as set out in the County Development Plan, namely: Sanitary Services, Roads and Traffic Management, Community and Recreational Amenity.*
    - *Contributions for Water, Sewerage, Roads and Amenities will be charged per square metre (m^2) gross floor area for the various types of developments proposed.*
- Special Contributions

- *In addition to the terms of the Scheme, a Special Contribution may also be required, under Section 48(2)(c) of the Act, in respect of any development where specific exceptional costs not covered by the Cork County Council Development Contribution Scheme are incurred by any Local Authority in respect of public infrastructure and facilities which benefit the proposed development.*

  Appendix 1 also sets out some particular types of developments where special contributions shall be levied and the amounts of the contributions in such cases shall be calculated on the basis of the criteria set down…

- Appendix 1: Special Contributions
  - *Special contributions may be levied under Section 48(2)(c) where specific exceptional costs not covered by Cork County Council's General Development Contribution Scheme are incurred…in respect of public infrastructure and facilities which benefit the proposed development. Only developments that will benefit from the public infrastructure or facility in question will be liable to pay the special contribution…*

6.1.8. The 2004 DCS was amended by the 'Development Contribution Scheme – Rates for 2015', which varied the rates applicable to certain forms of development, including residential. The following is applicable to the appeal case:

- Development Contribution Schemes – Rates for 2015
  - Rates included in the 2004 General Scheme were amended from 1st January 2015 in the above document.
  - Breakdown of DCS rates for Residential Development are for 'Roads' and 'Amenity' (i.e., categories of water and sewerage were omitted).
  - Residential development (CASP) area: total per sqm = €24.49 (Roads portion comprises c.72% and Amenity remaining c.28% of the total).
  - States DCS rates are 'applicable from 1st January 2015 until further notice'.

6.2. National Policy Context

Overview

6.2.1. The national policy context relevant to the appeal includes a number of frameworks and plans which seek the provision of residential development in an environmentally sustainable manner, and a number of section 28 Ministerial Guidelines for planning authorities. Having regard to the nature of both the first and third party appeals, the legislative and planning guidance context for title to land, conditions and development contributions is also of direct relevance.

Key National Frameworks and Plans

6.2.2. National policy documents of relevance, the provisions of which I have had regard to and ensured consistency with, include the:

- National Planning Framework, First Revision, Project Ireland 2040
- Housing for All 2021
- Climate Action Plans 2024 and 2025
- National Biodiversity Plan 2023-2030
- Section 28 Ministerial Guidelines for Planning Authorities

Section 28 Ministerial Guidelines for Planning Authorities

6.2.3. The planning guidelines relevant to the appeal include those with design standards for and regulation of residential development, and those more specifically concerned with planning conditions, land ownership, and development contributions, as follows (my abbreviation in brackets):

- Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities, 2024 (Compact Settlements Guidelines)
- Planning Design Standards for Apartments, Guidelines for Planning Authorities, 2025 (Apartment Guidelines)
- Childcare Facilities, Guidelines for Planning Authorities, 2001 (Childcare Guidelines)
- The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009 (Flood Risk Guidelines)

- Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities, 2021, updated in 2023 (Commercial Institutional Investment Guidelines)
- Development Management, Guidelines for Planning Authorities, 2007 (Development Management Guidelines) (underline, my emphasis)
    - Section 5.13 guides that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development… Only where it is clear…that the applicant does not have sufficient legal interest [to make an application] should permission be refused on that basis. If notwithstanding…some doubt still remains, the planning authority may decide to grant permission. However, such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words, the developer must be certain under civil law that he/ she has all rights in the land to execute the grant of permission.
    - Section 7.3 outlines the criteria for planning conditions. These include conditions being necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable.
    - Section 7.12 states that for a condition requiring a special contribution it is essential that the basis for the calculation of the contribution be explained in the planning decision. This means that it will be necessary to identify the nature /scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.
    - Section 7.12 outlines that circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration

should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area.

- Development Contributions, Guidelines for Planning Authorities, 2013 (Development Contribution Guidelines) (underline, my emphasis)
    - Section 1 guides a special contribution may be imposed under section 48(2)(c)…in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition…

Legislative Context

6.2.4. Planning and Development Act 2000, as amended (underline, my emphasis)

Development contributions	
Section 48(1)	A planning authority may, when granting a permission under *section 34*, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority…
Section 48(2)	(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.
Section 48(12)	Where payment of a special contribution is required in accordance with subsection (2)(c), the following provisions shall apply—

	(a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates…
Section 48(13)	(a) Notwithstanding sections 37 and 139, where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.
Section 48(17)	In this section— "public infrastructure and facilities" means— …(*e*) the refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, surface water sewers, flood relief work and ancillary infrastructure…
Appeals against conditions	
Section 139(1)	Where— (*a*) an appeal is brought against a decision of a planning authority to grant a permission, (*b*) the appeal relates only to a condition or conditions that the decision provides that the permission shall be subject to, and (*c*) the Board is satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted, then, subject to compliance by the Board with *subsection (2)*, the Board may, in its absolute discretion, give to the relevant planning authority such directions as it considers appropriate relating to the attachment, amendment or removal by that

	authority either of the condition or conditions to which the appeal relates or of other conditions.
Section 139(2)	In exercising the power conferred on it by *subsection (1)*, apart from considering the condition or conditions to which the relevant appeal relates, the Board shall be restricted to considering— (*a*) the matters to which a planning authority shall have regard specified in *paragraph (a)* of *subsection (2)* of *section 34*…. (*b*) the terms of any previous permission considered by the Board to be relevant.
Permission for development (referred to in section 139(2)(a) above)	
Section 34(2)	(a) When making its decision in relation to an application under this section, the planning authority shall be restricted to considering the proper planning and sustainable development of the area, regard being had to— (i) the provisions of the development plan, (ia) any guidelines issued by the Minister under *section 28…* …(iii) any European site or other area prescribed for the purposes of *section 10(2)(c)*, (iv) where relevant, the policy of the Government, the Minister or any other Minister of the Government, (v) the matters referred to in *subsection (4)* (*items conditions can include for)… …(vi) any other relevant provision or requirement of this Act, and any regulations made thereunder.

6.3. Natural Heritage Designations

6.3.1. The appeal site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA (pNHA).

6.3.2. The pNHA designations in proximity to the appeal site include (measured at closest proximity):

- Bandon Valley West of Bandon pNHA (001034) is c.628m to the southwest.
- Bandon Valley Above Inishannon pNHA (001740) is c.2.71km to the northeast.

6.3.3. The European site designations in proximity to the appeal site include (measured at closest proximity):

- Courtmacsharry Bay SPA (004219) and Courtmacsharry Estuary SAC (001230) are c.9.84km to the south.
- Bandon River SAC (002171) is c.23.5km to the west.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. The appeal case comprises a first-party appeal and a third-party appeal in respect of the decision made by Cork County Council on the proposed development. The first-party appeal is against the attachment of Condition 77, and the third-party appeal is against the decision to grant permission. The third-party appellant has indicated ownership of the property, Riverdale Farm, adjacent to the east of the site (proximate to the site's road frontage onto Kilbrogan Street).

First Party Appeal

7.1.2. The first-party appeal grounds can be summarised as follows:

Background and Context

- Appeal relates to a special contribution included in Condition 77.
- Condition 77 arises from the Executive Engineer technical report of the planning authority (PA).
- Requests that the appeal is considered under sections 48 and 139 of the Planning and Development Act 2000 (2000 Act), and that considerations are restricted to the named condition only.

- Inclusion of the special contribution will have negative implications for the viability of the delivery of the scheme.
- Special contribution relates to the upgrading, widening and provision of associated works (public lighting, drainage, resurfacing) of c.1,700m (combined linear total) of roadway north of the site (indicated on image entitled 'Map of Road/ Suggested Upgrade Context', Enclosure 2 of appeal).
- CDP policy (Specific Objective BD-R-01, Table D3: Tier 1) indicates that no existing road upgrades are required for/ there are no infrastructural impediments to the development of the site.
- Proposal provides for considerable public realm enhancements in the area (lands within the redline boundary, letter of consent from Cork County Council included in the application).
- PA made no reference during preplanning consultations (Stages 1 and/ or 2) to the roads upgrade works included in Condition 77.
- LRD opinion (Item 3(12)) includes the first reference to levying of special development contributions; was assumed to relate to the delivery of the Transportation and Public Realm Enhancement Plan (TPREP) scheme in Bandon town centre.
- Applicant's Traffic & Transport Assessment (TTA) scope agreed with PA; no request for an assessment of the roads and junctions subject of the special development contribution.
- TTA assessed five junctions (Junctions 1-5) in the town; all found to continue to function efficiently in the short and long term, and proposal will not cause any notable operational problems across the network.

Grounds of Appeal

- Special contribution is unjustified, not in accordance with Section 48(2)(c) of the 2000 Act or the Development Contributions Guidelines for Planning Authorities, 2013.
- Works specified in Condition 77 are neither exceptional nor specific to the proposed development.

- Works are covered by the general development contribution scheme, and the condition constitutes a form of double-charging.
- PA reports (Executive Engineer, Planning Officers) make no reference to ‘exceptional’ works.
- Submits the special contribution is speculative and not specific to the proposed development.
- Works specified in Condition 77:
    - a) Road widening and ancillary works between the site entrance on Kilbrogan Street and Lovells Cross along the L 2039-0, L-6055-0 and L-95892-1.
        - These works relate to c.1,450m of roadway.
        - Lists the findings of the Executive Engineer ‘s report.
            - TTA projects that the Macroom Road/ Convent Hill junction (Junction 3) will operate over capacity in future years.
            - Reasonable to anticipate drivers will utilise alternative routes via Kilbrogan Street and the local road network to avoid congestion at this junction and access the town centre.
            - Increased traffic volumes on these roads are likely to arise as a direct consequence of the proposed development.
        - Disputes the above findings; refers instead to the TTA findings:
            - Majority of traffic increases at the junction come from other developments rather than the proposal.
            - Traffic management improvements of this junction may be required beyond the 2032 design horizon.
            - Junction improvements are recommended in the Bandon TPREP report.
        - PA did not update the general, special, or supplementary contribution schemes (prior to adopting the CDP) to reflect the costs or future delivery of the Bandon TPREP scheme.

        - Therefore, works specified in ‘a)’ are covered by the general development contribution scheme; the special contribution is a double charge.
    - b) Road widening and ancillary works between Kilbrogan Cemetery Junction and Macroom Road along the L-95892-1.
        - These works relate to c.250m of roadway.
        - States these do not meet the test for specific exceptional costs for reasons outlined previously.
- Works do not accord with principles of reasonableness or proportionality; PA has not evidenced any reasonable basis for the levying of the special development contribution.
- Condition 78 includes for the general development contribution, which the applicant has no issue paying towards public infrastructure improvements in the area.
- Identifies three planning history cases as precedents for the appeal case; special contribution conditions for road works in Bandon removed by the Commission on appeal.
- Concludes by submitting that the special contribution charge sought under Condition No. 77 should be omitted in its entirety.

