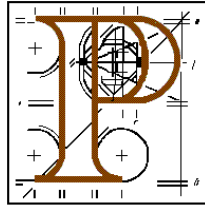


An Bord Pleanála Ref. No.: PL 04.244411

An Bord Pleanála



Inspector's Report

Proposed Development:

Permission is sought to construct a Motorway Service Area, to include a shop/restaurant building (with a drive through and take-away facility and ancillary plant, storage/service areas), forecourt with canopy, fuel facilities for heavy commercial vehicles (HCVs) with canopy over, underground fuel tanks, LPG tanks, substation, car wash, drainage facilities, signage, landscaping, picnic & external seating/amenity areas, set-down and parking areas (with control barriers to HCV parking), footpaths and a new entrance and roundabout on to the R639 regional route (with amendments to the existing entrance serving the Teagasc facility at Moorepark) and all associated ancillary development works at Junction 14 on the M8 Motorway, Gortroe and Moorpark (townlands), Fermoy, Co. Cork.

Planning Application

Planning Authority:	Cork County Council
Planning Authority Reg. Ref.:	14/06188
Applicant:	JR ORONCO Ltd.
Type of application:	Permission
Planning Authority Decision:	Grant permission subject to conditions

Planning Appeal

Appellants:

1. Sean R. McCarthy
2. John O'Leary
3. David Ryan
4. Teagasc
5. Applegreen Service Area Ltd
6. Liam Fitzgerald

Observers:

James V. Walsh

Type of appeal:

Third Party against permission

Site Inspection:

14/04/2015

Inspector:

A. Considine

1.0 THE SITE

- 1.1 The appeal site is located approx. 3km north of the town of Fermoy, and just off junction 14 of the M8 motorway. The site lies to the east of the interchange, on the regional road, the R639 which would have been the old N8 road connecting Fermoy and Mitchelstown. The village of Kilworth lies approx. 1.5km to the northeast of the current proposed development site. To the south of the site, and across the R639 regional road lies Moorepark West which is occupied the Moorepark Agricultural Research Centre of Teagasc. Access to Moorepark West is off the regional road and the road is marked out providing turning lanes into the facility. The speed limit in this area is 60km/ph and the Board will note that there are no footpaths in the area even though the Blackwater Way walking route runs along the R639 past the subject site.
- 1.2 The site has a stated area of 2.8ha (7acres) and comprises a section of a larger field which is currently used for agricultural purposes. This subject site is located to the south-west of the overall field and is bound to the south east by the regional road, the R639 which will be affected by the proposed development. To the west and north of the site, there is a private road which provides access to farm lands, a private residence and towards the Funshion River to the north. The M8 motorway, Junction 14 and its associated slip road lie beyond the private access road to the west of the site. The existing roadside boundary, along the regional road, R639, comprises a stone wall with mature trees and the Board will note that there is a wide vegetated verge between the wall / trees and the public roadway. The site itself is generally flat and level with a very gentle fall towards the north east and towards the Funshion River, a tributary of the River Blackwater.

2.0 PROPOSED DEVELOPMENT

- 2.1 As per the public notices, planning permission is sought to construct a Motorway Service Area, to include a shop/restaurant building (with a drive through and take-away facility and ancillary plant, storage/service areas), forecourt with canopy, fuel facilities for heavy commercial vehicles (HCVs) with canopy over, underground fuel tanks, LPG tanks, substation, car wash, drainage facilities, signage, landscaping, picnic & external seating/amenity areas, set-down and parking areas (with control barriers

to HCV parking), footpaths and a new entrance and roundabout on to the R639 regional route (with amendments to the existing entrance serving the Teagasc facility at Moorepark) and all associated ancillary development works at Junction 14 on the M8 Motorway, Gortroe and Moorpark (townlands), Fermoy, Co. Cork.

- 2.2 The proposed buildings associated with the development comprise a large single storey building which will rise to a height of 5.4m, will have a gross floor area of 841.50m² and will include three specific areas as follows:

Area 1:	Retail & Ancillary Offer	-	350.5m ²
Area 2:	Customer Refreshment (Toilets)	-	84.9m ²
Area 3:	Fast Food Offer	-	182.4m ²

In addition to the above, 189.6m² will be occupied by the food court seating area and entrance lobbies. The Board will note that it is proposed to provide a 'Drive-Thru' facility as part of the food offering.

The forecourt area of the proposed development is to be located to the front of the proposed building with six pump islands. The overhead canopy will rise to a stated height of 6.8m in height. To the rear of the building, it is proposed to provide three HGV fuel pumps with an overhead canopy of 6.2m in height. Parking is generally proposed on the northern and eastern areas of the site and provision is made for bicycle parking in proximity to the main service building. The proposed development also provides for signage.

In terms of finishes, it is submitted that the roof of the building will comprise standing seam aluminium or zinc finish with a non reflective finish, and solar panels will be considered on the south facing slope. The walls will comprise smooth architectural panels with the possible inclusion of smooth coloured render and natural stone to match boundary wall.

