



An
Coimisiún
Pleanála

Inspector's Report

PL-501045-WD-26

Development

Demolition of existing temporary structures and construction of post primary school.

Location

Gaelcholáiste Phort Láirge,
Bishopscourt, Ballygunner, Waterford

Planning Authority

Waterford City and County Council

Planning Authority Reg. Ref.

25/60541

Applicant(s)

Minister for Education and Youth

Type of Application

Permission

Planning Authority Decision

Grant Permission + Conditions

Type of Appeal

First Party Normal Planning Appeal

Appellant(s)

Minister for Education and Youth

Observer(s)

None

Date of Site Inspection

28th May 2026

Inspector

Phillippa Joyce

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1.0 Site Location and Description

- 1.1. The appeal site is located at Bishopstown, Ballygunner, in the southeast of Waterford City. The site is located in the outer suburban/ rural edge of the city, c.3.5km to the northwest of Waterford Airport.
- 1.2. The site is rectangular in configuration and indicated as measuring c.2.2ha. The site accommodates the existing Gaelcholaiste Phort Lairge school complex, with several portacabins, set down areas, and surface car parking area positioned in the southern portion of the site. The northern portion of the site is greenfield in nature. Access to the school grounds is gained from Ballygunner Road (local tertiary road, L-90708), the site's western boundary.
- 1.3. Adjacent to the west, south and east of the site are detached dwellings, agricultural buildings and fields, and wetlands. Lands to the north of the site are more developed, comprising St. Mary's national school, Ballygunner GAA grounds, Aperee Living nursing home, Haven Wood retirement village, and Kilcarragh Park residential estate.
- 1.4. The topography of the site is notable with ground levels decreasing in a southeasterly direction across the site from Ballygunner Road. The site drains to an existing ditch/ stream which runs along the eastern boundary of the site.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Demolition of c.1,153sqm temporary educational facility consisting of prefabricated single storey buildings, comprising of 14 classrooms, 1 staff room, administration offices, toilet blocks, vehicular and pedestrian access gates, signage, car park, footpath and astro turf pitch.
 - Demolition of 77sqm of a temporary creche facility comprising of prefabricated single storey building with outdoor play area.
 - Construction of a new standalone 5,573sqm post primary school. Accommodation provides for 2 classroom special education needs unit with all associated facilities, 12 general classrooms, 1 multimedia room, 1 music

room, 1 textile room, 1 design room, 1 graphics room, 2 science laboratories with associated preparation room, 1 engineering room, 1 construction studies with associated preparation room, 1 art room with associated project store, 1 home economics room, 1 library, 1 general purpose hall, 1 staff room, 1 kitchenette, 3 SET Rooms, 7 administrative rooms, 1 multi use hall and associated PE store, 1 fitness suite, 2 changing rooms, ancillary accommodation and circulation.

- Realignment of roadside boundary, reconfiguration of existing entrance egress, construction of a new pedestrian path, cycle path, new entrance access road, front boundary wall with signage, 2 No. gates, a public drop-off area and 1 no bus stop.
- Construction of a new internal carriageway, car park with 48 no. car park spaces, parent drop off area, 70 no. cycle space, 4 No bus drop off, 2 No special education needs unit drop off and new signage above the main building entrance.
- Construction of ESB substation, switch room, foul pump station, bio retention soakaway, LPG area, bin store, external store, covered yard, heat pump compound, 3 ball courts, 1 Astro turf pitch, and all associated ancillary site development, drainage, fencing and landscape works.

2.2. During the assessment of the application, Further Information (FI) was requested by the planning authority (see section 3.0 below for details). In response to the FI request, the applicant made minor revisions to and provided technical assessments for the proposed development.

2.3. For the Commission's clarity, my assessment (as contained in the sections of this report below) has had regard to the initially lodged plans and particulars as amended by those associated with the FI response.

3.0 Planning Authority Decision

3.1. Summary of Decision

- 3.1.1. The application was lodged with the planning authority on 1st August 2025. On 24th September 2025, the planning authority requested Further Information (FI), which

the applicant responded to on 30th January 2026. On 26th February 2026, the planning authority issued a Notification of Decision to Grant Permission for the proposed development subject to 14 conditions.

3.2. Planning Authority Reports

3.2.1. Planner's Report

Initial Assessment

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

- Access/ Roads
- Services
- Amenity/ Privacy
- Levels
- Archaeology
- Ballygunner Bog cNHA
- Flood Risk Assessment
- Aviation Glint and Glare Assessment.

The majority of the headed items were assessed as being acceptable. The initial assessment concludes with a recommendation that FI be requested from the applicant.

Further Information Assessment

A FI request issued to the applicant relating to five items as follows:

- i. Services (surface water management and SuDS measures).
- ii. Access/ Roads (taken in charge areas, conflict between pedestrians and cyclists in the bus set down area, single lane exit route, additional drop off bays, lighting scheme, surface water drainage details for parking/ shared path, sightlines, and indication on use of gates).
- iii. Services (location details on connection to wastewater public network).

- iv. Aviation Glint and Glare Assessment (provide an Aeronautical Safety Assessment).
- v. Amenity/ Privacy (impact to/ on first floor windows in adjacent nursing home).

Key revisions made to the proposed development in the FI response include:

- Minor amendments to/ clarifications on surface water drainage proposals.
- Minor amendments to the access and traffic arrangements (single lane exit, additional drop off area, taking in control details, indication of sightlines).
- Revisions to first floor level window designs (high level) on northern elevation to prevent potential overlooking of nursing home.
- Provision of an Aeronautical Safety Assessment (no impact on Waterford Airport).

On assessment of the FI response, the planning authority found the responses to be satisfactory.

The planning authority undertook screenings in respect of EIA, and the Habitats and Water Framework Directives, screening out the need for each respective assessment.

Recommendation

The planning authority states regard was had to the nature of the development, the zoning provisions, and type of development in the vicinity of the site. It is concluded that the proposal would be in accordance with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

Roads Section: Comments made on proposal. FI response stage, planning officer's report refers to the referral report, condition recommended (basis for Condition 14).

Environment Section: No objection subject to condition.

Metropolitan Municipal District Department: No initial report on case file. FI response stage, planning officer's report refers to the referral report, condition recommended (basis for Condition 2).

3.2.3. Planning Conditions

The planning authority's Notification of Decision to Grant Permission for the proposed development is subject to 14 conditions. These are both bespoke and standard conditions, some arising from technical reports.

Due to the nature of the appeal, the following conditions are of relevance to the grounds of appeal:

Condition 2

The development shall be revised to provide for the realignment of the public road and for the provision of a bus lay-by and roundabout to provide for public transport bus services to serve the development. The final layout and detailed design shall be agreed in writing with Waterford Metropolitan Municipal District Department, Waterford City & County Council prior to the commencement of development and shall include the following:-

(i) A bus lay by shall be provided, located between the northern vehicular entrance to the site and southern vehicular exit from the site as identified on the site layout plan submitted to the Planning Authority. The proposed car parking spaces perpendicular to the public road, bus set down area, shared bicycle and pedestrian path, ramped access, steps, car parking further to the east, internal access road(s) etc. shall be revised accordingly to accommodate this requirement.