Third Party Appeal

7.1.3. The third-party appeal grounds can be summarised as follows:

- Redline development boundary encroaches the appellant’s property and along a third-party laneway (a long established and only access point to the public road).
- Appellant is an adjoining landowner (cites folio reference number).
- States certain rights were reserved in the appellant’s favour (the appellant previously owned part of the application site).
- The reserved rights were registered against the folio property (cites folio reference number, 148713F), which is now the subject of the proposed development.

- The reserved rights include the construction of a block wall along the shared boundary line between the landholdings (2m high, capped, with pillars every 15ft), connection of the appellant's property to all services (water and utility), and a right of way/ easement to the estate road(s) through an access point on the shared boundary line.
- The registered rights continue to affect the said property, continue to affect the lands, and have not been incorporated into the proposed development.
- Enclosed with the appeal are land registry folio details (for folio 148713F), extracts of three maps/ drawings, and the appellant's third party observation to the PA on the planning application (note: written statement only; appeal will need to be read in conjunction with the observation which includes part of a copy of the original purchase contract and an associated drawing).
- The third-party observation to the PA refers to the:
    - Appellant's previous ownership of part of the appeal site (sold in 2005).
    - Certain rights reserved on the sold property not being included for in the planning application (as outlined above).
    - Previous planning application which is stated as incorporating the reserved rights (a drawing indicating same is attached to the observation).
    - Proposal is cutting across a right of way on the roadway accessing the appellant's property.
    - Existing traffic congestion in the area, the traffic generation arising from the proposal, and impacts associated with same (further traffic congestion, unsafe conditions, increased noise).

7.2. Applicant's Response

7.2.1. The applicant has responded to the third-party appeal. The key issues can be summarised as follows:

- The third-party has no objection in principle to the proposed development.

- The appeal relates solely to historical legal agreements and covenants between the appellant and the registered owners of the subject lands.
- The applicant has the written consent of the landowner and therefore sufficient legal interest to make the application.
- The applicant acknowledges the appeal and defers to section 34(13) of the 2000 Act.
- As the appeal is restricted to legal issues, the Commission has no role in adjudicating same.
- Requests regard is had to section 138 of the 2000 Act and that the appeal is dismissed on the basis it is without planning substance or foundation.

7.3. Planning Authority Response

7.3.1. A response has been received from the PA on the appeal which states that all relevant issues have been covered in the technical reports forwarded to the Commission, and that the PA has no further comment to make in this matter.

7.4. Observations

7.4.1. None received.

8.0 Planning Assessment

8.1. Scope of the Appeal

8.1.1. The appeal case includes both a first party appeal and a third party appeal.

First Party Appeal

8.1.2. The first party appeal is against Condition 77, a section 48(2)(c) special development contribution. In the first party appeal, the applicant requests that the Commission considers the appeal under both section 48 and section 139 of the 2000 Act, and that considerations are restricted to the named condition only.

Third Party Appeal

8.1.3. The third party appeal grounds include that the development's redline boundary encroaches on the appellant's property and the laneway providing access to same, and that rights reserved on the subject lands are not provided for in the proposed

development. Accompanying the appeal are land registry folio details (for the subject lands), extracts of three maps/ drawings, and the appellant's observation to the PA on the planning application.

8.1.4. For the Commission's clarity, in order to allow for an assessment of the appellant's case, it is necessary to have regard to the appellant's observation to the PA (available on the case file). The observation comprises a written submission, a copy of part of the original purchase contract, an accompanying drawing (extract of a site layout plan from a previous planning permission (I understand this to be *PA Ref. 05/4559*)), and a map identifying the location of the encroachment.

8.1.5. The part of the original purchase contract and accompanying drawing in the observation to the PA indicate the reserved rights. These include the route of the 2m blockwall along the shared boundary (a stepped line marked O-Q-W-J on the drawing). This corresponds, in the main, with the western and southern boundaries between the landholdings. Services were to be made available at points to be agreed on the line of Q-W (western boundary) and W-J (southern boundary). Access to the estate roads (over which the appellant states she is afforded a right of way/ easement) was to be provided at the point marked Q (northern point of the western boundary).

8.1.6. The third party appeal also includes a copy of the appellant's written observation on the application to the PA, which, in addition to the appeal grounds described above, raises concerns regarding traffic generation arising from the proposed development and its impact on the local road network.

8.1.7. In its response to the third party appeal, the applicant states that the appeal grounds relate solely to historical legal agreements and covenants between the appellant and the registered owners of the appeal site, submits the appeal is restricted to legal issues in which the Commission has no role in adjudicating, and requests the appeal be dismissed on the basis it is without planning substance or foundation.

Matters Outside of the Planning Process

8.1.8. In respect of encroachment, the appellant submits the development's redline boundary encroaches on part of her property and the laneway which accesses same. This issue was also raised in the observation to the PA. The observation and

appeal include drawings/ maps which indicate the location of the boundary encroachment (southeastern corner of the appellant's property).

8.1.9. I have reviewed the appellant's drawings/ maps, the site location map and site layout plans with the application, and other available mapping sources (e.g., planning registers (PA's and ACP's), myplan.ie, Cork County Council zoning maps, Eircode). These mapping sources all use the same Ordnance Survey (OS) baseline data.

8.1.10. From a review of same, these do indicate that there is an area in the southeast corner of the appellant's property and at the western end of the laneway that are encroached by the redline boundary and incorporated into the subject lands.

8.1.11. However, following my site inspection and review of other mapping sources (Google Earth, Google Maps, EPA), I consider that there may be a potential discrepancy in the OS base map for this specific area. Following my site inspection, the on-the-ground- situation is potentially not as indicated on the OS base map. I question the depiction of the laneway with variations in width, in particular the wide surface area indicated at the western end. The EPA GIS baseline map depicts the laneway in a manner that I noted at the time of my site inspection (narrow in width, of a consistent configuration).

8.1.12. Other items which may corroborate the potential discrepancy on the OS base maps include the depiction of the western boundary of the appellant's property, which in fact extends further west than the western gable of the shed/ garage structure (evident from aerial photography imagery on Google Earth, Google Maps, and survey work undertaken for the application, e.g., Overall Existing Site Survey Layout Plan Dwg No. PL-003).

8.1.13. Additionally, the arboricultural survey work undertaken for the application (i.e., Tree Constraints Plan Dwg No. TC3725 (Sheet 2 of 4)) identifies a group of trees (reference G8) on the southern side of the laneway, in the wide surface area towards the western end of laneway (i.e., area indicated without vegetation on the OS base map).

8.1.14. The Arboricultural Impact Assessment and Tree Protection Plan describes G8 as a group of trees growing along the watercourse embankment. I noted trees on the northern side of the Kilbrogan Stream/ southern side of the laneway at the time of my

site inspection. The survey work would appear to indicate that the laneway as indicated in the OS base map is not as wide/ does not extend into this specific area.

8.1.15. That being, I consider that there is a potential discrepancy in the manner in which the southeastern boundary of the appellant's property and/ or the western end of the laneway are mapped. I consider the laneway serving the appellant's property and the point of access into the appellant's property may be located fully to the north of the redline boundary and, as such, there may be no encroachment of this specific area.

8.1.16. In the appeal response, the applicant has not commented specifically on the claim of encroachment or given an explanation for the mapping of the redline boundary, stating instead that consent has been secured from the registered landowner (i.e., to include the lands in the application).

8.1.17. In any event, the reason for the above assessment is to assist the Commission in its determination on the matter. In my opinion, the potential for encroachment of this area, which appears evident in a review of drawings/ maps which rely on the OS base map, may not exist due to the potential for discrepancies in same. I consider that the applicant has demonstrated sufficient interest in the lands to make the application (i.e., consent from the landowner) and for the purposes of planning the Commission can rely on same.

8.1.18. In respect of the appellant's claim of reserved rights and these not being provided for in the proposed development, I note same and have outlined these above for the Commission. In considering the matter, I have had regard to the guidance in section 5.13 of the Development Management Guidelines.

8.1.19. The guidelines are clear that *'[t]he planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts*'. That being, matters relating to boundaries, rights of way, burdens on land, and title to land are legal matters that are outside of the scope of the planning process.

8.1.20. The guidelines indicate that only in instances where it is clear that an applicant does not have sufficient legal interest in the subject lands should permission be refused on that basis. As stated above, I consider that the applicant has demonstrated same.

8.1.21. In instances where there is doubt as to the sufficiency of the legal interest the PA may decide to grant permission as such a grant is subject to the provisions of section 34(13) of the 2000 Act (i.e., a person is not entitled solely by reason of a permission to carry out any development). That being, the developer must be certain under civil law that they have all rights in the subject land to execute the grant of permission. I consider such an approach to be appropriate in this instance.

Matters to be Considered Further

8.1.22. Following my review of the case file, I am satisfied that, for planning purposes, the applicant has provided documentary evidence demonstrating sufficient legal interest to make the application (letters of consent from the registered landowner and PA) and to propose the overall design and layout of the scheme (with connection to services and boundary treatments as indicated in the plans and particulars), subject to the restrictions explicit in section 34(13) of the 2000 Act.

8.1.23. While I note the applicant's position regarding the nature of the third party appeal and that is should be dismissed, I consider that the appellant raises matters which can be appropriately addressed through a consideration of relevant conditions (i.e., these are matters of relevance to planning and the development to be permitted) (discussed in subsection 8.3 below).

8.1.24. I acknowledge that the appeal does not explicitly refer to traffic impacts associated with the proposed development as an appeal ground. However, as the observation is included as part of the appeal, in the interests of fairness, completeness and to avoid any ambiguity, I consider that my assessment of the first party appeal (i.e., the impact of the proposal on the local road network) (discussed in subsection 8.4 below) also addresses the concerns raised by the third party in this respect.

8.2. Legislative Context for the Appeal

8.2.1. In respect of an appeal made relating to a special development contribution, I note that section 48(13)(a) of the 2000 Act directs that the Commission '*shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal*'.

8.2.2. As a third party appeal has also been made against the PA's decision, the Commission is prohibited from assessing the appeal case in the manner requested by the applicant (i.e., in accordance with section 48).

8.2.3. The applicant also requests that the Commission considers the appeal in accordance with section 139 of the 2000 Act. As outlined below, I consider this approach to be warranted.

8.2.4. Due to the nature of the third party appeal, I consider that the matters raised are either outside the scope of the planning system (encroachment, reserved rights) or, where relevant to planning and the development to be permitted, can be addressed through considerations of the PA decision, other applicable conditions attached to the decision (connection to services, boundary treatments), and the first party appeal (i.e., matters of traffic generation and impact on the local road network).

8.2.5. Therefore, in my opinion, the appeal case can be appropriately considered under the provisions of section 139. Section 139 allows the Commission to decide an appeal case whereby a determination of the application in the first instance is not warranted.

Section 139 of the Planning and Development Act 2000, as amended

8.2.6. As the PA granted permission for the proposed development, the first party appeal relates exclusively to one condition and, where relevant to planning and the development to be permitted, I identify the third party appeal as relating to four conditions (Conditions 25, 29, 33, and 51), I consider the appeal satisfies the provisions of section 139(1)(a) and (b).

8.2.7. Section 139(1)(c) outlines the course of action to be taken should the Commission be satisfied that the determination of the application as if it had been made to it in the first instance would not be warranted. While I outline the basis for my decision in the following subsections, in short due to the nature of the appeal and to the conditions to which the appeal relates, I am satisfied that such a determination is not warranted.