In terms of access to the site, the Board will note that a letter of consent was provided from Cork County Council with regard to the making of the application. The proposed development will affect the regional road and the Teagasc Moorepark Campus as it is proposed to provide a new roundabout to facilitate access to the proposed development site as well

as a new access layout to the Teagasc facility. The letters of consent relate solely to the making of the application.

The application documents include the following reports / documents:

- Planning Report
- Architectural plans and drawings
- Visual Impact Analysis including landscape plans
- Lighting Services Plan
- Environmental & AA
- Construction & Waste Management (Incl Litter Management)
- Noise Impact Assessment
- Odour Management Plan
- Impact of Development on Kilworth Borewell – Construction & Operation Phases
- Road Safety Audit – Stage 1
- Traffic & Transport Assessment
- Services / Infrastructure Report
- Preliminary Tree Survey & Report

3.0 REPORTS ON PLANNING FILE

3.1 There are 14 submissions noted on the planning file from third parties. I have read the content of all submissions. Of the 14, the Board will note that there is one in support of the proposed development. The issues raised in the 13 objections are summarised as follows:

- There is an existing off-line service facility within approximately 1km of the proposed development site. There is no need for this proposed development.
- A grant of planning permission would be a proliferation of off line service facilities
- The site is in a green belt. It is an objective of the CDP to retain lands generally for agriculture, open space and recreation use. The proposed development is not an exceptional circumstance and should not be permitted.

- Local people struggled and failed to get planning permission for homes on edge of town sites. Questions how a company can get planning permission for the development proposed on farm lands.
- The development will introduce a commercial and retail activity into a rural area closed to Fermoy Town, contrary to the proper planning and development of the area.
- The development, if permitted will detract from the commercial activity in Fermoy Town including fast food businesses. Should a sequential test, as per the Retail Planning Guidelines, be provided, there is no need for the facility.
- The development may generate employment but existing jobs will be lost in the existing facilities.
- The development will generate a traffic hazard
- Service areas should be on line and not off line as proposed.
- The NRA have a site for a service area directly off the M8 between Fermoy and Mitchelstown which is more suitable.
- A similar development has been permitted in Cahir, Co. Tipperary, approximately 33km from the subject site, where considerable investment has been made. A grant of planning permission in this instance raises a concern that the permitted development would no longer be economically viable.
- The proposed development is not in compliance with the requirements of the 2009 County Development Plan or the 2011 Fermoy LAP.
- This is a repeat application for a development which was recently refused by ABP. Circumstances have not changed to alter that decision to refuse.
- The need to pump effluent 2.2km is unsustainable and poses an unacceptable risk to public health and is an unsustainable provision of resources.
- The application is invalid as the proposal demands that a new rising main is to travel along the R639 to Fermoy on public roads. Permission for these works have not been obtained.
- The proposed development is not consistent with detail of on site provisions for users if it is to be considered a Motorwat Service Station and is contrary to NRA design standards for such facilities.
- The proposal is a resubmission of the previously refused proposal. Should the PA seek to rank the two planning applications, the current proposal by JR Oronco Ltd and the concurrent Applegreen proposal at Junction 13 of the M8, a comparison of both current applications would be appropriate.

- Tipperary County Council has recently granted planning permission for a service station at Junction 11 of the M8

In terms of the submission in support of the proposed development, the Board will note that it is submitted on behalf of Topaz, prospective operator of the facility.

3.2 There are no submissions from elected representatives noted on the planning file.

3.3 5no. external reports have been submitted to the Planning Authority in relation to the proposed development from the following:

Health Service Executive: Submits no objection subject to compliance with conditions.

An Taisce: Notes that this is a repeat application and submits that an evaluation is required that demonstrates that all issues have been resolved which determined the site previously unsuitable.

Inland Fisheries Eireann: Submits that IFE is not opposed in principle to the proposed development, it is requested that consideration be given to a number of points relating to the protection of waters during construction and operational phases

Irish Water: Submits no objection to the proposed development subject to the signing of contract with Irish Water.

National Roads Authority: This report submits that the development should be undertaken in accordance with the requirements of the Spatial Planning & National Roads Guidelines for Planning Authorities and in particular, section 2.8. In addition, the report refers to the recently published NRA Service Area Policy, August, 2014, and in particular, sections 1.4 and 5.2 of the policy document. Reference is also made to the NRA DMRB TA 70/14: The Location & Layout of On-Line Service Areas (June 2014).

The report submits that the authority neither endorses nor opposes such facilities but will assess proposals on the basis of impacts on national

roads and compliance with guidelines. The report notes that the current proposed development is an off-line motorway service area located in an unzoned rural area in the vicinity of junction 14 of the M8 and is not an NRA service area. While the site is located within an area identified in the NRA Service Area Policy, in its current form is not in accordance with this policy document. It is submitted that a proliferation of off-line service area facilities at national road junction should be avoided.