(ii) Public road realignment and the provision of a new roundabout at the location of the vehicular exit from the site (southern exit) as identified on the site layout plan submitted to the Planning Authority, to include public road realignment/new road from the new roundabout required by this condition, within the confines of the site to link with existing public road to the south of the site. This will necessitate revising the location of the proposed 5 a side astro pitch, internal road layout, car parking spaces, walkways etc.

Prior to the commencement of development, a revised layout and detailed design as agreed with Waterford Metropolitan Municipal District Department shall be submitted to, and agreed in writing with, the Planning Authority. The development shall be carried out in accordance with the agreed revised detailed design and agreed layout.

Reason: To enable the provision of public transport facilities to serve the development and the proper planning and development of the area.

Condition 14

In accordance with the Development Contribution Scheme adopted by Waterford City & County Council on the 9th February 2023 the developer shall, prior to the commencement of development, make a Special Contribution of €125,000 (one hundred and twenty five thousand euro) to the Planning Authority in respect of specific exceptional costs that will be incurred by the local authority in respect of the provision of a pedestrian crossing point to the north of the site to facilitate the development. The contribution will be subject to the provision for refund set down in Section 48(12) of the Planning and Development Act 2000 (as amended). (The contribution rates payable will be adjusted annually commencing on the 1st January of each year. The adjustment will be based on changes to the Whole Sale Price Index for capital goods, building and construction published by the Central Statistics Office.)

<i>Special Contributions</i>
<i>€125,000.00</i>

Reason: It is considered reasonable that the developer make a contribution towards the exceptional costs to be incurred by the local authority in the provision of infrastructure that will facilitate the development in accordance with the terms of the Development Contribution Scheme adopted by Waterford City & County Council on the 9th February 2023 towards expenditure incurred or that is proposed to be incurred by the Local Authority in respect of works which facilitate the development.

3.3. Prescribed Bodies Submissions

Irish Aviation Authority: FI requested (requests an Aeronautical Safety Assessment).
No subsequent report.

Waterford Airport: As above.

Development Applications Unit, Department of Heritage: No objection subject to condition.

Transport Infrastructure Ireland: No objection subject to condition.

Uisce Eireann: Confirmation of Feasibility report with application. Connections are feasible without infrastructure upgrades.

3.4. Third Party Observations

- 3.4.1. No third-party submissions were received on the application by the planning authority.

4.0 Planning History

Appeal Site

Planning history at the appeal site dates from 2011 to 2022 and relates to the development of the site for educational purposes (as outlined in the planning authority's report (pgs. 2-4)).

5.0 Policy Context

5.1. Local Policy Context

- 5.1.1. Waterford City and County Development Plan 2022-2028 (CCDP) is the applicable development plan for the assessment of the appeal case. The CCDP comprises several volumes including Volume 1: Written Statement, Volume 2: Development Management Standards, Volume 3: Appendices, and Volume 4: Maps.
- 5.1.2. Relevant policy and objectives from Volume 1 include those in Chapters 4 and 5. From Volume 2 are those in Sections 5.0, 7.0, 9.0 and 11.0, and from Volume 3 are those in Appendices 8 and 11 (the latter to be read in conjunction with Volume 4: Maps (Map 5: Natural Heritage Map)).
- 5.1.3. The relevant CCDP policy and objectives include:

Volume 1

- Chapter 4: Economy, Tourism, Education and Retail
 - Policy Objective EDU 01: Education Facilities

In collaboration with the Department of Education, Coiste Cúram Leanaí - Waterford Childcare Committee, SETU, Waterford and Wexford Education and Training Board and other agencies we will support the provision of education facilities such as childcare, first and second level schools, and tertiary/ lifelong learning across all providers; in so doing, the Development Plan will seek to ensure that an adequate quantity and range of serviced and appropriately zoned land is available for the provision and expansion of education facilities throughout the City and County.

While having a flexible approach to the reuse and redevelopment of redundant educational buildings/ facilities and sites for future educational use; we will protect certain sites where this would support the provision or improvement of education facilities and secure the provision of mixed use, compact 10-minute neighbourhoods.

Schools and educational facilities should:

- Be provided in accordance with the guidance set out in Guidelines on Sustainable Residential Development in Urban Areas.*
- Be located so as to be easily accessible by public transport and/ or active modes.*
- Be delivered at appropriate locations and in support with new residential developments.*
- Take into account, in the design and layout of the facility, the development management standards set out in Volume 2 the Development Plan.*
- Be provided in recognition that new residential communities can generate demand for additional school places, and that it is vital to the process of supporting sustainable communities, that the necessary increased capacity in school facilities, either in the form of new schools, or the expansion of existing schools, is provided;*
- Have regard to other policies of this Development Plan, insofar as they relate to proper and sustainable development, and supports an ecosystem*

services approach to provision and our just transition to a low-carbon economy.

- Chapter 5: Transportation
 - Policy Objective Trans 50

It is an objective to support the following transport priorities across Waterford County and in the Waterford Metropolitan Area subject to their consistency with the recommendations of the WMATS or any future LTPs and or County Transport Plan, the outcome of environmental assessments and the planning process including mitigation under SEA/ AA as appropriate:

- *R710 Waterford City Outer Orbital Route*

(note: the outer orbital route is to the north of the site).

Volume 2

- Section 5.0 Non-Residential Development
 - Development Management DM 17 – requires a Traffic and Transport Assessment for education development in excess of 2,500sqm.
- Section 7.0 Parking Standards
 - Table 7.1, car parking, Secondary School, 1.25 per classroom
 - Table 7.2, cycle parking, Post-Primary School, 1 short-stay space per 5 students, 1 long-terms space per 5 staff members
- Section 9.0 Other Development Considerations
 - Development Management DM 50 – requires a Mobility Management Plan for new schools/ educational facilities/ extensions of.
- Section 11.0 Zoning and Land

Table 11.1 Land Use Zoning Objectives

The site is zoned as 'Community Infrastructure CI' which seeks to '*Provide for and protect civic, educational, religious, community, health care and social infrastructure*'.

Table 11.2 Zoning Matrix

'Education' is a permitted in principle land use class under the 'Community Infrastructure CI' zoning.

Volume 3

- Appendix 8: Landscape and Seascape Character Assessment

Section 4.3(a) Low Sensitivity Areas

The site is located within a 'Low Sensitive' Scenic Classification (as per Map A8.3).

....These areas have potential to absorb a wide range of new developments subject to normal planning and development control procedures.

- Appendix 11: Natural Heritage Assets (to be read in conjunction with Volume 4: Maps (Map 5: Natural Heritage Map).

Hedgerow boundaries at the site are categorised as 'biodiversity' under primary green infrastructure value.

To the east of the site is Ballygunner Wetlands, categorised as 'biodiversity' under primary green infrastructure value.

5.2. National Policy Context

Section 28 Ministerial Planning Guidelines

5.2.1. The relevant planning guidelines include the following (my abbreviation in brackets):

- Development Management, Guidelines for Planning Authorities, 2007 (Development Management Guidelines).
 - 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 7.7 relates to conditions directly departing from the application. A condition which radically alters the nature of the development to which the application (e.g., a complete re-design of a development), will usually be unacceptable.