8.2.8. Section 139(1)(c) allows the Commission to give directions to the PA, as it considers appropriate *'relating to the attachment, amendment or removal by that authority either of the condition or conditions to which the appeal relates or of other conditions'.*

8.2.9. In undertaking the determination of this appeal case, I confirm to the Commission that, as specified by section 139(2)(a), I have restricted my consideration to the matters to which regard is to be had (i.e., those specified in section 34(2)(a) of the 2000 Act, see section 6.0 of this report above). For this appeal case, these matters predominantly relate to the policy context formed by the development plan and section 28 guidelines, to European sites, and requirements of the 2000 Act.

8.2.10. In accordance with section 139(2)(b), I identify four previous planning permissions as relevant to the determination of this appeal case. These are ACP 324173-26, ACP 322415-25, ABP 319115-24 and ABP 318036-23 in Bandon (see section 5.0 of this report above). The relevant terms of these permissions include the removal of a special development condition from each of the grants of permission relating to the payment of monies towards the provision of traffic and transport related infrastructure.

8.2.11. Finally, in respect of the proposed development, I have considered the nature of the appeal and the conditions to which the appeal relates in the context of environmental impact assessment (EIA) and water status impact assessment (WSIA). These are included in sections 9.0 and 10.0 of this report below. Having regard to the provisions of section 139(2)(a)(iii) of the 2000 Act, which in turn defers to section 34(2)(a), I have carried out an appropriate assessment (AA) of the proposed development, which is presented in section 11.0 below (to be read in conjunction with Appendix 1).

8.3. Determination of the Application in the First Instance

8.3.1. Section 139(1)(c) requires that the Commission must be satisfied that a determination of the application by it in the first instance is not warranted. In achieving such satisfaction, I identify the following items as material, and discuss each below:

- the extent of compliance with applicable local and national policy.
- the planning authority decision.
- the nature of the conditions to which the appeal relates.
- the other conditions attached to the grant of permission.
- the nature of third-party involvement in the appeal case.

Compliance with Applicable Local and National Policy

8.3.2. The proposed development, a residential scheme comprised of houses and apartments with an ancillary childcare facility, located at an outer suburban site in a designated 'Large Town', on lands with/ proximate to environmental sensitivities (biodiversity, flooding, archaeology, architectural heritage), is subject to an extensive range of local, regional, and national policy.

8.3.3. The policy context includes, inter alia, numerous local CDP policies and objectives, and various policies, standards and requirements in several national planning guidelines (including a number of mandatory SPPRs in respect of residential standards).

8.3.4. In this regard, I reference the applicant's Planning Statement, Statement of Consistency, Architectural and Urban Design Statement, and Traffic and Transportation Assessment. These reports identify the applicable local and national policy context and the manner in which the proposed development is consistent with same.

8.3.5. I also reference the planning officers' reports (Area Planner and Senior Planner), which similarly identify applicable local and national policy. The PA found the proposed development to be acceptable in terms of the provisions of the CDP, and no material contraventions of same were identified during the assessment.

8.3.6. I confirm to the Commission that I have reviewed the applicant's reports and planning officers' assessments. I am satisfied that the applicant has demonstrated that the proposed development is compliant with local policies (CDP and Bandon TPREP) and national planning guidelines requirements. I concur with the position of the PA in finding that the proposed development complies with the provisions of the CDP and national policy.

8.3.7. With regard to the appellant's appeal grounds, I have not identified any local or national policy provision that would require an amendment to the overall design and layout of the proposed development so as to facilitate the connection of services to and/ or the provision of boundary treatment at the appellant's property in the manner requested by the third party.

8.3.8. Conversely, I consider the design and layout of the proposed development complies with overarching policy and objectives, key among which include those, on placemaking and quality urban design, active travel, green infrastructure, and landscape (CDP Objective PL 3-3 Delivering Quality and Inclusive Places; Objective TM 12-2: Active Travel; Objective GI 14-2 Green Infrastructure Objectives for Main Towns and Settlements; and Objective GI 14-9 Landscape and Objective HE 16-21 Design and Landscaping of New Buildings respectively).

8.3.9. In the interests of clarity, I confirm to the Commission that I have reviewed the Adopted Variation No. 1 to the CDP, 31st July 2026, which post-dates the PA decision and appeal lodgement dates. I do not identify any variation to the CDP which materially alters the local policy context for the appeal case.

Planning Authority Decision

8.3.10. From a review of the case file, it is evident that the proposed development has been subject to comprehensive design, planning, consultation, and assessment. The applicant and PA undertook preplanning consultations; a full suite of plans and particulars accompanied the planning application (supplemented by unsolicited further information correcting discrepancies in house type drawings).

8.3.11. These include a Flood Risk Assessment (FRA), a Water Framework Directive (WFD) screening report, Natura Impact Statement (NIS) for appropriate assessment (AA), and an Environmental Impact Assessment Report (EIAR). There are also several conditions (78 no.) attached to the grant of permission to manage its implementation and operation.

8.3.12. As stated above, the PA found the development to be in accordance with CDP policy and provisions (no material contraventions are identified), and national policy and planning guidelines requirements (including SPPRs). This is in respect of the following issues:

- Principle of development (e.g., zoning objective, residential and childcare facility uses, settlement hierarchy, population growth target).
- Quantitative metrics (e.g., residential density, unit mix, and development standards, public open space, car and cycle parking provision).

- Qualitative features (e.g., design and layout, placemaking, connectivity, permeability, landscaping, boundary treatments).
- Impacts on the receiving environment (e.g., landscape, water services and quality, biodiversity, roads and traffic, archaeology, architectural heritage).

8.3.13. Further, I note that the internal sections of the PA and the prescribed bodies indicate satisfaction with and no objection to the proposed development subject to conditions.

8.3.14. As noted previously, the PA's response to the appeal refers the Commission to the reports on the case file. The PA states it has no further comment to make. Accordingly, in this assessment I have referred to the reports of the PA as relevant.

Nature of the Conditions

Special Contribution

8.3.15. The applicant has appealed one planning condition, Condition 77, a special development contribution, and I identify that the appeal grounds raised by the appellant relate to four conditions; Condition 25 in respect of connections to water supply and wastewater drainage, Conditions 33 and 51 in respect of connection to surface water drainage, and Condition 29 in respect of boundary treatments.

8.3.16. In considering the nature of the conditions, I do not find the conditions to which the appeal relates to be material in consequence. For instance, in respect of Condition 77, the determination of the first party appeal would have been restricted to an assessment of only the special contribution had a third party appeal not also been made (i.e., as directed in section 48(13) of the 2000 Act).

Connections to Services

8.3.17. The third party appeal ground disputing services not being connected to the appellant's property as a reserved right is associated with Condition 25, which relates to the applicant securing connections for the proposed development to Uisce Eireann's water services infrastructure, and Conditions 33 and 51 which relate to the PA requirements relating to connections to surface water drainage.

8.3.18. The proposed development seeks connections to the existing public water supply, wastewater and surface water drainage networks, infrastructure for which is located in the adjacent public roads (Kilbrogan Street, Convent Hill) and within the site. For

water supply, a feed will be taken from the existing watermain located in Kilbrogan Street and used to service the proposed development (Proposed Watermain Layout, Dwg No. C-10003). For wastewater drainage, the proposed development will connect to the existing on-site foul sewer (extends through the centre of the site, on the southern side of Kilbrogan Stream). The sewer connects to existing infrastructure at Kilbrogan Street (pumping station and rising mainline) which extends south to connect with the existing foul sewer located on Convent Hill (Proposed Foul Sewer Layout, Dwg No. C-10001). For surface water drainage, the proposed development will be served by various on-site SuDS features and attenuation tanks, which include for flow-control outfalls to Kilbrogan Stream (Proposed Surface Water Layout, Dwg No. C-10002).

8.3.19. As identified in the third party appeal (with extracts from applicable application drawings), the proposed development does not extend water services infrastructure to the appellant's property. As discussed previously in subsection 8.1, the requirement for the applicant to make provision for the connections is a legal matter which is outside of the scope of the planning process.

8.3.20. In considering the proper planning and sustainable development of the area, I note that Uisce Eireann has provided a Confirmation of Feasibility to the applicant indicating that the proposed water and wastewater connections are feasible without necessitating upgrades to UE infrastructure. In respect of surface water drainage, I note that the PA's Area Engineer indicated satisfaction with the onsite SuDS features, attenuation tanks, and discharge proposals to the stream. Conditions are recommended to be attached to a grant of permission.

8.3.21. The conditions I identify as relevant to the appeal case are those relating to connections and/ or the operational phase of the development; these include Condition 25 (water supply and wastewater drainage networks) and Conditions 33 and 51 (surface water drainage). I consider that these conditions are sufficiently robust to ensure adequate water services infrastructure to serve the proposal, to the prevent flood risk, and protect water body quality.

8.3.22. I do not identify any issue raised in the third party appeal, or matter within the appeal case, that would prevent connections to the water services infrastructure as is

proposed. I do not recommend to the Commission that any amendment be made to same under the provisions of section 139 of the 2000 Act.

Boundary Treatments

8.3.23. The third party appeal ground disputing the boundary treatment proposed along the shared boundary is associated with Condition 29, which relates to the overall boundary treatment plan for the proposed development.

8.3.24. The appellant submits that a 2m high block wall (capped and with pillars) is required to be constructed along the western and southern boundaries between her property and the appeal site (i.e., the stepped line marked O-Q-W-J on the drawing included in the appellant's observation) as a reserved right.

8.3.25. The proposed boundary treatments and the development of lands adjacent to the appellant's landholding are indicated on a number of plans and particulars submitted with the application (Proposed Site Layout Plan Dwg No. PL-004, Boundary Treatment Plan Dwg No. 400_R09, Soft Landscaping Plan Dwg No. 200_R09, Tree Protection Plan Dwg No. TPP3725 (Sheet 2 of 4), Open Space Calculation Dwg No. 600_R08).

8.3.26. Along the western boundary, the new proposed boundary treatment is indicated as 'Residential Hedge' and the adjacent lands within the site are proposed to be developed as an 'Ecological Area'. The Ecological Area will comprise of habitats WS1 (Native Shrub Natural Regeneration) and WN6 (Wet Willow–Alder–Ash Woodland (Pocket Woodland Planting)). The area adjacent to the southern boundary is proposed to be developed as a 'Riparian Zone' and will comprise of habitats WS1 and FS1 (Reed and Large Sedge Swamp). As noted at the time of my site inspection, the southern boundary is densely overgrown with trees and scrub vegetation. There is no new boundary treatment proposed to the existing vegetation along this boundary, i.e., the existing boundary will be retained and protected.

8.3.27. In similarity with the appellant's request that connections to services be provided as part of the proposed development, the requirement for the applicant to provide a boundary wall is a legal matter which is outside of the scope of the planning process.

8.3.28. In considering the proper planning and sustainable development of the area, I note that the proposed development of ecological and riparian areas in the vicinity of

Kilbrogan Stream, and of the boundary treatments to the south and west of the appellant's property are, in and of themselves, acceptable.