Issues are also noted with regard to signage and concludes that permission for same as proposed should be refused as it would interfere with the operational efficiency and safety of the national road network and endanger public safety by reason of traffic hazard, would be at variance with national policy and would set a precedent for further similar development.

- 3.4 There are 6 no. reports noted from internal County Council Departments on the Planning Officers report from the following:

Area Engineer: Submits no objection to the proposed development subject to compliance with conditions.

Public Lighting: Submits no objection to the proposed development subject to compliance with conditions.

County Architect: Advises few issues with the application as garages tend to have their own aesthetics. The only real concern raised relates to the amount of cut in the existing ground levels to create a large flat plate for vehicles. There has been no clear attempt to reduce these levels by, for example, the introduction of terraces where shallow ramps could connect areas. The report concludes no objection subject to the inclusion of a condition requiring that the impact of the amount of cut in the ground to create levelled areas is reduced.

Environment Section: Report advises no objection subject to compliance with conditions.

Archaeologists Report: Refers to previous application and report. Advises the large scale development in close proximity to a number of archaeological monuments discovered during the construction of the M8 –

CO27-198 &116. It is requested that a condition be included requiring archaeological monitoring

Heritage Unit: There are two reports noted on the planning file from the Heritage Unit as follows:

- 1st Report dated 01/12/2014: The report notes the previous application pertaining to the site. The report addresses certain issues pertaining to the development including during the construction and operational phases. The conclusion of this report notes that 'as further information is required by the planning authority, the habitats directive screening conclusion statement can't be completed until this information has been submitted.' It is requested that the file be referred back to the unit once further information has been submitted.
- 2nd Report dated 03/12/2014: This report acknowledges that no further information is to be requested by the Planning Authority. The report concludes that having reviewed the application, including the unsolicited further information, along with internal reports, the Heritage Officer is satisfied that significant effects on the Blackwater SAC can be screened out. No objection subject to conditions. An AA Screening Report is also attached.

3.5 The first party submitted unsolicited further information, prior to the Planning Authority completing their report, in an effort to specifically address a number of issues raised by both the NRA and Applegreen. The submission is summarised as follows:

- The assertions that the proposed development is not in accordance with the NRA Service Policy, August, 2014 and NRA DMRB TA 70/14 are unsubstantiated.
- The submission seeks to demonstrate compliance with both documents.
- Following the consultation period, the applicant corresponded with all third parties inviting them to discuss issues associated with the proposed development. This resulted in one objector being satisfied that the proposed development was satisfactory

- 3.6 Following the submission of the above unsolicited further information, the first party was requested to re-advertise same.
- 3.7 The PAs Assistant Planner provided a planning report which presents an overview of issues pertaining to the proposed development in order to assist the Senior Planner in making his recommendation on the proposed development. The report considers the planning history of the site and those relevant nearby sites, notes that 3 pre-planning meetings were held between the applicants and the Senior Planner on 11/11/2011, 23/02/2012 and 09/09/2014, considers the EIS / EIA requirements and policy context for the proposed development. The report summarises all submissions made in relation to the proposed development including internal and external technical reports and public submissions. An assessment and conclusion section is presented in the report but the Board will note that this section presents a summary of the arguments made by the first party in relation to the proposed development and its compliance with relevant policy and standards rather than an assessment or recommendation.
- 3.8 Following the completion of the above report, and prior to the completion of the Senior Planners report on the proposed development, the following submissions were received by the PA:
- Irish Water: Three letters were received by the PA as follows:
16/12/2014:
 - Irish Water wishes to object to the proposed development.
 - The proposed development lies over a karst aquifer and is within 600m of the borehole abstraction point for the Downings Bridge Public Water Supply which currently yields approximately 900,000 litres of water per day and is the drinking water supply for a population of 1,400 people. A fuel spill has the potential to result in serious contamination of the source.
 - The applicant has not provided any hydrogeological studies to indicate where the proposed development is located in relation to zones of contribution or ground water in the vicinity of the proposed surface water discharge point upstream of the location of the borehole.
 - The development is contrary to Irish Waters commitment to minimise catchment risk and on this basis, strongly object to the

proposal.

02/01/2015:

- The site is located within a regionally important aquifer and the vulnerability of the site can be classed as 'High' to 'Extreme'.
- The Groundwater Protection Guidelines, GSI, classify the level of response to development in such extreme high risk areas as, 'Not Acceptable'.
- The development is contrary to Irish Waters commitment to minimise catchment risk and in light of the identified risk, Irish Water has no option but to require that the water source be protected, in the absence of full and agreed proposals for an alternative supply to the area.
- Should the applicants have alternatives to the proposed site or current proposals, Irish Water will engage fully with the applicants to facilitate the development where possible.