- Section 7.9 provides guidance on conditions that require matters to be agreed. Key points include the following:
 - Such conditions should be avoided where the matters involved are of a fundamental nature or such that third parties could be affected.
 - Conditions requiring matters to be agreed with a particular department of the local authority should not be attached to a permission.
 - An applicant should not be required by condition to ascertain and comply with the requirements of a particular department of the local authority or to comply with some general requirements of the authority that are not clearly spelled out in the permission or elsewhere.
 - If the matter in question is of genuine planning concern, it should be dealt with in the decision order, or be made the subject of a further permission or an agreement with the planning authority; if the matter is not proper to planning, it should be omitted entirely from the decision.
- Section 7.12 applies to conditions requiring development contributions. Section 48(2)(c) of the Planning Act allows for special contributions for specific exceptional costs not covered by a development contribution scheme. The basis for the calculation of the contribution should be explained in the planning decision. 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.

5.3. Natural Heritage Designations

- 5.3.1. The appeal site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA (pNHA).
- 5.3.2. The pNHA designations in proximity to the appeal site include:
 - King's Channel pNHA (001702) is c.1.61km to the northeast.
 - Kilbarry Bog pNHA (001700) is c.3.51km to the west.

(Note: Ballygunner Wetlands is located to the east of the site. I note that reference is made to Ballygunner Bog 'cNHA' in the planning authority's report. I have reviewed the development plan maps (including Map 5: Natural Heritage Assets), the NPWS website and available records (correct as of the date of this assessment) and have not identified the wetlands as an official pNHA designation).

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

- Lower River Suir SAC (002137) is c.1.66km to the north.
- Tramore Back Strand SPA (004027) is c.5.74km to the south.
- Tramore Dunes and Back Strand SAC (000671) is c.5.74km to the south.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. This is a first party appeal in respect of the decision by Waterford City and County Council to grant permission for the development. The appeal grounds relate to specific conditions only and the appeal can therefore be considered under section 139 of the 2000 Planning and Development Act, as amended.

Context

- Appeal relates to specific conditions only; these are Conditions 2 and 14.
- Applicant is satisfied with the remainder of the decision to grant permission.

Condition 2 – Revised Site Layout

- Condition 2 is unreasonable and unjustified in the context of a school upgrade project.
 - Condition parachuted in, unreasonable, unjustified, unexpected.
 - Matters in the condition not raised during the entire pre-planning and planning application process (including FI request).
 - Matters not included in any report provided by any referral body (NTA had not provided an initial report).

- NTA request for a roundabout arose at a meeting after FI request; not possible to respond to same as not part of the formal request.
- Applicant required to provide an entire new roundabout at significant cost.
- Condition 2 represents a poorly considered and imbalanced assessment of needs.
- Road infrastructure should have been upgraded by the local authority many years ago; burden (general need for a roundabout in the area) now being placed on the school.
- Condition 2 is not properly applied as regards Section 34(4) of the Act.
 - Lands subject of Condition 2 are not under the applicant's control; outside of the red and blue line boundaries.
 - Requirements are not expedient for the purposes of or in connection with the development authorised by the permission.
 - Development is not necessary to facilitate the proposed development; will instead delay it.
 - Not the responsibility of one school project to deliver infrastructure on behalf of the council without any prior consultation.
 - Concerns arise that council's road engineers have placed the planning authority in a position where an ultra vires condition has been applied.
 - Requirements of Condition 2 are not needed only in connection with the school project; much pertains to public works to the road including an entirely new roundabout.
 - Condition sets out several requirements which are disproportionate to the needs of a single school.
 - Requires development far in excess of the needs of the school; would be primarily used by road users with no connection to the school.
 - Council has not indicated how it will contribute or pay for the additional works, how they would be taken charge, or how it would enter into an

agreement with the applicant with respect to the provision of these public facilities.

- Council placing the burden of paying for public infrastructure (land and money) on the school and the Department; so as to avoid paying fully or partly for it.
- Condition is not an acceptable condition applied outside of Section 34(4).
 - Regard has not been had to the provisions of the development plan (no policy or objective relating to the required works; no statutory basis).
 - No specific policy or objective requirement in any Section 28 guidelines which requires the development as set out in Condition 2.
 - No other national or regional policy framework requiring same.
- Condition 2 is an unacceptable 'point of detail' condition under Section 34(5) of the Act.
 - Condition not only looking for "details"; requiring the full re-design of the scheme to facilitate heavy infrastructure public works.
 - Not some new small and minor matters to be agreed; represent significant and material developments.
 - Proposal includes improvements to school bus and public bus access.
 - Purpose of condition is not to agree points of detail but to force the applicant to cover the land and financial costs of public works which are the local authority's responsibility.
 - Overall objective to be achieved by the matters to be agreed is unclear.
 - Points of details in condition have not been subject to environmental assessments.
- Inadequate reasons provided for the decision (as per Section 34(10) of the Act).
 - Planning authority unable to provide reasons and considerations for the imposition of Condition 2; one line justification is not enough.

- Content of Condition 2 was not raised in the original Planner's Report or raised in the FI request.
- Condition is at odds with the planning assessment conducted by the planning authority including by Roads.
- No environmental screening of Condition 2 took place; concerns regarding the status of the reasoned conclusion.
- Decision lacks transparency; no reasoning provided for the inclusion of the condition.
- Condition 2 is contrary to the Development Management Guidelines.
 - Condition 2 is not precise; ambiguous as regards how it could be implemented on the existing school site.
 - Condition 2 is not necessary; the proposal already includes an upgrade of the interface with the public road, how it serves school buses and other vehicles, and its parking arrangement.
 - Condition 2 is not relevant to planning; not directly related to the development to be permitted.
 - Condition 2 is not relevant to this planning application; no development plan policy or public transport plan indicating these requirements.
 - Condition 2 is relevant only to the council as the roads authority for the area.
 - Condition 2 refers to the need for public works not for this project specifically, but in general alongside the school.
 - Condition 2 is not enforceable as presently written; it cannot be implemented.
 - Condition is unwieldy, imprecise (reference to use of some public transport), not understandable (vague references).
 - Condition 2 is wholly unreasonable; requires the applicant to realign a public road – works for which no consent has been obtained, which have not been advertised in statutory notices, or environmentally screened.

- Requests that Condition 2 be removed in its entirety.

Condition 14 – Special Development Contribution

- Applicant willing to pay Condition 14 if Condition 2 is removed.
- Condition 14 lacks adequate rigour in terms of its proper application by the planning authority.
- Outlines background to the pedestrian crossing; discussed at preplanning, considered in the Road Safety Audit (Problem P13), found it to be a road safety issue, excluded from the planning application.
- Requests Commission to consider the current appearance of the Ballygunner Road to the north of the site; outlines the nature and extent of footpaths on either side of the road.
- Unclear what exactly the applicant is being asked to contribute to; at the end of the existing extent of footpath on the eastern side of the road, there is no footpath to cross to on the north side of the road.
- Unclear how the school would benefit from a pedestrian crossing sited a considerable distance from the school's proposed new entrance and on the other side of the road from which there is no existing footpath.
- Proposal includes very detailed improvements to the existing pedestrian facilities offered by the school; which connect to the footpath to the north/northwest. All other areas are outside of the red line boundary.
- Considers that all appropriate pedestrian infrastructure improvements have been included in the final scheme design; to be paid for by the school and the Department.
- No General or Specific Local Objective in the CDP which requires the provision of any new pedestrian crossing at this location.
- No reference in the Development Contribution Scheme to provision of a pedestrian crossing in Ballygunner.
- Roads Engineer FI stage report suggested a Special Development Contribution but offered no reason why and did not specify an amount.