8.3.29. Indeed, I consider that these proposals comply with and would facilitate the achievement of several CDP objectives including the site Specific Objective BD-R-01 (supports, retains and protects habitats of biodiversity value), Objective GI 14-2 Green Infrastructure Objectives for Main Towns and Settlements (promotes and uses the stream as a multi-functional green infrastructure corridor), Objective GI 14-9 Landscape (discourages the removal of extensive amounts of trees, hedgerows or other distinctive boundary treatments), and Objective HE 16-21 Design and Landscaping of New Buildings (requires appropriate landscaping and screen planting of proposed developments).

8.3.30. I note that the PA (Planning Officers, Ecology Officer) found the boundary treatments and development of the ecological areas and riparian zones acceptable in principle. Conditions are recommended to be attached to a grant of permission.

8.3.31. The condition I identify as relevant to the appeal case is that relating to the boundary treatments, Condition 29. I consider the condition to be sufficiently robust to ensure the residential and visual amenity interests are protected. The condition also requires prior to commencement agreement with the PA, so will continue to be subject to an approval process.

8.3.32. I do not identify any issue raised in the third party appeal, or matter within the appeal case, that would prohibit the provision of the boundary treatment as is proposed. I do not recommend to the Commission that any amendment be made to same under the provisions of section 139 of the 2000 Act.

Other Conditions attached to the Grant of Permission

8.3.33. Of the conditions attached to the grant of permission, I have reviewed the other 73 conditions which are not subject of this appeal. I find these to be a mix of bespoke conditions (including revisions to the total number of dwelling units and car parking spaces (Condition 4)) and standard conditions (technical, procedural, financial), arising from the requirements of the internal sections and prescribed bodies.

8.3.34. The basis or reasons for the conditions are comprehensive, including complying with the requirements of the development plan, planning legislation, protecting several

environmental factors, and proper planning and sustainable development of the area.

8.3.35. For the most part, I consider that the conditions attached to the grant of permission are comprehensive, addressing the majority of items that would be reasonably anticipated were a determination of the application to be undertaken by the Commission in the first instance (and were the decision to result in a grant of permission).

8.3.36. I identify two conditions (discussed below in subsection 8.5) that have been omitted from the PA's decision, which I recommend the Commission attach to the grant of permission as part of this appeal assessment, as allowed for under section 139 of the 2000 Act. These relate to the implementation of the mitigation measures in the EIAR and to the post-consent agreement of an operational waste management plan (OWMP).

Nature of Third-Party Involvement in the Appeal Case

8.3.37. There is one third party appellant against the decision to grant permission. There are no third party observations on the appeal. The issues raised by the appellant have been outlined above. I note that the appellant, as highlighted by the applicant in their response to the appeal, does not object to the proposed development in principle.

Conclusion

8.3.38. In conclusion, due to the extent of compliance with applicable local and national policy, the positive assessment of the proposed development by the PA (and prescribed bodies), the nature of the conditions to which the appeal relates, the relative comprehensiveness of the other conditions, and the nature of third party involvement in the appeal case, I recommend that the determination by the Commission of the application as if it had been made to it in the first instance would not be warranted.

8.4. Condition 77 – Special Contribution

8.4.1. Condition 77 requires the applicant to pay a *'special contribution of €540,100'* in respect of *'specific exceptional costs…for the provision of road widening and*

ancillary works required to facilitate the proposed development..'. These subject works are to be undertaken on specific roads as follows:

1. between the proposed site entrance on Kilbrogan Street and Lovells Cross along the L-2039-0, L-6055-0 and L-95892-1, and
2. between the Kilbrogan Cemetery Junction and Macroom Road along the L-95892-1.

8.4.2. Condition 77 states that the costs of these works are not covered in the Council's General Contributions Scheme. The reason given for the condition is that *'It is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development*.'

Appeal Grounds

8.4.3. In the appeal, the applicant outlines the context to Condition 77 and states no indication for same given at preplanning consultations, no reference to the works being exceptional, and disputes positions in the PA reports.

8.4.4. The implications of the condition are outlined. The road widening and ancillary works apply to a total linear length of c.1.7km. Firstly, are works to three roads comprising c.1.45km of roadway, and secondly to one road of c.250m. I direct the Commission to 'Map of Road/ Suggested Upgrade Context' in the appeal (Enclosure 2[1]). The map indicates the subject roads (coloured yellow, blue and white) and the lengths of roadway involved. The intersection of the blue and white lines coincides with the location of Kilbrogan Cemetery, and the intersection of the blue line and Macroom Road junction (to NE, off the map) coincides with Lovell's Cross (as per Google maps, correct on the date of this assessment).

8.4.5. The applicant submits that the works are neither exceptional or specific to the development and are covered by the PA's DCS. The applicant describes the condition as unjustified, not reasonable or proportionate, and not in accordance with the applicable legislation or planning guidelines.

8.4.6. The applicant requests that Condition 77 be omitted in its entirety.

[1]Note: the section of Kilbrogan Street (L-2039, coloured yellow) extending south to the intersection with Convent Hill is not specified in Condition 77.

Area Engineer Report

8.4.7. The basis for Condition 77 arises from the Area Engineer's report. Item 22 of same refers to the applicant's Traffic and Transport Assessment (TTA) with a focus on the impact of the development on the Convent Hill/ Macroom Road T-Junction (Junction 3, Figure 1.1, pg. 7, TTA). The report states that the TTA projects that the junction will operate over capacity in future years, which validates concerns held by the PA.

8.4.8. The Area Engineer's concerns are associated with the impact of the proposed development on driver patterns. The report outlines the alternative routes that drivers may take to access Bandon town centre so as to avoid congestion at Junction 3. These routes include travelling to the north/ northeast of the site along Kilbrogan Street (L 2039-0) onto the wider local road network to Lovell's Cross (via L-6055-0, L-95892-1), and then southwards from Kilbrogan Cemetery to the town centre (via L-95892-1, Macroom Road (R589)).

8.4.9. The report states that increased traffic volumes on these roads are likely as a direct consequence of the proposed development, and that the widths on sections of the roads are inadequate to accommodate same (existing road width indicated as c.3.5m and desirable road width as c.5.5m). The report identifies that sufficient widths exist between the roadside drainage ditches to facilitate road widening works without the necessity for significant land acquisition.

8.4.10. The justification for the special contribution is that it is required *'…in respect of specific exceptional costs that will be incurred in providing infrastructure necessary to mitigate traffic congestion arising from the development*' and that the works are considered *'…necessary to accommodate development-generated traffic, provide a viable alternative route to the constrained Macroom Road/ Convent Hill Junction, and contribute towards the long-term efficient operation of the wider road network in Bandon'*.

Traffic and Transport Assessment

8.4.11. The appeal grounds dispute the position of the Area Engineer, referring to and relying on the findings of the applicant's TTA. The applicant states that the TTA assessed five junctions (Junctions 1-5, Figure 1.1, pg. 7) in the town and found that all will continue to function efficiently in the short and long term, the majority of traffic increases are from other developments, traffic management improvements may be

required to the junction and wider network, and the proposal will not cause any notable operational problems across the network.

8.4.12. I have reviewed the applicant's TTA. The methodology used in the TTA has been to include ten development sites in the traffic modelling (with proposals at different stages of planning, construction, operation) (sites shown in Figures 1.2 and 4.1) and to cumulatively assess the combined effects of same on the local road network.

8.4.13. The TTA focusses on five junctions in the local road network, and from a base year of 2025 establishes the three forecast years: Opening Year 2027, Opening Year + 5 2032, and Opening Year + 15 2042. The forecast traffic growth at the junctions is tested under three scenarios; 1) without any development, 2) with the surrounding development only, and 3) with the surrounding development and the proposed development.

8.4.14. The TTA predicts that the proposed development would increase traffic flows entering/ exiting the site by 115 no. trips in the morning peak and by 105 no. trips in the evening peak (i.e., a total of 220 no. trips daily over the forecast years, all assumed to be new trips to the network).

8.4.15. I identify the key findings in the TTA as follows and comment on same:

- Junction 1: Tannery Rd/ Coolfadda Rd and Junction 2: Convent Hill Rd/ Kilbrogan St under Scenario 3 are predicted to experience negligible impacts across the three forecast years, at both AM and PM peaks (i.e., ratio of flow to capacity (RFC) values are all under 85% (0.85) (a standard design threshold which indicates a junction is functioning within practical capacity)).
- Junction 3: Convent Hill Rd/ Macroom Rd is sensitive to cumulative growth. Under Scenario 3, for the three forecast years, RFC values and delays steadily increase at both AM and PM peaks (as per the summary table in Figure 7.3, pg. 33). These remain largely within acceptable parameters up to Opening Year + 5 2032 when the RFC for AM peak marginally exceeds 1.0 (i.e., RFC values between 85%-100% (0.85-1.0) indicate a junction is reaching its functional limit). By Opening Year + 15 2042 under Scenario 3 the TTA states significant congestion is predicted in the AM peak (table indicates RFC of 1.17 and delay of 301 seconds) (i.e., RFC value above 100% (1.0) indicates traffic demand is exceeding the structural capacity of the

junction). The TTA submits that the majority of the traffic increase is due to surrounding development rather than the proposed development. On comparison of Scenario 2 and Scenario 3 in 2042, I acknowledge the volume of background/ surrounding traffic (i.e., Scenario 2) but consider the increase in RFC values from 0.97 to 1.17 and an associated increase in delay time from 101 seconds to 301 seconds to be notable. The TTA acknowledges that the proposed development contributes to higher AM peak congestion. Importantly, I note capacity is available at Junction 3 in the PM peak for Scenario 3 across the three forecast years (i.e., RFC values are all under 85% (0.85)). The TTA states that planned improvements to the junction included in the Bandon TPREP will improve pedestrian safety, manage vehicle speeds, and optimise flow thereby mitigating future impacts.

- Junction 4: N Main St/ Kilbrogan Hill Rd experiences similar traffic demands and impacts as outlined above for Junction 3. Over the three forecast years under Scenario 3, RFC values and delays steadily increase at the AM and PM peaks (as per the summary table in Figure 7.4, pg. 34), remaining largely within acceptable parameters up to Opening Year + 5 2032 when the RFC for the AM peak marginally exceeds 1.0. By 2042, I note that the RFC values for the AM and PM peaks are both above 1.0. The TTA states that by 2042, cumulative growth from background, surrounding developments and the proposed development has driven up RFC values and delays increase accordingly, but submits that the proposed development's contribution to same is proportionally small relative to wider development impacts. The TTA states that the planned realignment of the junction included in the Bandon TPREP will improve operational performance and capacity, and strengthen resilience.
- Junction 5: Cork Rd/ N Main St/ St Finbarr's Pl is described as a key node within the local road network in the TTA, accommodating traffic growth from several sources in the town. The TTA analyses the junction in its current T-junction configuration, as a potential signalised T-junction, and developed as a mini roundabout, the recommendation of the Bandon TPREP. Modelling for both T-junction configurations in the TTA predicts significant congestion under cumulative traffic demand, with RFC values and delays rising well above

capacity by Opening Year + 5 2032 and Opening Year + 15 2042. The TTA highlights the improved operational performance of Junction 5 developed as a mini roundabout. Analysis predicts increases in traffic demand at Junction 5 over the forecast years for Scenario 3 (as per the summary table in Figure 7.5, pg. 35). These remain within acceptable parameters until Opening Year + 5 2032 when the RFC value for the PM peak exceeds 1.0. By Opening Year + 15 2042, the RFC values for both the AM and PM peaks exceed 1.0 and delays are between 131 and 417 seconds. In contrast to Junctions 3 and 4, Junction 5 experiences more congestion in the PM peak. The TTA highlights the limitations of the current T-junction and the need for strategic mitigation to manage peak period performance (e.g., Bandon TPREP recommendations).