12/01/2015:

- Whilst maintaining commitment to minimising risk to the water supply through catchment protection, Irish Water has identified that sufficient capacity is available in the Fermoy Public Water Supply as an alternative to the current Downing Bridge water supply to the Kilworth Area.
 - As such, subject to the construction of a watermain link between the two water supplies in advance of the works and the installation suitable alarm and automatic shutdown system for the Downing Bridge water supply, Irish Water has no objection to the proposed development.
 - The exact location and specification for the interlink between the two supplies, and specification for the borehole alarm and shutdown system will be stipulated by Irish Water Asset Management and must be delivered in advance of the proposed works.
- Submission from McGill Planning on behalf of Applegreen Services Areas Ltd. The submission is summarised as follows:
 - While the PA requested a re-advertising, the information submitted was unsolicited and was lodged prior to the PA deciding whether FI should be formally requested under Article 33. It is submitted that the PA in accepting the unsolicited FI acted *ultra vires*.

- The information provided noted the 'availability of six (6) additional acres to expand in line with the NRA Guidelines and to meet future demand, this land is owned by one of the company's shareholders...'. This disclosure represents a doubling of the size of the land area which is significant and has not been clearly demonstrated to be under the control of the applicant, as required by the regulations to be outlined in blue on submitted maps. Failure to disclose such information from the outset would normally render an application invalid.
- If there are additional lands adjacent under the control of the applicant, then the applicant should be formally requested under Articles 33 and 35 to submit new maps indicating the location and extent of same, as well as demonstrating that these lands are not being preserved for alternative commercial uses.
- There are various other factually inaccurate statements relating to the full compliance of the proposal as submitted.

3.9 The Senior Planner notes the reports and documentation including submissions on file and refers to the Area Planners report. The report notes the key points including the planning history, policy and submissions. The report considers the proposed development under seven headings as follows:

- Procedural Issues
- Principle of the development
- Retail impact
- Visual impact / Works
- Water Service Impact
- Roads / Layout
- EIA /AA

The report concludes having regard to both the current application on the Fermoy Site as well as the proposed development at the Mitchelstown Site. The report concludes that the proposed development is acceptable in principle and that the provision of one off line MSA at either Junction 13 or Junction 14 is acceptable by reference to both local and national policy. The development is considered acceptable in terms of retail impacts, visual impacts, water services, roads and layout. The report also notes that the Mitchelstown site has been considered unacceptable in terms of

water services and as such, it is concluded that the Fermoy Site is acceptable and is a better location than the Mitchelstown proposal. It is recommended that planning permission be granted subject to conditions.

4.0 DECISION OF THE PLANNING AUTHORITY

The Planning Authority granted planning permission for the proposed development subject to 36 no. conditions

5.0 RELEVANT PLANNING HISTORY

5.1 The Board will note the concurrent planning appeal which is with An Bord Pleanala which relates to a similar type development proposed at Junction 13 of the M8, at Gornahown, Mitchelstown, which is located approximately 9km to the north of the current proposed development site, ABP ref PL04.244445 refers. This development proposes the construction of an Off-line Motorway Service Area comprising:

- A new vehicular access to and from the north-bound interchange roundabout of Junction 13.
- A four pump island car/van forecourt and a two pump island HCV forecourt, both with canopy over. The height of each canopy is 8.059m and 6.9m respectively.
- Underground fuel storage tanks (total area 200sqm) tanker delivery area and associated pipe work.
- An amenities building (total gross floor area c1410sqm) comprising: convenience shop (100sqm net sales area) and ancillary areas (428sqm) comprising store room, freezer, chiller, managers office, comms room, staff toilets, staff changing area, staff tea station and cleaners room, 5 no. Eat-in / take-away café / restaurants (c267sqm in total) public toilets (c123sqm), seating / circulation area (c437sqm), internal and external play areas (c102sqm).
- Parking for 124 no. cars (including 7 no disabled parking spaces), 20 no. HGVs, 5 no. coaches and 7 no. motorcycles.
- Ancillary signage (both illuminated and non-illuminated) on the shop building, forecourt canopies and general fuel forecourts (total area of signage c 24.9sqm). 2 no. double sided totem ID/Price point signs (c7.5m and c12m in height respectively and c49sqm total advertising area) indicating site services.

- On-site wastewater treatment system, c3.0km 100mm dia. Rising main to connect to the public mains and c11,500-sq.m. willow plantation.
- Surface water attenuation tank (c1200sqm)
- Retaining walls
- Pumping stations
- Surface water outfall to local stream to the north.
- All ancillary site development, landscaping and boundary treatment works.

All at Junction 13 on the M8 Motorway Gortnahown, Kiltrislane, Cloonlough, Brigown, Mitchelstown, Co.Cork

5.2 The following is the planning history pertaining to the current Junction 14 (Fermoy) proposed development site:

ABP ref. PL04.242495 (PA ref. 13/4399): Cork County Council granted planning permission, subject to 41 conditions, for the construction of a Motorway service station on the subject site, to include a shop/restaurant building with a drive through and take-away facility and ancillary storage/service areas, forecourt with canopy over, fuel facilities for heavy commercial vehicles with canopy over, underground fuel tanks, substation, car wash, drainage facilities, signage, landscaping, picnic & external seating areas, parking and set-down areas, new entrance and roundabout on to the R639 regional route and all ancillary development works at Junction 14 on the M8 Motorway, Gortroe and Moorpark, Fermoy, Co. Cork.