- Development Contribution Scheme states that such contributions apply only to development which will benefit directly from the public infrastructure facility in question.
- Planning authority is required to specify in the condition the particular works to be carried out to which the contribution relates; no such list referred to/ applied by the planning authority.
- One item is referred to in the condition, a pedestrian crossing, which would be excessively costly at €125,000 and the need for this as part of this project is unproven.
- No adequate justification for the proposed €125,000 bill to be paid by the applicant.
- Unclear why €125,000 should be paid, especially as no pedestrian crossing is included in the project and none appears to be planned at present.
- Development Contribution Scheme allows for reduced development contributions for proposals which have social benefits and where there is no additional demand on infrastructure; no such reduction has been applied.
- Contribution of €125,000 is considered to be excessive; a reduced fee and the removal of Condition 2 would represent a more reasonable and fair approach to the levying of development contributions on this school project.
- Requests that Condition 14 be amended.

6.2. Planning Authority Response

- 6.2.1. No response has been received from the planning authority to the appeal.

6.3. Observations

- 6.3.1. None.

7.0 Planning Assessment

7.1. Scope of the Appeal

- 7.1.1. In determining the scope of the appeal, it is necessary to consider the provisions of section 139 of the Planning and Development Act 2000, as amended (2000 Act), and

the reasons as to why a determination by the Commission of the application in the first instance is not warranted.

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

- 7.1.2. The planning authority granted permission for the proposed development, the first party appeal relates exclusively to two conditions, and the applicant indicates satisfaction with the remainder of the decision. I consider the appeal can be considered under section 139 of the 2000 Act and satisfies the provisions of section 139(1)(a) and (b).
- 7.1.3. 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 this subsection below, in short, I am satisfied that in having regard to the nature of the two conditions appealed, such a determination is not warranted.
- 7.1.4. Section 139(1)(c) allows the Commission to give directions to the planning authority, 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'*.
- 7.1.5. 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 (including screening the need for an appropriate assessment of the proposed development on European sites)).
- 7.1.6. For this appeal case, these matters predominantly relate to the policy context formed by the development plan, development contribution scheme, section 28 guidelines (relevant provisions are cited in section 5.0 of this report above), and proper planning and sustainable development of the area.
- 7.1.7. In respect of section 139(2)(b), there are no grants of permissions with terms that are relevant to the determination of this appeal case.
- 7.1.8. Finally, in respect of the proposed development, I have carried out screening exercises for environmental impact assessment (EIA), appropriate assessment (AA),

and water status impact assessment (WSIA). These are presented in sections 8.0, 9.0, and 10.0 of this report below.

7.2. Determination of the Application in the First Instance

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

Nature of the Conditions

7.2.2. The applicant has appealed two planning conditions (cited in full in section 3.0 above). The first condition (Condition 2) requires significant revisions be made to the scheme (realignment of the public road, provision of a bus lay-by and roundabout to enable public transport to serve the proposal), and the other condition (Condition 14) requires payment of a special development contribution for a pedestrian crossing.

7.2.3. I note that both conditions require and/ or relate to works for which planning permission was not applied for in the proposed development (i.e., a bus lay-by, roundabout, and pedestrian crossing). As such, I consider that the appealed conditions can be appropriately assessed through section 139 of the 2000 Act.

7.2.4. The section allows for the amendment and/ or removal of conditions, and as the appealed conditions require works that were not proposed, the amendment or removal of same would not materially affect the proposed development.

Planning Authority Decision

7.2.5. From a review of the case file, the proposed development has been subject to several stages of assessment. The applicant and planning authority undertook preplanning consultations, the proposal was subject to a FI request and response

process, a range of environmental screening processes, and there are conditions attached to the grant of permission to manage its implementation and operation.

7.2.6. In its assessment (initial and FI response), the planning authority found the development to be in accordance with development plan policy and provisions (no material contraventions are identified, no concerns in respect of national policy requirements raised). Compliance is indicated in respect of the following:

- Principle of development (e.g., zoning and use class).
- Qualitative features (e.g., layout, levels, amenity of adjacent properties, prevention of overlooking).
- Quantitative metrics (e.g., car and cycle parking provision).
- Impacts on the receiving environment (e.g., biodiversity, archaeology, traffic and transportation, water services and utilities, aviation).

7.2.7. Further, I note that the internal sections of the planning authority and the prescribed bodies indicate satisfaction with and no objection to the proposed development.

Other Conditions attached to the Grant of Permission

7.2.8. Of the conditions attached to the grant of permission, I have reviewed the remaining conditions which are not subject of this appeal. I find these to be a mix of bespoke and standard conditions, a number arising from the requirements of the internal sections.

7.2.9. The basis or reasons for the conditions include addressing the requirements of the development plan, for public health and safety, safeguarding the amenities of the area, and proper planning and sustainable development. I consider that the conditions attached to the grant of permission are acceptable and would address planning considerations 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).

Nature of Third-Party Involvement in the Appeal Case

7.2.10. There are no third-party appellants against the planning authority decision, or observations on the appeal.

Compliance with Applicable Local Policy

- 7.2.11. For the most part, I concur with the planning authority's positive assessment of the proposed development. From a review of the application and appeal documentation, I consider that the applicant has demonstrated the proposed development complies with local development plan requirements.
- 7.2.12. From my assessment of the appeal case, I consider that the proposed development is of an appropriate nature, scale and extent for the site and location, is accompanied by the necessary plans and particulars (e.g., Traffic and Transport Assessment, Mobility Management Plan) demonstrating same, complies with the applicable 'Community Infrastructure CI' zoning objective, and with other relevant policies and objectives relating to education, transportation, landscape, and natural heritage assets (cited in section 5.0 of this report above).

Conclusion

- 7.2.13. In conclusion, due to the nature of the conditions to which the appeal relates, the positive assessment of the proposal by the planning authority and prescribed bodies, the scope of the other conditions, the absence of third-party involvement in the appeal case, and the extent of compliance with applicable local policy, 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.

7.3. Condition 2 – Revised Site Layout

- 7.3.1. Condition 2 requires that revisions be made to the site layout of the scheme involving the realignment of the public road, the provision of a bus lay-by and of a roundabout. The condition has two parts, (i) and (ii), detailing the revisions to be made to the scheme; the final layout and design are to be agreed with the planning authority; and the reason given for the condition is to enable the provision of public transport facilities to serve the development.
- 7.3.2. From a review of the case file, the basis for Condition 2 arises from the referral report of the Metropolitan Municipal District Department. At FI response stage, the planning officer's report refers to the internal report, which is included at the end of the planning report. The referral report includes an attachment entitled 'Gaelcholaiste Phort Lairge – roundabout sketch.pdf'.

- 7.3.3. For the determination of this appeal, the Commission requested and received a copy of the attachment from the planning authority. The attachment is drawing entitled 'Ballygunner Bus Terminal, Proposed Roundabout, General Arrangement', Dwg No.: PTSDT-ACM-GEO_GA_0045_XXX-XX-DR-CR-0004. The drawing is indicated as having been prepared for the NTA, dates from February 2026, and is stated as being 'Draft Copy; Work in Progress'.