- A Comparison of Scenario 2 and Scenario 3 is included (as per Figure 7.7, pg. 37) for Opening Year 2027 of the five junctions for the AM and PM peaks. The comparison allows the additional traffic attributable only to the proposed development at each junction to be identified (proportional increase as %). Junctions 1 and 2 have the largest proportional increases (20-22%) and have been demonstrated to operate within capacity with negligible impact. Junctions 3, 4, and 5 have low proportional increases (3-7%) which have been demonstrated as having some impact. The TTA states that future measures (primarily those in the Bandon TPREP) are expected to manage these effectively to ensure that overall traffic flow remains efficient.
- Of Cumulative Impact the TTA observes that traffic demands increase steadily over the forecast years due to the scale of cumulative growth in the area, of which the proposed development only accounts for a modest share. The TTA submits that the proposed development does not itself generate capacity issues at any junction, with pressures primarily arising from wider background and third-party development traffic.

8.4.16. On review of the TTA, I consider the methodology employed to be reliable, the reporting of the proposed development's impact on the analysed junctions to be reasonable (modest, proportional), and the conclusions drawn regarding the necessity for future improvements to the local road network (including reference to measures in the Bandon TPREP) to be acceptable.

8.4.17. That being, I consider that the applicant has demonstrated that the proposed development would not cause any significant negative impact on the operational capacity of the modelled junctions in and of itself, particularly in the short to medium term (such that would warrant a refusal of permission or the facilitation of an alternative route as required in Condition 77).

8.4.18. I highlight and accept the key findings of the TTA as being; traffic generation is predicted to increase in tandem with planned growth in the town (local, regional and national policy basis), the local road network is anticipated to experience performance pressures, and planned upgrades and improvements to the junctions are required to be implemented particularly in the medium to long term to the benefit of all road users.

Development Contribution Scheme

8.4.19. The applicable development contribution scheme for the appeal case is the General Scheme adopted by the PA in 2004 Cork County Council: Adopted Development Contribution Schemes 2004 (as amended, 2015) (DCS).

8.4.20. The DCS provides for general and special contributions and outlines what these relate to and when they can be applied (cited in section 6.0 of this report above).

8.4.21. Residential development in the CASP area attracts a general contribution of €24.49 per sqm ('Roads' allocation of c.72% and 'Amenity' c.28%). The DCS does not define the 'Roads' category or the types of infrastructure covered by same. The DCS does not refer to any general objectives, specific objectives, or named projects identifying/ relating to the provision of or the upgrading of roads in Bandon.

8.4.22. References made in the DCS to special contributions reiterate the wording of section 48(2)(c) of the 2000 Act.

Legislative Provisions and Guidelines Requirements

8.4.23. In section 6.0 of this report above, I have cited the applicable legislative provisions and requirements of the planning guidelines for the appeal case. There is a degree of overlap, and the key provisions of section 48(2)(c) of the 2000 Act are reiterated in both the Development Management Guidelines and Development Contribution Guidelines (with additional guidance cited in the tests below).

8.4.24. In my opinion, for Condition 77 to be justified, the following tests from same would each need to be satisfied. These are as follows, and I propose to consider each test in turn below.

i. Works are 'public infrastructure and facilities' and benefit the proposed development (section 48(2)(c) 2000 Act).

ii. Cost of works are specific, exceptional, and not covered by the DSC (section 48(2)(c)).

iii. Cost of works are incurred directly as a result of, or in order to facilitate, the proposed development and are properly attributable to it (Section 7.12, Development Management Guidelines).

iv. Works benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services (Section 1, Development Contribution Guidelines).

v. Condition is necessary, relevant to planning, relevant to the development to be permitted, and reasonable (Section 7.3, Development Management Guidelines).

vi. Condition specifies the particular works proposed to be carried out (section 48(12)(a), Section 1, Development Contribution Guidelines), and the basis for the calculation of the contribution is explained in the planning decision (Section 7.12, Development Management Guidelines).

Test (i): Public Infrastructure

8.4.25. In respect of Test (i), the works comprise the road widening and ancillary works to three roads/ parts thereof. The Area Engineer describes the works as involving road widening and upgrading with associated drainage, resurfacing, road markings and traffic management works, and additional road realignment, carriageway raising, and provision of public lighting in the vicinity of Kilbrogan Cemetery.

8.4.26. Section 48(17) defines '*public infrastructure and facilities'*. Sub-item (*e*) comprises *'the refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, surface water sewers, flood relief work and ancillary infrastructure'*. I am satisfied that the subject works are public infrastructure and facilities, coming within the definition of section 48(17)(e).

8.4.27. The works subject of Condition 77 would likely be to the benefit of the proposed development as three roads/ parts thereof in the vicinity of the site would be widened and upgraded. However, as discussed further below, the works would also be to the benefit of the general public, and several other properties and landowners along the roads.

8.4.28. The subject works are a form of infrastructure for which a special contribution could be levied. Test (i) is satisfied.

Test (ii): Specific, Exceptional, Not Covered by the DCS

8.4.29. In respect of Test (ii), the Area Engineer report generally refers to road widening and upgrading with associated drainage, resurfacing, road markings and traffic management works. While more detailed references are made to road realignment, carriageway raising, and provision of public lighting *'in the vicinity of Kilbrogan Cemetery junction'*, this description is still somewhat vague and open to interpretation (i.e., no definitive plan, design details, measurements, number of lights included in the report). Similarly, references are made to '*desirable road width'*, provision of a drain '*assumed on one side of the road'*, and monetary rates are indicated for different elements of the road construction without details, breakdown, context, or comparison. As such, I consider that the costs of the works are general and not specific.

8.4.30. Further, I consider the general description of the costs, as outlined above, reflect their standard nature, i.e., the costs are not exceptional. The works outlined in the Area Engineer report reflect standard road works that would be undertaken by the Council in its duties as a roads authority. While the works in the vicinity of Kilbrogan Cemetery are marginally more specific, the provision of a raised table *'to improve forward visibility and assist in traffic speed reduction'* and public lighting '*to improve road user awareness and enhance road safety'* cannot reasonably be categorised as exceptional.

8.4.31. Additionally, I consider the justification cited in the Area Engineer report for the condition (as relevant to this Test) that the works will '…*contribute towards the long-term efficient operation of the wider road network in Bandon'* reflect their general and standard nature.

8.4.32. With regard to whether the costs are covered by the DCS, I note that the general contribution for the proposed development is calculated in the Senior Planner's report (appears to correct a potential error in the calculation of the amount due for the apartments in the Area Planner's report). These are costs per sqm for the childcare facility, houses and apartments (rates from the 2015 amendment). The total general contribution of €469,014 forms the basis for the general development contribution in Condition 78. In the appeal, the applicant does not dispute the calculation and/ or payment of same.

8.4.33. However, in the appeal grounds the applicant outlines that the requirement for the road widening and ancillary works had not been raised by the PA in the preplanning consultations (Stages 1 and/ or 2). While the applicant acknowledges that the subsequent LRD Opinion[2] refers to the levying of a special contribution, it is stated as being understood to relate to the TPREP scheme in Bandon town centre (the applicant submits that the cost of the TPREP is covered by the DCS).

8.4.34. As I outlined previously, the DCS only includes the categories of 'Roads' and 'Amenities', with no definitions for same. In the absence of more detailed information in the DCS, I consider it is reasonable to rely on the meaning attributed to 'public infrastructure and facilities' in section 48(17). As established in Test (i) above, this includes the upgrading and enlargement of roads, and ancillary infrastructure (as per section 48(17)(e)), which correspond with the subject works.

8.4.35. As the subject works are a form of 'public infrastructure and facilities', I consider these to come within the category of 'Roads', the funding for which is covered by monies collected by way of general contributions (i.e., addressed in Condition 78 of the decision). Therefore, I consider that the costs of the subject works are covered by the DCS.

---

[2] For the Commission's clarity, a copy of the LRD Opinion is appended to the Area Planner's report on the case file, and the reference to a special contribution is made in Traffic and Transport: Item 13: *Special Contribution: A special contribution (per the number of proposed residential units) is required to be provided in line with other developments in the locus, in order to fund the necessary road and junction upgrades required to accommodate the additional traffic volumes generated by the proposed development.*

8.4.36. The costs for the subject works are not specific or exceptional and are covered by the DCS. Test (ii) is not satisfied.

Test (iii): Incurred Directly, Required to Facilitate, and Properly Attributable

8.4.37. In respect of Test (iii), it is necessary to establish whether the costs of the subject works are incurred directly as a result of the proposed development, or required to facilitate it, and are properly attributable to it.

8.4.38. The Area Engineer's report focusses on the impact of the proposed development on Junction 3, as presented in the TTA, relying on same to justify the applicant contributing to the subject works.

8.4.39. In my assessment of the TTA, outlined above, I believe the applicant has demonstrated that the proposed development, in and of itself, would not cause undue impact on the operational capacity of the junction in the short to medium term. Traffic demand associated with the proposed development at the junction (proportional increase) is relatively low. The increased levels of traffic predicted in the medium to long term are also due to background growth and other planned developments in the town. Congestion at the junction was identified at the AM peak only, with sufficient capacity remaining at the PM peak from the short to the long term. In my opinion, these key findings indicate that the costs of subject works are not incurred directly by or in order to facilitate the proposed development.

8.4.40. The applicant submits Condition 77 is attached without evidence and describes it as speculative. The scope of the TTA is stated as having been agreed with the PA, with no requirement made for an assessment of the roads and junctions subject of the special contribution. I note that the Area Engineer report refers to '*concerns'* and that '*it is reasonable to anticipate'*.

8.4.41. The PA does not reference any alternative analysis or reports as the basis for the condition. That being, it would appear that the impact on driver patterns (cited as the justification for the subject works) is assumption-based rather than evidence-based. The PA has not established that the cause for Junction 3 operating at capacity in the medium to long term is as a result of the proposed development, primarily or even predominantly. In this regard, I concur with the applicant and consider that the subject works have not been properly attributed to the proposed development.

8.4.42. Further, I consider the justification cited in the Area Engineer report for the condition (as relevant to this Test) that the costs '…*will be incurred in providing infrastructure necessary to mitigate traffic congestion arising from the development*' and the works will '…*provide a viable alternative route to the constrained Macroom Road/ Convent Hill Junction'* reflect their indirect and unattributable nature.

8.4.43. The costs of the subject works would not be incurred directly as a result of, or in order to facilitate, the proposed development and are not properly attributable to it. Test (iii) is not satisfied.

Test (iv): Benefit Very Specific Requirements

8.4.44. In respect of Test (iv), the costs of the subject works are required to benefit very specific requirements for the proposed development, with an example given in the Development Contribution Guidelines of a new road junction. As I have outlined in Test (ii) above, I consider the works to be of general benefit and not specific benefit to the proposed development.