Following multiple third party appeals, and a first party appeal, the Board accepted the recommendation of the Inspector and refused planning permission for the proposed development. The reason for refusal is stated as follows:

‘The proposed development is located within the Fermoy Greenbelt Area, wherein it is the policy of the County Development Plan and the Fermoy Electoral Area Local Area Plan that such development will only be allowed where it is of a strategic and exceptional nature. The Spatial Planning and National Roads Guidelines issued by the Department of the Environment, Community and Local Government in January, 2012,

advocate a co-ordinated approach to the provision of off-line motorway service areas as part of the development plan process and indicate that a proliferation of private off-line service area facilities at national road junctions shall be avoided. Having regard to the foregoing and other concurrent proposals for similar development along the M8 motorway, and notwithstanding the acknowledged requirement for such a facility in this area, it is considered that pending the imminent updating of national Service Area policy by the National Roads Authority and the formulation of an appropriate planning policy approach in this regard, the proposed development would be premature and contrary to the policies of the development plan with regard to development within the Greenbelt and the provision of the Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.'

5.3 The following is the relevant planning history pertaining to other sites in proximity to the subject site

ABP ref. PL04.242586 (PA ref. 13/4648): Cork County Council granted planning permission, subject to 47 conditions, for the construction of an Off-line Motorway Service Area comprising:

- Vehicular access to/from the north-bound interchange roundabout of Junction 13.
- Car/van forecourt and HCV forecourt, both with canopy over.
- Underground fuel storage tanks and associated pipe work.
- Amenities building (966.6-sq.m.) comprising: convenience shop and ancillary areas; 4 no. Eat-in / take-away café / restaurants; seating / circulation area; public toilets; internal and external play areas and substation.
- Parking for 71 no. cars, 12 no. HGVs, 3 no. coaches and 5 no. motorcycles.
- Car wash.
- On-site wastewater treatment system and c. 12,000-sq.m. willow plantation, 2.5km rising main to connect to the public mains.
- Surface water attenuation tank and outfall to stream to the north.
- All ancillary signage, site development, landscaping and boundary treatment works.

All at Junction 13 on the M8 Motorway Gortnahown, Kiltrislane, Cloonlough, Brigown, Mitchelstown, Co.Cork

Following multiple third party appeals, the Board accepted the recommendation of the Inspector and refused planning permission for the proposed development. The two reasons for refusal are stated as follows:

1. The proposed development is located within the Mitchelstown Greenbelt Area, wherein it is the policy of the current development plan for the area and the Fermoy Electoral Area Local Area Plan that development will only be allowed where it is of a strategic and exceptional nature. The Spatial Planning and National Roads Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in January 2012 advocate a coordinated approach to the provision of off-line motorway service as part of the development plan process and indicate that a proliferation of private off-line service area facilities at national road junctions should be avoided.

Having regard to the foregoing and other concurrent proposals for similar development along the M8 motorway, and notwithstanding the acknowledged requirement for such a facility in this area, it is considered that pending the imminent updating of national Service Area policy by the National Roads Authority and the formulation of an appropriate planning policy approach, the proposed development would be premature and contrary to the policies of the development plan with regard to development within the Greenbelt and to the provisions of the national guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development is located within the source protection zone of the Mitchelstown South Water Supply Scheme. Having regard to the nature of the uses proposed on the site, and notwithstanding the proposed zero discharge design of the on-site wastewater treatment and disposal proposals, the Board is not satisfied that this location is suitable or appropriate for such development or that it would not give rise to an increased risk of contamination of this important public water supply source.

Furthermore, owing to the topography of the site requiring extensive earthworks and infilling, the site is likely to be highly visible which would seriously injure the visual amenity of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

ABP ref. PL04.241495 (PA ref. 12/6185): Permission was granted for development at the existing Amber petrol filling station site on the Dublin Road (R639) Fermoy, approx. 1.8km southeast of the subject site comprising:

- (1) An extension station (08/10082) restaurant / dining area, incorporating a drive-thru restaurant and take-away (148-sq.m.) and external seating / smoking area;
- (2) Parking for 60 cars and 17 trucks with new entrance off Pike Road and modified entrance off Dublin Road; and (3) associated works and signage.

The Board order noted concerns in relation to the impact of the development on Fermoy town centre and considered that they could be adequately addressed by the omission of the proposed 'drive-thru' component of the restaurant. Condition no. 2 of the Board decision omitted the proposed 'drive-thru' element, while condition no. 3 precluded hot food takeaway from the premises.