Appeal Grounds

- 7.3.4. The appeal grounds include strong opposition to the attachment of Condition 2 to the planning authority's grant of permission. The applicant submits the condition is unjustified in the context of a school upgrade project, is not properly applied under the provisions of section 34 of the 2000 Act (particularly subsections 34(4), (5) and (10)) and is contrary to several requirements in the Development Management Guidelines.
- 7.3.5. The applicant requests that Condition 2 be removed.

Development Management Guidelines – Criteria for Planning Conditions

- 7.3.6. There is a degree of overlap between appeal grounds in the appeal. I consider that the veracity of condition can be adequately assessed by having regard to the guidance on the criteria of planning conditions contained in Section 7.3 of the Development Management Guidelines. I propose to consider the condition under each criterion below.

Necessary

- 7.3.7. The condition requires the realignment of the public road, the provision of a bus lay-by and of a roundabout, all within the confines of the appeal site. The reasons given in the condition include '*to provide for public transport bus services to serve the development*' and '*to enable the provision of public transport facilities to serve the development*'.
- 7.3.8. The site accommodates an existing, operating post-primary school in temporary accommodation, and the proposed development seeks the construction of permanent buildings to serve the educational facility.
- 7.3.9. In respect of access and transport, the proposal seeks the realignment of the roadside boundary (set back into the site), and provision of a bus set down area, a

public vehicular drop off area, a cycle path, a shared pedestrian and cycle path, new entrance gate and internal one-way access road, reconfiguration of the existing entrance as an exit gate (as per FI response, stage Proposed Site Plan: Dwg No.: WFD-MGNE-B2-ZZ-DR-A-0003).

- 7.3.10. While I note the reasons given for the condition are to provide public transport bus services to the school, from a review of the case file I have not been able to identify any additional information or detailed analysis on these public bus services (existing or planned) that would reasonably justify the extent and materiality of the changes to the proposed development sought on foot of Condition 2.
- 7.3.11. That being, I consider that the proposal incorporates several upgrades to the existing infrastructure at the site, which will notably improve access to the school by buses and other vehicles. While I acknowledge that the buses may predominantly include private school bus operators, the proposal ensures sufficient provision for bus-mode transport.
- 7.3.12. While the realignment of the public road to facilitate the provision of a publicly accessible bus lay-by and roundabout (as required by Condition 2) may be desirable in general terms, the planning authority has failed to demonstrate that the provision of same are necessary for the proposed development (i.e., its efficient and/ or safe operation).

Relevant to Planning

- 7.3.13. The requirement in Condition 2 for additional transport infrastructure at the site, to enable the provision of public transport bus services to serve the development, can be considered to serve the proper planning and sustainable development of the area and, therefore, to be of general relevance to planning.
- 7.3.14. However, on the matter of relevancy the guidelines refer to the provisions of section 34(4)(a) of the Planning Act, and state that a condition relevant to planning must be *‘expedient for the purposes of or in connection with the development authorised by the permission’*.
- 7.3.15. I consider that the revisions sought to the proposed development on foot of the condition cannot reasonably be considered to be expedient for the development. The condition requires extensive redesign of the scheme (several items within the

site layout plan are cited as being required to be relocated) and a process of agreement with the Metropolitan Municipal District Department. Conversely, as lodged with the planning authority, the proposed development can be implemented by the applicant. The additional transport infrastructure constitutes general improvements to the area, to the benefit of all road users, and not just the school community.

7.3.16. Related to considerations of 'relevant to planning', I identify guidance in Development Management Guidelines (Section 7.9, cited in section 5.0 of this report above) on conditions where matters are to be agreed, as being applicable to Condition 2. The guidelines state that if the matter in question is of genuine planning concern, it should be dealt with in the decision order, be made the subject of a further permission or an agreement with the planning authority. If the matter is not proper to planning, it should be omitted entirely from the decision.

7.3.17. The guidelines indicate where the use of this type of condition should be avoided. I consider Condition 2 to be in direct conflict with several of the stated requirements as follows:

- the revisions to the scheme involve matters which are of a fundamental nature and have potential to affect third parties (i.e., those who may not have been aware of/ had access to the attachment entitled 'Gaelcholaiste Phort Lairge – roundabout sketch.pdf).
- the condition requires matters (i.e., final layout and detailed design) to be agreed with a particular department of the local authority (the Metropolitan Municipal District Department).
- the applicant is required by the condition to comply with general requirements of the authority which have not been explicitly outlined in the permission (not identifiable in the planning authority's reports) or elsewhere (not definitive from the drawing in the attachment entitled 'Gaelcholaiste Phort Lairge – roundabout sketch.pdf).

7.3.18. Finally, from a review of the policy context, I have not identified any local development plan policy or objective, or national plan policy or guideline requirement, which would necessitate the revisions as included for in the condition (i.e., there is no planning statutory basis for same).

Enforceable

- 7.3.19. In respect of a condition being enforceable, I note that the guidelines advise that conditions shall be effective and capable of being complied with. As is discussed in the following subsection with regard to whether Condition 2 is sufficiently precise, I consider that the condition would not meet these tests for being enforceable.
- 7.3.20. In my opinion, the revisions required in the condition materially amend the layout of the scheme, the references to the items to be redesigned and where to be located to are vague, the process of agreement with the planning authority may not be resolved, and there is no provision for a referral process to the Commission in the event of a dispute. In this regard, I acknowledge the applicant's position that as attached, the condition is unimplementable.

Precise

- 7.3.21. Condition 2 has two sub-items; sub item (i) relates to the bus lay-by, its location, and the elements (seven named plus an 'etc') of the proposed development which '*shall be revised accordingly*'; and sub item (ii) relates to the road realignment and roundabout, their location, and the elements (four named plus an etc) to be revised.
- 7.3.22. I consider the requirements of the condition to be material for the proposal, requiring extensive revisions to the layout, many of which can be anticipated as needing detailed redesign due to the site conditions (the change in ground levels is notable) and to ensure compliance with relevant traffic standards and water services infrastructure. I share the applicant's concerns regarding the number, range, and breath of details that require post-consent agreement.
- 7.3.23. From a review of the case file, I have not identified sufficient details which describe the required amendments to the scheme, substantiate the generality and/ or address the lack of clarity regarding these amendments. As highlighted in the appeal grounds, the requirements of Condition 2 were not raised in the initial planning authority reports or the FI response reports and, therefore, there is insufficient justification for and information on same. I note that there is no initial report from the Metropolitan Municipal District Department, or a report on file from the NTA in its capacity as a prescribed body.

- 7.3.24. I also acknowledge the concerns raised by the applicant in respect of the environmental screenings undertaken by the planning authority as Condition 2 was only attached at the end of the decision-making process. I discuss same in the following sections of this report.
- 7.3.25. Related to considerations of 'precise', I identify guidance in Development Management Guidelines (Section 7.7) on conditions directly departing from the application, as being applicable to Condition 2. The guidelines state that a condition radically alters the nature of the development to which the application (e.g., a complete re-design of a development), will usually be unacceptable.