8.4.45. The Area Engineer's report indicates that the road widening and ancillary works are required on c.1.7km linear length and 3,450sqm of roadway. The subject roads are located to the north/ northeast of the site, serving several existing residential properties (detached dwellings, residential estates), town park, agricultural fields, school premises, and agri-commercial operations. In terms of zonings and future development potential, the lands along the length of roadway are zoned as Existing Residential, Greenbelt, Residential[3], Existing Mixed/ General Business/ Industrial Uses, and Business and General Employment.

8.4.46. The subject works relate to two groups of roads/ parts thereof. I estimate the distance from the proposed development's site entrance on Kilbrogan Street to Lovell's Cross as c.1.43km (roadway length), and from to the junction at Kilbrogan Cemetery and Macroom Road as c.810m. Having regard to these separation distances and given the range of uses in-between, I do not consider that the subject works (road widening, road realignment and carriageway raising, a raised table with public lighting) benefit very specific requirements of the proposed development, or that the proposal would be the sole or even the main beneficiary of the works.

[3] As per Variation Ref. No. BD-LAT10: lands rezoned from Agriculture BD-AG-01 to Residential BD-R-11 in the CDP Variation 1.

8.4.47. I do not dispute the general requirement for and/ or benefits of providing the road widening and ancillary works to the local road network in the vicinity of the appeal site as envisaged in Condition 77. However, I consider that the subject works align with the alternative scenario cited in the Development Management Guidelines; i.e., *'…the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity)'.*

8.4.48. The guidelines continue that, if this is the case, *'..consideration should be given* [by relevant planning authorities] *to adopting a revised development contribution scheme or…adopting a separate development contribution scheme for the relevant geographical area'*. In this regard, I note that the DCS was adopted in 2004 and stated to last 20 years. Current CDP policy (subsection 19.7.13) indicates the intention to adopt a new development contribution scheme(s) following the adoption of the CDP. This has not been undertaken to date; accordingly, I consider that the subject works are covered by the DCS.

8.4.49. Further, I identify other components already incorporated into the proposal and/ or subject of other conditions which benefit very specific requirements of the proposed development (i.e., works to be undertaken and paid for by the applicant). These include the works on Kilbrogan Street at the new entrance (raised table, footpath, public lighting), the works subject of Condition 56 (pedestrian route to be step free, part of overall street redesign), of Condition 57 (junction arrangement, road markings, signage), and Condition 58 (public lighting). I consider that these measures unarguably benefit very specific requirements of the proposed development, and it is reasonable for the applicant to contribute towards/ provide for same.

8.4.50. The subject works do not benefit very specific requirements for the proposed development. Test (iv) is not satisfied.

Test (v): Necessary, Relevant, Reasonable

8.4.51. In respect of Test (v), Condition 77 is required to be necessary, relevant to planning, relevant to the development to be permitted, and reasonable.

8.4.52. As outlined in Test (iii) above, the works subject of Condition 77 are not necessary, i.e., they are not required in order to facilitate the proposed development which, as demonstrated in the TTA, could be implemented and operational without same, and

without causing undue adverse impact on the local road network in the short to medium term.

8.4.53. I consider that the subject works are not relevant to planning. Applicable CDP policy to this Test includes that relating to the Core Strategy and supporting infrastructure (cited in section 6.0 of this report above). The appeal site is categorised as 'Tier 1' lands in the CDP. These are described as being '*able to connect to existing development services, i.e. road and footpath access including public lighting, foul sewer drainage, surface water drainage and water supply, for which there is service capacity available'* (CDP Section 2.19 Active Land Management) and *'…fully serviced (in respect of road access, footpath access, public lighting, foul sewer drainage, surface water drainage, and water supply)'* (CDP Appendix D: Core Strategy Critical Infrastructure).

8.4.54. I have not identified any CDP policy requirement which justifies the subject works and by association, Condition 77 (only a water supply service is identified as critical infrastructure in Bandon). CDP Objective BD-GO-03 supports the ongoing delivery of the recommendations in the Bandon TPREP including for road safety measures and revised traffic management arrangements, which the TTA complies with. Further, as noted previously, the DCS does not include any road-based project which would serve as the policy basis for the condition.

8.4.55. Conversely, as discussed in Test (iv) above, elements of the proposed development and associated conditions are relevant to the development to be permitted. These include the new roadway and footpath infrastructure to be provided on Kilbrogan Street (raised table, pedestrian footpath, public lighting, links with existing footpaths, access into the town park) as per Conditions 56-58 which will facilitate the achievement of Specific Objective BD-U-01 (requires the development of a walkway from the town centre through the town park and into the appeal site).

8.4.56. Additionally, I highlight recent planning history in Bandon (cited in section 5.0 of this report above) in which special contribution conditions attached by the PA in respect of traffic/ transportation related items, have been omitted on appeal by the Commission. Having regard to same, I am satisfied that Condition 77 is not relevant to the development to be permitted.

8.4.57. Finally, of whether the condition is reasonable, I consider that the nature of the road widening and ancillary works required to be undertaken is analogous to a notable public infrastructure project ordinarily undertaken by a public authority (i.e., the PA). I concur with the applicant, and I consider that the scale of the works is neither reasonable nor proportionate for a single residential scheme (albeit a LRD) in the town.

8.4.58. I believe my findings in relation to Test (iii) (costs not incurred directly, works are not required in order to facilitate, neither properly attributable to the proposed development) and Test (iv) (works do not benefit very specific requirements for the proposed development) testify to the unreasonableness of Condition 77.

8.4.59. Condition 77 is not necessary, relevant to planning, relevant to the development to be permitted, or reasonable. Test (v) is not satisfied.

Test (vi): Basis for Calculation

8.4.60. In respect of Test (vi), the basis for the calculation of the contribution is required to be explained in the planning decision, with the particular works specified in the condition.

8.4.61. On review of the Area Engineer's report, I note that the overall nature of the works, the estimated expenditure involved, and the basis for the calculation of the special contribution have been explained and are apparent in the case file. However, as discussed in Test (ii), I consider that the details are brief and general, and the costs are somewhat vague estimates. There is a lack of precision that would be reasonably expected by an applicant conditioned to pay for same.

8.4.62. As such, I consider that the manner in which the special contribution has been incorporated into Condition 77 would not comply with the provisions of section 48(12)(a) of the 2000 Act and the requirements of the planning guidelines.

8.4.63. The basis for the calculation of the contribution has not been adequately outlined. Test (vi) is not satisfied.

Conclusion

8.4.64. In conclusion, having regard to the nature, scale, and benefit of the subject works, to the relevant policies and objectives relating to core strategy, land management, and critical infrastructure in the Cork County Development Plan 2022-2028, to the terms

of the 2004 Cork County Council: Adopted Development Contribution Schemes 2004 (as amended, 2015) and the manner in which these have been applied, I consider that Condition 77 fails to comply with the requirements of section 48(2)(c) of the Planning and Development Act 2000, as amended, with the provisions of the Development Management, Guidelines for Planning Authorities, 2007, and the Development Contributions, Guidelines for Planning Authorities, 2013, in respect of circumstances which might warrant the attachment of a special contribution condition, and with the criteria for planning conditions in the Development Management, Guidelines for Planning Authorities, 2007. Condition 77 of the planning authority's grant of permission is not warranted, and I recommend that it is removed in its entirety from the grant of permission.

8.5. **Other Matters**

8.5.1. As referred to previously, for the most part, the conditions attached by the PA to the grant of permission are comprehensive. I have reviewed the reports of the internal sections of the PA and note that the recommended conditions have been largely incorporated into the decision.

8.5.2. I have reviewed the reports of the prescribed bodies and note that, similarly, the recommended conditions have been largely incorporated into the decision. The Inland Fisheries Ireland recommendations align with Conditions 18, 19, 20, 40, 41, and 44; Uisce Eireann recommendations align with Conditions 25, 26, and 60; and the HSE EHO; recommendations align with Conditions 14, 40, 41, 43, 44, and 71.

8.5.3. The application includes an EIAR, and I note the omission from the PA decision of a condition requiring the implementation of all the mitigation measures thereof. I have reviewed the applicant's EIAR and identify several mitigation measures required to be implemented across the range of environmental factors. Further, I note that the report of the HSE EHO recommends the implementation of the mitigation measures in Chapter 5: Air Quality and Climate, Chapter 9: Land, Soils, Hydrology and Hydrogeology; and Chapter 11: Material Assets – Utilities and Other.

8.5.4. While I note that certain conditions have been attached which require the implementation of mitigation measures for specific chapters of the EIAR (i.e., Condition 7 for Chapter 12: Archaeological, Architectural and Cultural Heritage, and

Condition 12 for Chapter 8: Biodiversity), I do not consider these to be sufficiently comprehensive.

8.5.5. I recommend that the An Coimisiun Pleanála (ACP) model condition requiring the implementation of all mitigation measures in the EIAR be attached to the grant of permission. I do not consider the generality of Condition 1 could be relied upon for this matter.

8.5.6. The application includes an OWMP, and in similarity with the above, I note the omission from the PA decision of a condition requiring the agreement and implementation of a final plan for the proposed development. For similar reasons, I recommend that the ACP model condition for same to be attached.

8.5.7. For the Commission's clarity, I confirm Condition 11 requires the mitigation measures in the NIS to be implemented.

Conclusion

8.5.8. As allowed for under section 139 of the 2000 Act, I recommend that the following conditions be attached to the grant of permission:

1. *The mitigation measures contained in the submitted Environmental Impact Assessment Report (EIAR), shall be implemented.*

   Reason: To protect the environment.

2. *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 (within each house plot, each apartment unit, and the childcare facility) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the agreed waste facilities shall be maintained, and waste shall be managed in accordance with the agreed plan.*

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

8.5.9. I recommend the conditions be attached as Condition 2 and Condition 75 in the sequence of the PA decision (i.e., after conditions relating to construction phase waste). The numbering for the newly attached Condition 75 accounts for the attachment of Condition 2.

9.0 Environmental Impact Assessment

9.1. Background

9.1.1. Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended (2001 Regulations), and section 172(1)(a) of the Planning and Development Act 2000, as amended (2000 Act), identify classes of development with specified thresholds for which EIA is required.

9.1.2. The following classes of development in the 2001 Regulations are of relevance to the proposed development:

- Class 10(b) relates to infrastructure projects that involve:

  (i) Construction of more than 500 dwelling units,

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

9.1.3. The proposal is an urban development project that comprises 240 dwelling units on an outer suburban site measuring c.9.59ha. The proposal is sub-threshold in terms of mandatory EIA requirements arising from Class 10(b)(i) and/ or (iv) of the 2001 Regulations.

9.1.4. Notwithstanding, an Environmental Impact Assessment Report (EIAR) has been prepared for the proposed development. The reason given for which by the applicant is due to the potential for significant effects on the environment when the proposed development is considered in combination with other developments. The EIAR comprises a non-technical summary (Volume 1), a main report (Volume 2) and appendices (Volume 3).