Tipperary County Council Jurisdiction:

ABP ref PL 92.244135 (PA ref. 14/600036): Permission granted by Tipperary County Council for the development of service station with proposed forecourt layout to include a forecourt canopy, 8 petrol/diesel pumps on two islands, underground fuel storage tanks, air/water service area, automatic roll-over carwash and ancillary signage, both illuminated and non-illuminated, the proposed forecourt building (300 m²), incorporating retail shop space (90.5m²), cafe/take away food area (99.5 m²) with external seating area to side of building, toilet and baby changing facilities and off licence. Permission also sought for parking of heavy goods vehicles/buses (18 spaces) and cars (35 spaces), two fast fill diesel pumps, area for recycling bins and bin store and all associated services required for above. Planning Permission also granted for a commercial

well to service this development and for on-site effluent system, percolation area, and all associated site works all at Scarnaglorane, Cahir, Tipperary. This location is at Junction 11 of the M8 Motorway and is currently under consideration by the Board at the time of writing this report (28th April, 2015)¹.

ABP ref. PL.23.241786 (PA ref. 13/4): Permission refused to Applegreen Service Areas Ltd. in February 2013 for the development of a motorway services area on the R639 at Cahir, Co. Tipperary, for three reasons including the failure to demonstrate a need for the facility on unzoned lands, which would undermine the strategic delivery of services as required by the NRA. The site is located approx. 40km north of the subject site. This application was withdrawn following first and third party appeal.

6.0 POLICY CONTEXT:

6.1 European Guidance

6.1.1 Regulation On Union Guidelines For The Development Of The Trans-European Transport Network

Agreement was reached in 2013 on the establishment of a unified core European transport network. The new core TEN-T network will be supported by a comprehensive network of routes, feeding into the core network at regional and national level.

The main objective of these new Guidelines is to establish a complete and integrated trans-European transport network, covering all Member States and regions. Article 44 Identification of the core network

1. The core network shall consist of those parts of the comprehensive network which are of the highest strategic importance for achieving the objectives of the trans-European transport network policy.

The M8 is identified as part of the core network.

¹ This report is updated on the 13th May, 2015 to advise and confirm that the above proposed development at Junction 11 of the M8 has been refused by An Bord Pleanala for 4 reasons, including non compliance with national and local policy amongst others.

Article 45 Requirements

2. The infrastructure of the core network shall meet all the requirements set out in Chapter II without exception. In addition, the following requirements shall also be met by the infrastructure of the core network:

(c) for road transport infrastructure:

- the development of rest areas approximately every 50 kilometres on motorways in order inter alia to provide sufficient parking space for commercial road users with an appropriate level of safety and security.

6.2 National Guidelines:

6.2.1 Spatial Planning and National Roads, Guidelines for Planning Authorities, Department of the Environment Community and Local Government, January 2012.

6.2.1.1. Section 2.8 deals with Service Areas. It is noted that services areas may come in two formats:

On-line Motorway Service Areas, provided by way of direct NRA / Local Authority involvement and which incorporate extensive parking and also facilities that cater specifically for the refueling, refreshment and toilet needs of drivers and passengers. No provision is made for hotel accommodation facilities, nor extensive retail outlets. The Authority's service areas are designed to discourage infrastructure from becoming destinations in their own right.

Off-line Motorway Service Areas at National road Junctions: "In the preparation of their plans, planning authorities may consider policies for the provision for off-line motorway service area facilities with reference to the requirements and advice included in the most up-to-date NRA guidance on the location and layout of the NRA's service areas and also similar type existing or planned privately promoted service facilities within existing towns / settlements and located in the general environs of the relevant road corridor.

A proliferation of private off line service area facilities at national road junctions should be avoided. It is therefore important that a coordinated approach between planning authorities should be undertaken in consultation with the NRA as part of the drafting of development plans.

In addition, facilities proposed for inclusion in service areas should be of a type that avoids the attraction of short local trips, a class of traffic that is inconsistent with the primary intended role for motorways and other national roads and associated junctions in catering for strategic long-distance and inter-urban and inter-regional traffic. Furthermore, to permit a service area to become a destination for local customers would be contrary to Government planning policy on retail and town centres as set out in Retail Planning Guidelines 2005. The consequence of this would be to threaten the viability of business in cities, towns or other local centres.”

6.2.2 Retail Planning Guidelines 2012

6.2.2.1 Section 4.11.10 notes that on line and off lines services are not considered in the guidelines and refers to the Spatial Planning and National Roads Guidelines which deal with such facilities.

The guidelines note that convenience shops are part of the normal ancillary services provided with motor fuel stations. They should only be permitted where they would not seriously undermine the approach to retail development in the development plan. The floorspace of the shop should not exceed 100m² net.

6.2.3 NRA Service Area Policy, National Roads Authority August 2014.

6.2.3.1 The document sets out the policy basis on which service areas will be provided to meet the needs of road users on the National Road network in Ireland. As set out at 2.2 in relation to design standards for service areas the authority publishes design standards for on-line service areas which are regularly updated. The NRA TA 70/14 (June 2014), Volume 6, Section 3, Part 3, NRA Design Manual for Roads and Bridges. The authority does not prescribe standards for developments which are not part of national roads, such as off-line service areas, though planning authorities and road authorities may have regard to National Roads Standards.