Reasonable

- 7.3.26. Finally, in respect of whether Condition 2 is reasonable, I share the applicant's concerns. The condition requires the realignment of the road and provision of the bus lay-by and roundabout within the appeal site on lands zoned for 'Community Infrastructure CI' purposes. These works are also to be provided by the applicant with no details available in the case file on the funding or construction programme (including phasing) for same.
- 7.3.27. From the foregoing, I agree with the applicant's position. I find the works required on foot of Condition 2 to be unreasonable and unjustified in the context of a school upgrade project, disproportionate to the needs of a single school, and not the responsibility of the applicant to deliver infrastructure benefitting the wider area.

Conclusion

- 7.3.28. In conclusion, having regard to the nature, scale and extent of the works required by Condition 2 and their being unnecessary for the proposed development, irrelevant to planning, imprecise in intent and implementation, and unreasonable to the applicant, I consider that Condition 2 fails to comply with the requirements of section 34 of the Planning and Development Act 2000, as amended, and the provisions of Sections 7.3, 7.7 and 7.9 of the Development Management, Guidelines for Planning Authorities, 2007, in respect of the criteria for conditions, where conditions depart from the application, and where conditions require matters to be agreed.
- 7.3.29. Condition 2 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.

7.4. Condition 14 – Special Development Contribution

- 7.4.1. Condition 14 requires the applicant to pay a ‘*special contribution*’ of €125,000 ‘*in respect of the provision of a pedestrian crossing point to the north of the site to facilitate the development*’. The reason given for the condition is for the developer to ‘*make a contribution towards the exceptional costs to be incurred by the local authority in the provision of infrastructure that will facilitate the development*’.

Appeal Grounds

- 7.4.2. In the appeal, the applicant outlines the context surrounding the pedestrian crossing and reasons as to why the crossing had not been included in the proposed development. Appeal grounds include the lack of clarity on the infrastructure to be provided and the benefit of same to the proposed development, and the manner in which the development contribution scheme has been applied.
- 7.4.3. The applicant states, if necessary, it is willing to pay a development contribution but that €125,000 is excessive. A reduced fee (no monetary value is suggested) and the removal of Condition 2 is stated as being a more reasonable approach to levying development contributions on the proposal.
- 7.4.4. The applicant requests that Condition 14 is amended.

Assessment

- 7.4.5. On review of the plans and particulars in the application and appeal, I identify four project-specific issues to be addressed in respect of the pedestrian crossing point. These include the requirement, location, safe provision, and main beneficiary of same.
- 7.4.6. Following from which, it necessary to consider the nature of the pedestrian crossing under the terms of the Waterford City and County Development Contribution Scheme 2023-2029 (DCS), whether the pedestrian crossing is a form of infrastructure for which a special contribution can legally be levied, and the reasonableness of the cost of the special contribution included in the condition. I propose to address each item in turn below.

Requirement for the Pedestrian Crossing

- 7.4.7. In the appeal grounds, the applicant outlines that the potential for a pedestrian crossing on Ballygunner Road had been discussed with the planning authority at preplanning consultations.
- 7.4.8. Based on references in the appeal to the Road Safety Audit (RSA), I identify the location of the pedestrian crossing point as being just north of the vehicular entrance to the Ballygunner GAA grounds (on the western side of Ballygunner Road, as per image of Problem No. 13, RSA, pg. 16). I calculate that the crossing point is c.103m to the north of the proposed entrance in the appeal site (in the northwestern corner of the school grounds).
- 7.4.9. In its appraisal of the pedestrian crossing point (discussed below), the RSA finds there is a potential risk for collisions between vehicles and vulnerable road users. The RSA recommends the provision of 'appropriate connections' to the playing pitches boundary (west) and to existing pedestrian infrastructure (north, south). The nature and extent of these connections is not outlined.
- 7.4.10. On the basis of this finding, the applicant states the pedestrian crossing was not included in the proposed development. Instead, improvements to existing pedestrian facilities are stated as having been incorporated into the proposed development, as the other areas referred to are outside of the red line boundary.
- 7.4.11. Having regard to the separation distances involved, the intermittent nature of the existing footpath infrastructure along Ballygunner Road, the unknown control over same and extent of third-party engagement on the matter, I consider the RSA recommendation (i.e., provision of 'appropriate connections' to ensure that the pedestrian crossing would operate safely) to be in excess of measures the applicant could reasonably be expected to provide within the context of the proposed development.
- 7.4.12. As such, I consider the applicant's decision to omit the pedestrian crossing from the application to be acceptable. I positively note that the improvements proposed within the appeal site (i.e., lands under the applicant's control) include a notable set-back in road frontage, provision of bus set down area, and a shared cycle and pedestrian footpath which connects to the existing footpath on the eastern side of the road (at the northwestern corner of the site).

Location and Safe Provision of the Pedestrian Crossing Point

- 7.4.13. I have reviewed the plans and particulars submitted with the planning application and appeal, the planning authority reports and undertaken my site inspection (where I visited the pedestrian crossing point). In so doing, I agree with the applicant and consider that there is a lack of clarity regarding the location of the crossing point and whether it can be provided without endangering public safety.
- 7.4.14. In respect of location, I have relied on the applicant's identification of the pedestrian crossing point (as that of Problem No. 13, RSA, pg. 16), as references in the planning authority reports (particularly the Roads Section) are not definitive/ explicit. The existing footpaths on the eastern and western sides of Ballygunner Road 'north of the site' are staggered and vary in widths at places. The existing footpath on the eastern side of the road extends further north than the location of the crossing point. That being, it is unclear whether there are other locations along the footpath(s) 'north of the site' that the planning authority may consider/ has considered to be more suitable for a pedestrian crossing.
- 7.4.15. In respect of safety, the RSA assesses the pedestrian crossing and finds there is a potential risk for collisions between vehicles and vulnerable road users. This is due to the pedestrian crossing point not connecting with any pedestrian infrastructure and that pedestrians may have to walk on the carriageway (I understand this to refer to the western side of the road once pedestrians have crossed from the end/ towards the end of the existing footpath on the eastern side of the road).
- 7.4.16. I have reviewed the planning authority reports on the case file and note that the planning officer's initial report refers to the RSA finding (i.e., Problem No. 13) and to the Roads Section report. However, the latter does not include any reference to the pedestrian crossing point, so any potential issue regarding the safety of same (as identified in the RSA) does not feature in the transport related items of the FI request.
- 7.4.17. At the FI response stage, the planning officer's report cites the referral report received from the Roads Section (there is no standalone report on file). The referral report states: *'Special contribution to be applied for the provision of a pedestrian crossing point to the north of the site. The existing footpath to the eastern side of the public road terminates to the north...'* The planning authority does not refer to the RSA's traffic safety concerns regarding the crossing point, nor to the

recommendation for 'appropriate connections' to be provided to/ from the crossing point.

- 7.4.18. That being, the potential for the pedestrian crossing to pose a risk to public safety, to constitute a traffic hazard, and the nature and extent of the measures deemed necessary to prevent same have not been addressed in the planning authority's assessment.

Main Beneficiary of the Pedestrian Crossing

- 7.4.19. As stated previously, I calculate the pedestrian crossing point as being over 100m from the proposed entrance to the school grounds. The pedestrian crossing point is in closer proximity to the Ballygunner GAA grounds, St. Mary's national school, the Aperee Living nursing home, Haven Wood retirement village and detached dwellings, and approximately equidistant to the Kilcarragh Park residential estate.
- 7.4.20. At this separation distance and given the range of uses in-between, I do not consider that the pedestrian crossing is necessary for the school, or that the school would be the sole or even the main beneficiary of the pedestrian crossing. I discuss this further in the following subsection within the context of the terms of the DCS and special development contributions only be applicable to developments which directly benefits from the provision of public infrastructure.
- 7.4.21. I do not dispute the general requirement for and/ or benefits of providing a pedestrian crossing on Ballygunner Road in the vicinity of the appeal site. However, as discussed in the following subsection, I consider the pedestrian crossing to come within the scope of 'transportation' infrastructure, that would be for use by the general public, and thereby provided by the planning authority using funding from general development contribution charges.