9.1.5. Cork County Council carried out an environmental impact assessment (EIA) of the proposed development, which is outlined in the Area Planner's report with internal

sections' reports including assessment(s) of the environmental factor(s) as relevant to that section. The following is concluded:

> *'Having undertaken a review of the EIAR, and having regard to the range of environmental topics assessed, the methodologies employed, the level of detail provided, and the absence of any substantive objection from prescribed bodies and internal consultees in relation to environmental effects, the Planning Authority is satisfied that the EIAR is adequate in identifying and describing the likely significant effects of the proposed development on the environment, in accordance with Section 172 of the Planning and Development Act, 2000 (as amended).'*

9.2. **Grounds of Appeal**

9.2.1. The first party appeal relates only to Condition 77, a special contribution condition. The third party appeal, where relevant to planning and the development to be permitted, relates to four conditions (Conditions 25, 29, 33, and 51).

9.2.2. No issues relating to EIA have been raised in either the first or third party appeal grounds.

9.2.3. As part of my review of the appeal case, I have identified the omission from the PA decision of a condition requiring the implementation of all the mitigation measures of the EIAR and of a condition requiring post-consent agreement on an operational phase waste management plan. Both are conditions which I consider necessary, relevant to planning, and to the development to be permitted.

9.2.4. In section 8.0 of this report above, I have assessed the conditions subject of the appeal. In respect of Condition 77, I recommend its removal from the PA decision to the Commission, and in respect of Conditions 25, 29, 33, and 51, I recommend that no amendments be made to same. Accordingly, these conditions are of no consequence to the EIA process and do not need to be considered further.

9.2.5. The two conditions that I recommend be attached to the grant of permission are considered in Table 9.1 below which provides commentary in relation to the EIAR/ EIA requirements.

Table 9.1: Conditions to which the appeal relates or of other conditions within the context of EIA

Condition	Nature of Condition	Commentary
Condition 2	Implement EIAR mitigation measures	The application is accompanied by an EIAR. I have reviewed same and note that mitigation measures to ameliorate potential and/ or identified impacts on the environment (and cross referenced with those in the CEMP) are included in Chapter 4 Human Beings, Chapter 5 Air Quality and Climate, Chapter 6 Noise, Chapter 7 Landscape and Visual, Chapter 8 Biodiversity, Chapter 9 Land – Soils, Geology, Hydrology, and Hydrogeology, Chapter 10 Material Assets: Roads and Traffic, and Chapter 12 Archaeology, Architectural and Cultural Heritage. The attachment of a condition requiring the express implementation of the mitigation measures in the EIAR is best practice in terms of the planning process and clarity for all parties, will ensure the protection of the environment, and is in the interests of the proper planning and sustainable development of the area. The attachment of this condition, as recommended in my assessment above, involving the implementation of the mitigation measures included for across several environmental factors,

		has no material consequence on the conclusions of the EIAR.
Condition 75	Agreement of a waste management plan for operational phase implementation	The application is accompanied by outline Operational Waste Management Plan. I have reviewed same and note that the management arrangements proposed. The attachment of a condition requiring the post-consent agreement of the plan with the PA is best practice in terms of the planning process and clarity for all parties, will ensure the protection of the environment, and is in the interests of the proper planning and sustainable development of the area. The attachment of this condition, as recommended in my assessment above, has no material consequence on the conclusions of the EIAR.

Conclusion

9.2.6. Having regard to the nature of the conditions to which the appeal relates, I consider that the determination by the Commission of the relevant application, involving the undertaking of an EIA, as if it had been made to it in the first instance would not be warranted for this appeal case.

10.0 Water Status Impact Assessment

10.1. Stage 1 – Screening Determination for Water Status Impact Assessment

10.1.1. The appeal relates to conditions attached to the planning authority's grant of permission for the proposed development, and conditions recommended to be

attached to the grant. No issues relating to water status have been raised within the appeal per se. I have undertaken a planning assessment of the conditions in section 8.0 and considered relevant conditions in the context of EIA in section 9.0 of this report above.

10.1.2. Having regard to the nature of the conditions to which this appeal case relates, undertaking an assessment of the proposed development with regard to the objectives set out in Article 4 of the EU Water Framework Directive has been deemed to not be necessary.

11.0 Appropriate Assessment

11.1. Stage 1 – Screening Determination for Appropriate Assessment

11.1.1. Having carried out Appropriate Assessment screening (Stage 1) of the proposed development (included in Appendix 1 of this report), it has been determined that the proposed development may have likely significant effects on Bandon River SAC (site code: 002171) in view of the site's conservation objectives and qualifying interests.

11.1.2. An Appropriate Assessment (Stage 2) is therefore required of the implications of the proposed development on the qualifying interests of the SAC in light of their conservation objectives.

11.1.3. The possibility of likely significant effects on other European sites has been excluded on the basis of the nature and scale of the proposed development, separation distances, and the absence of meaningful pathways to other European sites.

11.2. Stage 2 – Appropriate Assessment

11.2.1. In carrying out an Appropriate Assessment (Stage 2) of the proposed development, I have assessed the implications of the proposed development on Bandon River SAC in view of the site's conservation objectives. I have had regard to the applicant's Natura Impact Statement, the report of the PA's Ecology Officer, and all other relevant documentation and submissions on the case file. I consider that the information included in the case file is adequate to allow the Commission to carry out of an Appropriate Assessment.

11.2.2. Following the Appropriate Assessment (Stage 2), it has been concluded that the project, individually and/ or in-combination with other plans or projects would not

adversely affect the integrity of Bandon River SAC (site code: 002171) in view of the site's conservation objectives and qualifying interests.

11.2.3. This conclusion is based on:

- An assessment of all aspects of the proposed development including proposed mitigation measures relating to the conservation objectives of Bandon River SAC.
- An assessment of in-combination effects with other plans and projects including historical and current plans and projects.
- There being no reasonable scientific doubt as to the absence of adverse effects on the integrity of Bandon River SAC.

12.0 Recommendation

Following from the above assessment, and having regard to the nature of the conditions to which the appeal relates, the Commission is satisfied that the determination by the Commission of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to:

ATTACH as Condition 2, and as Condition 75 for the reasons therefor, and

REMOVE Condition 77 for the reasons and considerations set out below.

13.0 Recommended Draft Order

Planning and Development Act 2000, as amended

Planning Authority: Cork County Council

Planning Authority Register Reference: 26/1129

Appeal by Wayleaf B Limited and Jacintha Warren against the decision made on the 25th day of June 2026 by Cork County Council to grant permission to Wayleaf B Limited, c/o of HW Planning, 5 Joyce House, Barrack Square, Ballincollig, Cork.

Proposed Development

Large-scale residential development (LRD) on lands at Coolfadda & Kilbrogan (townlands), Bandon, Co. Cork, consisting of the following:

The construction of a residential development of 240 no. residential units comprising 156 no. dwelling houses, 84 no. apartments, a creche facility and all ancillary site development works. The proposed 156 no. dwelling houses comprise of 29 no. 4 bedroom detached/semi-detached dwellings, 126 no. 3 bedroom semi-detached/terraced units and 1 no. 2 bedroom detached dwelling house. The proposed 84 no. apartments will consist of 60 no. 2 bedroom units and 24 no. 1 bedroom units to be accommodated in 4 no. three storey apartment buildings.

Vehicular and pedestrian access to the proposed development will be provided via new entrances from the L-2033 local road which will serve western areas of the proposed development and via Kilbrogan Street (L-2039) which will serve eastern and northern areas of the proposed development. The proposed development also provides for 2 no. shared vehicular entrances from Convent Hill to the south (L-2011) to serve southern areas of the proposed development. The proposed development also provides for public realm enhancements to Kilbrogan Street (L-2039), which include a raised table, and new footpath to connect to existing footpath infrastructure and provide connectivity to the Town Park. Other ancillary site development works include landscape and amenity areas, pedestrian and cycle paths within the site, bicycle parking and bin storage facilities, the removal/demolition of an existing pre-fab structure and a vehicular bridge crossing over an existing watercourse to serve as access for 26 no. of the proposed dwelling houses in northern areas of the site. An Environmental Impact Assessment Report and a Natura Impact Statement have been prepared in respect of the proposed development.

Decision

Having regard to the nature of the appeal and to the conditions to which the appeal relates, the Commission is satisfied that the determination by the Commission of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the

said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to:

ATTACH as Condition 2, and as Condition 75 for the reasons therefor.

2. *The mitigation measures contained in the submitted Environmental Impact Assessment Report (EIAR), shall be implemented.*

   Reason: To protect the environment.

75. *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 (within each house plot, each apartment unit, and the childcare facility) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the agreed waste facilities shall be maintained, and waste shall be managed in accordance with the agreed plan.*

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

REMOVE Condition 77 for the reasons and considerations set out below.

Condition 77:

Having regard to the nature, scale, and benefit of the subject works, to the relevant policies and objectives relating to core strategy, land management, and critical infrastructure in the Cork County Development Plan 2022-2028, to the terms of the 2004 Cork County Council: Adopted Development Contribution Schemes 2004 (as amended, 2015) and the manner in which these have been applied, I consider that Condition 77 fails to comply with the requirements of section 48(2)(c) of the Planning

and Development Act 2000, as amended, with the provisions of the Development Management, Guidelines for Planning Authorities, 2007, and the Development Contributions, Guidelines for Planning Authorities, 2013, in respect of circumstances which might warrant the attachment of a special contribution condition, and with the criteria for planning conditions in the Development Management, Guidelines for Planning Authorities, 2007. Condition 77 of the planning authority's grant of permission is not warranted and is removed in its entirety from the grant of permission.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report, in an improper or inappropriate way.

_____

Phillippa Joyce

Senior Planning Inspector

13th October 2026

Appendix 1: Appropriate Assessment – Stage 1 and Stage 2

Appropriate Assessment
Stage 1 Screening Determination

Description of the Project

I have considered the proposed development (project) in light of the requirements of section 177U of the Planning and Development Act 2000, as amended.

Subject Site

The subject site is a greenfield, outer suburban site in the northwest of Bandon town. Notable features include Kilbrogan Stream which extends across the northern portion of the site, flowing in an easterly direction. The stream is a tributary of the Bandon River, which flows to the south/ southeast through the town. The topography of the site is notable, with ground levels falling steeply in northerly and easterly directions across the site, draining to the stream.

There are three European site designations in proximity to the site; Courtmacsharry Bay SPA (004219) and Courtmacsharry Estuary SAC (001230) are c.9.84km to the south, and Bandon River SAC (002171) is c.23.5km to the west.

Project

Components of the project of particular relevance to AA include:

- Site development activities including preparatory ground works (excavation, infilling, ground reprofiling).
- Water supply and wastewater drainage infrastructure with connections to public systems; wastewater from the project will be collected and discharged to Bandon WWTP for treatment.
- Wastewater infrastructure requires works beneath the bed of the Kilbrogan Stream to lay pipes to service the east of the site.
- Surface water drainage infrastructure with several SuDS features (collection, infiltration, attenuation) and discharging overflow at greenfield runoff rates to Kilbrogan Stream.

- Discharged overflow is from three attenuation tanks via three new outfalls to the stream, each constructed with a headwall.
- Two new bridges constructed over the Kilbrogan Stream to facilitate access to the north of the site. The vehicular bridge set back c.10m either side of the stream, the pedestrian bridge between c.5m-c.7.4m either side of the stream.