6.2.3.2 Section 2 of the Policy document deals with facilities and types of On-Line Service Areas as follows;

Two types of on-line service areas are envisaged, namely **Type 1** and **Type 2** Service Areas

A Type 1 Service Area (full service area) will be

a large scale service area providing an amenity building (including a convenience shop, restaurant, washrooms and tourist information), fuel facilities, parking and picnic area

A Type 2 Service Area (rest area) will be

a small scale service area providing parking, picnic and toilet facilities, but without a main amenity building or fuel facilities

6.2.3.3 In relation to spacing of service areas the policy targets the provision of Type 1 Service Areas (full service areas) every 100km in most cases. In practice, that requires the spacing to be less than 100 km in most cases. In addition, where the gap between Type 1 Service Areas is in excess of 85 km, a Type 2 Service area should be provided. The spacing set out above has been set based on a combination of European and national policy, international research, analysis of the road network in Ireland and submissions received as part of the public consultation process.

6.2.3.4 The needs for service areas on the existing dual carriageway network is demonstrated in Figure 3.1 and associated text identifies Mitchelstown - Fermoy section of the M8 –Junction 13 to 14 - as a location where off-line facilities could meet the criteria. The Policy also notes that the combination of an existing off-line service area at Cashel (Junction 8) and a planned service area at Ballacolla (Junction 3) which has planning approval on the M8, may meet or could be upgraded to meet the criteria.

6.2.3.5 In terms of Need, the document identifies that a Type 1 facility to be located Mitchelstown to Fermoy, Junctions 13-14, and at an approximate distance of 45-105km from previous facility. The document identifies the need for an off-line facility in this area of the M8.

6.2.3.6 At 5.2 it is stated that “Except for the statutory consultee role, the Authority has no role in determining how off-line development should be delivered

6.2.4 NRA Advice Note TA 70/14 - The Location and Layout of On-line Service Areas, June 2014.

The advice note gives general principles to be followed for the siting and layout of on-line service areas on National Roads. The advice note supercedes NRA TA 70/13 and includes amendments of the definition and types of service area.

6.2.5 National Road Safety Strategy (RSA) 2013-2020

With regard to engineering measures, the strategy notes that the completion of the Major Inter-urban Route network has improved the safety of the National Route system. Further motorway service areas are planned to protect against driver fatigue.

Key actions under the heading of Engineering include the following:

56. The provision of at least 5 new service areas on or immediately adjacent to the motorway network by 2020. The lead agency for this action is identified as the NRA.

6.3 Local Policy

In terms of the local policy context, the Board will note that the previous, 2009 Cork County Development Plan was in operation during the Planning Authority's assessment of this proposed development. I also note that the Senior Planners report and recommendation is dated the 12th of January, 2015, which is three days before the new County Development Plan came into effect. The Managers Order granting planning permission for the proposed development was signed on the 6th February, 2015 and the Board will note that the First Schedule of the Decision refers to Objective RCI 8-10 of the 2009 County Development Plan. In this regard, I intend to present the policy context of both documents in this section for ease of reference for the Board in its deliberations of this appeal.

6.3 Cork County Development Plan 2009

6.3.1 Section 6.3.10 of the Plan deals with Service and Rest Areas:

The National Roads Authority has prepared a policy statement on the provision of service and rest areas. They have identified the need for one service area between Fermoy and Mitchelstown. The Council will support the NRA in the provision of this important facility for road users. Regard must be given to the National Roads Authority's guidance document, 'Policy for the Provision of Service Areas on Motorways and High Quality

Dual Carriageway', when identifying an appropriate site for a serviced rest area.

6.3.2 Objective INF 3-6:- National Roads – Protection of Interchanges:

It is an objective of this Plan to protect the capacity of the interchanges in the County from locally generated traffic.

6.3.3 Objective INF 3-7:- National Roads – Service and Rest Areas

It is an objective to implement the NRA's policy document on the Provision of Service Areas and Rest Areas on Motorways and High Quality Dual Carriageways.

6.3.4 Section 4.8.9 of the Plan deals with Greenbelts Around Other Towns

Within these Greenbelts, the Local Area Plans will generally reserve land for agriculture, open space or recreation uses. Exceptions to this will only be allowedin the circumstances referred to in paragraphs 4.8.5 and 4.8.6 of this plan.

Section 4.8.5. refers to long-established commercial or institutional uses while paragraph 4.8.6. refers to development of a strategic and exceptional nature, that would not be suitably located within zoned lands, and which may be accommodated successfully in certain Greenbelt locations. This would only be appropriate where the impact of the development on the specific function and open character of the Greenbelt can be minimised (objective RCI 8-10).

6.3.5 Objective RCI 8-11 Greenbelts Around Settlements

(a) It is an objective to retain the identity of towns, to prevent sprawl, and to ensure a distinction in character between built up areas and the open countryside by maintaining a Greenbelt around all individual towns.