Terms of the Development Contribution Scheme

- 7.4.22. I have reviewed the DCS and identify the following items as being relevant to the appeal case.
- Section 2 of the DCS lists 'pedestrian facilities' as being a form of 'public infrastructure and facilities'.

- Section 3 identifies ‘pedestrian facilities’ within the ‘Transportation and Drainage’ class of public infrastructure for which the general development contribution scheme provides funding (60% proportion of total funds).
- Section 5 lists ‘Improvement of Roads, Footpaths and Lighting countywide’ as an example of projects which received such funding from the previous development contribution scheme.
- Section 4(c) states that special development contributions can apply only to development which will benefit directly from the public infrastructure facility in question. In an attached condition, the planning authority *‘must specify...the particular works carried out, or proposed to be carried out, to which the contribution relates’*.
- Section 8 lists exemptions to making payments to the scheme, including General Exemption (1) voluntary not for profit clubs, non-statutory groups/ organisations for non-commercial community related developments.
- Appendices A-C list objectives from Volumes 1 and 3 of the development plan and projects from the council's capital plan.

7.4.23. On the basis of the above definitions in the DCS, I consider the pedestrian crossing (as per Problem No. 13, indicated as a ‘zebra crossing with belisha beacons’, crossing a local road, c.9m in width) to be a form of ‘public infrastructure and facilities’, to come within the ‘transportation’ class of public infrastructure, the funding for which is covered by monies collected by way of general development contributions. I consider that a pedestrian crossing with beacons would be analogous to projects included under the heading of ‘Improvement of Roads, Footpaths and Lighting countywide’ which received general development contribution funding under the previous scheme.

7.4.24. In respect of special development contributions, I question whether such a contribution can be applied to the proposed development. The DCS states that such contributions can apply only to development which will benefit directly from the public infrastructure facility (underline, my emphasis). As discussed previously, at a separation distance in excess of 100m and due to the improvements included as part of the proposed development, I consider the proposal would benefit generally from the provision of the crossing. As would several other more proximate, intervening

uses and indeed the general public. Also, I consider the reference in Condition 14 to the 'provision of a pedestrian crossing point to the north of the site' to be general and vague, and to lack the necessary specification required in Section 4(c) of the DCS. Further, the DCS appendices do not include any general objectives, specific objectives, or named projects identifying/ relating to the provision of the pedestrian crossing in Ballygunner.

7.4.25. Related, I highlight the legislative provisions of section 48(2)(c) of the 2000 Act. This section allows for the payment of a special contribution only where specific exceptional costs would be incurred by a local authority in respect of providing public infrastructure which is not covered by the DCS. As outlined previously, I consider the pedestrian crossing to constitute public infrastructure which is covered by the general scheme.

7.4.26. In the interest of clarity, as noted in the planning authority decision, I consider the applicant comes within the scope of General Exemption (1), such that a general section 48 development contribution does not apply to the proposed development.

Cost of the Special Contribution

7.4.27. Condition 14 requires the payment of €125,000 as a special contribution towards the '*specific exceptional costs to be incurred by the local authority in the provision of the pedestrian crossing*'. I have concerns regarding the transparency and reasonableness of the €125,000 contribution included in the condition.

7.4.28. From a review of the case file, I cannot identify any details regarding the calculation of the special contribution and/ or costings for the referred to work. In the initial report from the Roads Section, Comment No. 4 simply reads 'Special Contribution of €xxxxxx'.

7.4.29. In the FI response report, the planning officer cites the Roads Section referral report as stating: '*Special contribution to be applied for the provision of a pedestrian crossing point to the north of the site....A condition in relation to same shall be attached*'. It would appear that this statement forms the basis for Condition 14. However, reference to €125,000 only features for the first time within the condition.

7.4.30. I highlight guidance provided in Section 7.12 of the Development Management Guidelines on the matter. The guidelines state '*...it is essential that the basis for the*

calculation of the contribution should 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....'

- 7.4.31. I consider that the nature of works, the expenditure involved and the basis for the calculation of the special contribution have not been explained and are not apparent from the case file. Nor has the planning authority responded to the appeal grounds. As such, I consider the decision to charge the said amount to be unjustified and therefore unreasonable. The manner in which the special contribution has been incorporated into Condition 14 thereby fails to comply with the requirements of the planning guidelines.

Policy Context

- 7.4.32. For the Commission's clarity, I have not identified any local development plan objective or national planning guideline policy to which the Commission is required to implement or to have regard to, which would require Condition 14 to remain as is.

Conclusion

- 7.4.33. In conclusion, having regard to the lack of clarity on the requirement, location, safe provision, and main beneficiary of the pedestrian crossing, to the terms of the Waterford City and County Development Contribution Scheme 2023-2029 and the manner in which these have been applied, and to the inadequate justification for and explanation of the calculation of the special contribution, I consider that Condition 14 fails to comply with the requirements of section 48(2)(c) of the Planning and Development Act 2000, as amended, and the provisions of Section 7.12 of the Development Management, Guidelines for Planning Authorities, 2007, in respect of conditions requiring special development contributions.
- 7.4.34. Condition 14 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.

8.0 Environmental Impact Assessment

8.1. Background

- 8.1.1. 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.
- 8.1.2. The following class of development in the 2001 Regulations is of relevance to the proposed development:
- Class 10(b) relates to infrastructure projects that involve:
 - (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.
- 8.1.3. The proposal is an urban development project on a site measuring c.2.2ha. The proposal is sub-threshold in terms of the mandatory EIA requirements arising from Class 10(b)(iv) of the 2001 Regulations.
- 8.1.4. Waterford City and County Council considered the need for an EIA of the proposal, having regard to the information submitted with the application. This included the applicant's EIA Screening Report (EIASR), which concluded that an EIA was not required for the proposed development. The planning authority concluded that based on the nature, size and location of the proposed development in the context of the criteria set out in Schedule 7 to the 2001 Regulations, it was satisfied that EIA is not required.

8.2. Grounds of Appeal

- 8.2.1. The appeal relates to conditions attached to the planning authority's grant of permission for the proposed development, which I assessed in section 7.0 of this report above.
- 8.2.2. Issues relating to the veracity of the planning authority's environmental screenings, including that for EIA, are raised within the first party appeal. It is submitted that the material changes to the scheme required to be undertaken in Condition 2 were not considered in the environmental assessments as the condition was attached at the end of the assessment process.
- 8.2.3. Table 1 below provides a summary of the nature of the appealed conditions with commentary in relation to EIA requirements.