Site Surveys

The project is accompanied by several reports including those relevant to the AA process: an EIAR, NIS, CEMP, ISMP, and FRA.

European Sites

The NIS identifies seven European sites in the zone of influence of the project (Table 7.1). Two sites, Courtmacsharry Bay SPA (site code: 004219) and Bandon River SAC (site code: 002171), are screened in for further consideration due to the identification of potential pathways from the site/ project; indirect land/ air pathway to Courtmacsharry Bay SPA (qualifying interests (QIs) include several bird species) and indirect hydrological/ ecological pathway to Bandon River SAC (QIs include fish and vegetation species).

Subsequent screening stage key findings include:

Disturbance to Protected Habitats and Species:

- No direct downstream hydrological connection between the site and any European site. The Bandon River SAC is located upstream of the site on the Bandon River. Ex-situ effects must be considered.
- Direct significant effects on the Freshwater Pearl Mussel QI are not anticipated as the closest mapped populations are located a significant distance upstream on the River Bandon.
- Potential for indirect significant effects on the Freshwater Pearl Mussel due to the release of sediments during the construction phase which may affect fish species, as the Freshwater Pearl Mussel larvae use a temporary salmonid host such as Atlantic Salmon.

- No significant risk either directly or indirectly to the protected species of the Courtmacsharry Bay SPA due to habitat fragmentation or loss, disturbance or reduction in species density.
- Potential for indirect significant effects to occur at the Bandon River SAC due to a deterioration in water quality during the construction phase. While the risk is low, the precautionary principle will be applied.

Invasive Species:

- Five invasive plant species were identified at the site; the ISMP will address same.
- No significant risk to protected habitats and species at any European site as a result of invasive species from the site.
- Risk of invasive species being introduced onto the site during the construction and operational phase of the project is considered to be low (no importation of soils or materials with the potential to contain invasive species).

Potential Impacts on Water Quality

- No direct hydrological connection between the site and Courtmacsharry SPA. The Bandon River SAC is located upstream of the site on the Bandon River; potential for an indirect hydrological connection.
- Several in-stream construction phase works are proposed; potential for a deterioration in water quality via the release of suspended solids, hydrocarbons and other pollutants.
- Potential for significant effects on protected species or habitats of the Bandon River SAC due to a deterioration in water quality during the construction phase. While the risk is low, the precautionary principle will be applied.
- Due to the potential for indirect significant effects on the Bandon River SAC, mitigation measures will be required during the construction phase.
- No potential operational phase impact arising from wastewater or surface water drainage proposals.

The AA screening conclusion states: *'In the absence of mitigation measures, the proposed development has the potential to have significant effects upon the qualifying interests/ special conservation interests of the Bandon River SAC (Site Code: 002171) due to a potential deterioration in water quality during the construction phase. Therefore, a Natura Impact Statement is required.'*

Submissions and Observations

Submissions from prescribed bodies were made on the application; Inland Fisheries Ireland, Uisce Eireann and the HSE EHO. No objections to the project are raised, and conditions are recommended which are incorporated into the planning authority's grant of permission.

The PA (Ecology Officer report) undertook an appropriate assessment of the project. The applicant's NIS was relied upon, and the decision to screen in Courtmacsharry Bay SPA and Bandon River SAC for further consideration is noted. In its Stage 1: AA, the PA screened out Courtmacsharry Bay SPA from further consideration as it was considered that due to the separation distance (c.10.7km) '…*it is unlikely that the proposed development would reduce significant areas of foraging habitat for these species'.* Bandon River SAC was screened in for further assessment with potential impacts identified on water quality and spread of invasive species.

Appeal grounds do not include the potential impact of the project on European sites.

Potential Impact Mechanisms from the Project

Effect Mechanisms

Having regard to the screening information in the applicant's NIS and the PA's Stage 1: AA screening, the characteristics of the project in terms of the site's features and location, and the project's scale of works, I consider the following impact/ effect mechanism requires examination for implications for a likely significant effect on one European site, the Bandon River SAC (site code: 002171).

A) Deterioration in water quality during the construction phase.

In respect of Courtmacsharry Bay SPA, I note that the applicant's NIS states that the SPA was screened in due to its proximity to the project (pg. 24). There is no direct or substantive indirect hydrological or ecological connection between the SPA and the project. The screening information in the NIS does not identify any potential risk to the SPA from the project in respect of disturbance to protected habitats and species, risk from invasive species, or potential impacts on water quality. The SPA was screened in for further consideration due to the application of the precautionary principle (note: ultimately the applicant's NIS for the SPA identified no potential for impact (Table 9.1)). In my opinion, an overabundance of precaution has been applied.

In my opinion, based on the range of information in the NIS, and having regard to the PA's Stage 1: AA screening decision, I consider that there is sufficient evidence on the case file to reasonably screen out Courtmacsharry Bay SPA from further consideration at this screening stage of the AA.

European Sites at Risk

Table 1: European Sites at risk from impacts of the proposed project

Effect mechanism	**Impact pathway/ Zone of influence**	**European Site(s)**	**Qualifying/ Conservation interest features at risk**
A) Deterioration in water quality during the construction phase	Impact via an indirect hydrological pathway.	Bandon River SAC (site code: 002171)	Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

			Lampetra planeri (Brook Lamprey) [1096]

Identification of likely significant effects on the European site(s) 'alone'

Table 2: Could the project undermine the Conservation Objectives 'alone'

European Site and qualifying feature Bandon River SAC (site code: 002171)	**Conservation objective**	**Could the conservation objectives be undermined (Y/ N)?**			
		Effect A	**Effect B**	**Effect C**	**Effect D**
Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] Lampetra planeri (Brook Lamprey) [1096]	*To restore the favourable conservation condition of…* *To maintain the favourable conservation condition of…*	Y			

Effect Mechanism A (deterioration in water quality during the construction phase)

- Potential for significant effects on protected species or habitats of the Bandon River SAC due to a deterioration in water quality (via the release of suspended solids, hydrocarbons and other pollutants) during the construction phase.

Appropriate Assessment: Stage 1 Conclusion – Screening Determination

In accordance with section 177U of the Planning and Development Act 2000 as amended, and on the basis of objective information, having carried out Appropriate Assessment screening (Stage 1) of the project, it has been determined that the project may have likely significant effects on Bandon River SAC (site code: 002171) in view of the site's conservation objectives and qualifying interests. An Appropriate Assessment (Stage 2) is therefore required of the implications of the project on the qualifying interests of the SAC in light of their conservation objectives.

The possibility of likely significant effects on other European sites has been excluded on the basis of the nature and scale of the project, separation distances, and the absence of meaningful pathways to other European sites.

No measures intended to avoid or reduce harmful effects on European sites have been taken into account in reaching this conclusion.

Appropriate Assessment
Stage 2

Aspects of the Proposed Development

Applicant's NIS

Subsequent NIS stage key findings include:

- Potential for water quality deterioration through the release of suspended solids during the in-stream and soil disturbing works.
- Suspended solids could become entrained in surface water run-off and could affect aquatic QIs through deposition.
- Indirect adverse effects can occur to Floating River Vegetation due to a deterioration in water quality.

- Given the separation distance, a potential deterioration in water quality would not be anticipated to significantly affect Alluvial Forests.
- Freshwater Pearl Mussel are sensitive to sedimentation and nutrient enrichment. As the larval stages rely on salmonid fish hosts, any potential impact on salmonid fish can have an impact upon the Pearl Mussel.
- A deterioration in water quality could impact on Salmonid fish thereby indirectly impacting on Freshwater Pearl Mussel. The release of sediments also has the potential to have an indirect adverse effect on Salmonoids.
- Indirect adverse effects could occur to the Brook Lamprey due to a potential deterioration in water quality during the construction phase.

PA's Stage 2: AA

In the PA's State 2: AA (presented in the Ecology Officer's report), regard is had to the mitigation measures in the NIS, EIAR (Biodiversity chapter), and ISMP. It is concluded that: '*On the basis of the information provided and the assessment above, I am satisfied without reasonable scientific doubt that, with the implementation of the mitigation measures proposed, the construction and operation of the proposed development will not adversely affect (either directly or indirectly) the integrity of the Bandon River SAC any European site, either alone or in combination with other plans or projects.'*

Mitigation Measures

The description and consideration of the impacts of the project are the subject of the EIAR (e.g. Biodiversity chapter), NIS, CEMP, and ISMP. A range of mitigation measures are identified during the construction phase of the project to protect water quality and the dependant protected species and habitats.

The mitigation measures relevant to protecting the European sites are included in the NIS and are outlined under the following headings:

- Mitigation measures prior to commencement of the proposed development
- Biosecurity Measures
- Measures for the installation of new headwalls
- Measures for installation of a new foul water pipe

- Measures for the construction of the new vehicular and pedestrian bridges
- Construction measures for the removal of an existing culvert
- Water quality mitigation measures for the remainder of the construction phase
- Mitigation measures once all construction works have ceased

Where relevant, likely significant effects on the European site(s) 'in-combination with other plans and projects'

Table 3: Plans and projects that could act in combination with effect mechanisms of the proposed project (e.g. approved but uncompleted, or proposed)	
Plan / Project	**Effect mechanism**
Listed in Section 11.0 of the NIS (Table 11, pgs. 59-61) with additional references to known undecided cases	A) as per Table 1 above

I have had regard to the information included in the EIAR, NIS, and CEMP, and information provided in the PA's reports (Ecology Officer, Environment Report, Planning Officers). I have also reviewed the planning registers (PA, ACP) and had regard to planning applications in Bandon town (see section 5.0 of this report above). I do not identify any significant in-combination effect from same.

In respect of relevant plans, I identify that SEA was undertaken by the planning authority in respect of the Cork County Development Plan 2022-2028. The CDP includes policies and objectives seeking environmental protection and pollution prevention and requiring projects to be constructed to/ operate within industry standards with connection to/ servicing by public water services infrastructure.

Table 4: Could the project undermine the Conservation Objectives in combination with other plans and projects?		
European Site and qualifying feature	**Conservation objective**	**Could the conservation objectives be undermined (Y/ N)?**

		Effect A	Effect B	Effect C	Effect D
Bandon River SAC (site code: 002171) As per Table 1 above	As per Table 2 above	N			

Appropriate Assessment: Stage 2 Conclusion

The project has been considered in light of the assessment requirements of sections 177U and 177V of the Planning and Development Act 2000, as amended. On the basis of objective information, I have assessed the implications of the project on Bandon River SAC in view of the site's conservation objectives. I have had regard to the applicant's Natura Impact Statement, the report of the PA's Ecology Officer, and all other relevant documentation and submissions on the case file. I consider that the information included in the case file is adequate to allow the Commission to carry out of an Appropriate Assessment.

Following the Appropriate Assessment (Stage 2), it has been concluded that the project, individually and/ or in-combination with other plans or projects would not adversely affect the integrity of Bandon River SAC (site code: 002171) in view of the site's conservation objectives and qualifying interests.

This conclusion is based on:

- An assessment of all aspects of the project including proposed mitigation measures relating to the conservation objectives of Bandon River SAC.
- An assessment of in-combination effects with other plans and projects including historical and current plans and projects.
- There being no reasonable scientific doubt as to the absence of adverse effects on the integrity of Bandon River SAC.

Inspector: _____ **Date:** __13th October 2026_