Table 1: Conditions to which the appeal relates within the context of EIA

Condition	Nature of Condition	Commentary
Condition 2	Revised Site Layout	The planning authority's condition requires the realignment of the public road, the provision of a bus lay-by, and the provision of a roundabout (within the site, involving revisions to several elements within the scheme's site layout plan). The applicant has requested the removal of the condition. The amendment of the planning authority's condition, as recommended in my assessment above, involving removal of the condition (such that the site layout plan included at the FI response stage is granted and implementable), would have no material consequence on the conclusions of the applicant's EIASR or planning authority's EIA screening exercise.
Condition 14	Special Contribution	The planning authority's condition requires payment of a special contribution towards the provision of a pedestrian crossing. The applicant has requested the amendment of the condition. The removal of the planning authority's condition, as recommended in my assessment above, would have no material consequence on the conclusions of the applicant's EIASR or planning authority's EIA screening exercise.

Conclusion

- 8.2.4. Having regard to the nature of the conditions to which the appeal relates, to my recommendations that the conditions are removed from the planning authority's grant of permission, and to the conditions not having any material consequences on the need for EIA, I consider that the determination by the Commission of the application as if it had been made to it in the first instance, involving pre-screening and preliminary examination of the proposed development for EIA, would not be warranted for this appeal case.

9.0 Appropriate Assessment

9.1. Stage 1 – Screening Determination for Appropriate Assessment

- 9.1.1. In accordance with section 177U(4) of the Planning and Development Act 2000, as amended (2000 Act), and on the basis of objective information, I conclude that the proposed development would not have a likely significant effect on any European site either alone or in combination with other plans or projects. It is therefore determined that Appropriate Assessment (Stage 2) under section 177V of the 2000 Act is not required (see Appendix 1 of this report below).

- 9.1.2. This conclusion is based on:

- Nature, scale and location of the project.
- Qualifying interests and conservation objectives of the European sites.
- Absence of any meaningful pathways to any European site.
- Distances from European sites.
- Objective information presented in the Appropriate Assessment Screening Report.
- Standard pollution controls and project design features that would be employed regardless of proximity to a European site and the effectiveness of same.

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

10.0 Water Status Impact Assessment

10.1. Background

10.1.1. The appeal relates to conditions attached to the planning authority's grant of permission for the proposed development. No issues relating to water status have been raised within the first party appeal. I have undertaken a planning assessment of the conditions in section 7.0, and considered the conditions in the context of EIA in section 8.0 of this report above.

10.2. **Grounds of Appeal**

10.2.1. Having regard to the nature of the conditions to which the appeal relates, to my recommendations that the conditions are removed from the planning authority's grant of permission, and to the conditions not having any material consequences on water status, I consider that the determination by the Commission of the application as if it had been made to it in the first instance, involving an assessment of proposed development in light of objectives set out in Article 4 of the EU Water Framework Directive, would not be warranted for this appeal case.

11.0 **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:

REMOVE Condition 2 and Condition 14 for the reasons and considerations set out below.

12.0 **Reasons and Considerations**

Having regard to the nature, scale and extent of the proposed development, the applicable zoning objective of 'Community Infrastructure CI', the relevant policies and objectives relating to education, transportation, landscape, and natural heritage assets in the Waterford City and County Development Plan 2022-2028, the terms of the Waterford City and County Development Contribution Scheme 2023-2029 and

the manner in which these have been applied, it is considered that Condition 2 and Condition 14 fail to comply with the relevant legislative requirements of the Planning and Development Act 2000, as amended, and the applicable provisions of the Development Management, Guidelines for Planning Authorities, 2007. Condition 2 and Condition 14 of the planning authority's grant of permission are not warranted and shall be removed in their entirety.

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

3rd July 2026

Appendix 1: Appropriate Assessment – Screening

I have considered the project in light of the requirements section 177U of the Planning and Development Act 2000, as amended. The project comprises the demolition of existing education facilities (c.1,220sqm) and construction of a post primary school (c.5,570sqm) with all associated site works on greenfield lands (i.e., location of new build) in an outer suburban/ rural city edge location.

The site's eastern boundary (drainage ditch) is a minor stream which rises in the wetlands to the east of the site and flows south. The stream is a tributary of the Keiloge River (Ballygunnmore_10, EPA reference (for full extent of watercourse)), which drains in a southerly direction, merging with other minor tributaries and separate watercourses prior to discharging to Tramore Back Strand (c.5.7km (crow-flies), c.6.1km (downstream) from the site). The site and watercourses are within the Dunmore East groundwater body (IE_SE_G_057, EPA reference).

The project is located inland and uphill of three European site designations; the Lower River Suir SAC (002137) is c.1.7km to the north, and the Tramore Back Strand SPA and SAC designations are c.5.7km to the south. The qualifying interests (QIs) of the Lower River Suir SAC include salt meadows, vegetation, oak woods, forests, mussels, several fish species, and otter (conservation objectives (COs) to restore and/ or maintain the favourable condition of same). The QIs of the Tramore Back Strand SPA include several wintering bird species, wetlands and waterbirds (COs are to maintain the favourable condition of same). The QIs of the Tramore Dunes and Back Strand SAC include mudflats, sandflats, vegetation, salt meadows, shifting dunes, and fixed dunes (COs are to maintain and restore the favourable condition of same).

The project includes connections to public water supply and wastewater networks, and an on-site surface water drainage system (SuDS based, including soakaways and a bioretention area with horticultural landscaping) with controlled discharge to the stream to east. The SuDS based system ensures on-site collection, attenuation of storm water, and initial treatment prior to environmentally safe discharge to the surface water/ groundwater bodies.

The majority of the site comprises greenfield lands with no evidence of habitats or species with direct links to any European sites (i.e., no ecological connections). There are no hydrological connections to the Lower River Suir SAC. There are hydrological connections between the project (via the proposed surface water drainage infrastructure) and surface water/ groundwater bodies to the European sites to the south.

However, due to the nature, scale and intensity of the project, the nature of the adjacent watercourse (drainage ditch/ minor stream), intersections with other tributaries/ watercourses, and the downstream separation distances, there are no meaningful direct hydrological connections to either of these European sites. An Appropriate Assessment Screening Report (AASR) has been prepared for the project. The AASR focussed on the Tramore Back Strand sites and concludes that the project 'either individually or in combination with other plans or projects, is not likely to give rise to impacts that would constitute likely significant effects in view of the Conservation Objectives of those sites'. The planning authority screened out the need for appropriate assessment.

Nature conservation concerns are raised in the planning appeal in respect of the veracity of the planning authority's environmental screenings having regard to Condition 2 (i.e., material changes to the scheme were not subject to screening). On the basis of my recommendations that Condition 2 be removed from the planning authority's grant of permission, and based on my own screening exercise outlined above, I am satisfied that the project can be eliminated from further assessment because there is no conceivable risk to any European site.

Conclusion

In accordance with section 177U(4) of the Planning and Development Act 2000, as amended, and on the basis of objective information, I conclude that the project would not have a likely significant effect on any European site either alone or in combination with other plans or projects. It is therefore determined that Appropriate Assessment (Stage 2) under section 177V of the Planning and Development Act 2000, as amended, is not required.

This conclusion is based on:

- Nature, scale and location of the project.
- Qualifying interests and conservation objectives of the European sites.
- Absence of any meaningful pathways to any European site.
- Distances from European sites.
- Objective information presented in the Appropriate Assessment Screening Report.
- Standard pollution controls and project design features that would be employed regardless of proximity to a European site and the effectiveness of same.

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

Inspector: _____

Date: _____