(b) It is an objective to reserve generally for use as agriculture, open space or recreation uses those lands that lie in the immediate surroundings of towns. Where Natura 2000 sites occur within greenbelts, these shall be reserved for uses compatible with their nature conservation designation.

(c) It is an objective in particular to prevent linear roadside frontage development on the roads leading out of towns and villages.

(d) The local area plans will define the extent of individual Greenbelts around the ring and county towns and any of the larger villages where

this approach is considered appropriate. They will also establish appropriate objectives for the Greenbelts generally reserving land for agriculture, open space or recreation uses.

- 6.3.6 **Objective RCI 8-10:-** Strategic and Exceptional Development:-
It is an objective to recognise that there may be development of a strategic and exceptional nature that may not be suitably located within zoned lands and that such development may be accommodated successfully in Greenbelt locations. In such circumstances, the impact on the specific functions and open character of the Greenbelt should be minimised.
- 6.3.7 The R639 is designated as scenic route S3: N8 National Primary Route between Moorepark and Mitchelstown, Views of the Galtee, Nagle, Kilworth & Knockmealdown Mountain Ranges.
- 6.3.8 **Objective ENV 2-11:-** Scenic Routes
It is a particular objective to preserve the character of those views and prospects obtainable from scenic routes identified in this plan.

6.4 Cork County Council Development Plan, 2014

- 6.4.1 Section 10.3 of the Plan deals with the Road Network while 10.3.3 deals with national and primary and secondary roads. Section 10.3.5 of the 2014 County Development Plan deals with Motorway Service Areas and states that ‘the “NRA Service Area Policy” (August 2014) sets out the policy basis on which service areas will be provided to meet the needs of road users on the national road network. In relation to offline facilities it states that provided offline facilities are in close proximity to the roadway and of sufficient standard, the NRA will take these locations into account when evaluating the level of provision and prioritisation of development for online NRA service areas.
- 6.4.2 County Development Plan Objective TM 3-1: National Road Network states as follows:
- c) Restrict individual access onto national roads, in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network.

e) Prevent the undermining of the strategic transport function of national roads and to protect the capacity of the interchanges in the County from locally generated traffic.

f) Consider the most up to date guidance in relation to the provision of Service and Rest Areas on the National Road Network (Section 2.8 of the Department of the Environment Community Heritage and Local Government 'Spatial Planning and National Roads Guidelines' (2012) and 'NRA Service Area Policy' (August 2014).

g) Cooperate with the National Roads Authority to identify the need for Service areas and/or rest areas for motorists along the national road network and to assist in the implementation of suitable proposals for provision, subject to normal planning considerations.

h) Ensure that in the design of new development adjoining or near National Roads, account is taken of the need to include measures that will serve to protect the development from the adverse effects of traffic noise for the design life of the development.

i) Control the proliferation of non road traffic signage on and adjacent to national roads having regard to the NRA's "Policy on the Provision of Tourist & Leisure Signage on the National Roads" and Section 3.8 of the 'Spatial Planning and National Roads Guidelines (2012)' of the Department of the Environment Community Heritage and Local Government.

6.4.3 In terms of road freight, the Development Plan at section 10.5.13 states that 'the County Council is also supporting the additional provision of service/rest areas on the motorway network to provide necessary facilities'.

6.4.4 Section 4.5 of the CDP deals with Greenbelts while section 4.5.4 deals with Planning Principles for a Greenbelt, stating that 'for the purposes of this plan the following principles underlie the designation of the greenbelts in Metropolitan Cork and around the county towns:

- Maintenance of distinction in character between the town or city urban and rural areas by the prevention of unrestricted sprawl of urban areas into the countryside;
- Prevention of individual settlements merging into one another;

- Strategic protection of land that may be required for development in the future;
- To focus attention on lands within settlements which are zoned for development and likely to contribute to the regeneration of areas;
- Provision of a source of recreation and amenity and to allow for open countryside to be within easy reach of most built up areas; and
- Retention of land in agriculture, forestry or other uses which would otherwise be susceptible to inappropriate development.

6.4.5 Sections 4.5.9 to 4.5.13 deals with Greenbelts around other towns, and objective RCI 5-8 is relevant as follows:

County Development Plan Objective RCI 5-8: Greenbelts around Settlements

a) Retain the identity of towns, to prevent sprawl, and to ensure a distinction in character between built up areas and the open countryside by maintaining a Greenbelt around all individual towns.

b) Reserve generally for use as agriculture, open space or recreation uses those lands that lie in the immediate surroundings of towns. Where Natura 2000 sites occur within Greenbelts, these shall be reserved for uses compatible with their nature conservation designation.

c) Prevent linear roadside frontage development on the roads leading out of towns and villages.

d) The local area plans will define the extent of individual Greenbelts around the ring and county towns and any of the larger villages where this approach is considered appropriate. They will also establish appropriate objectives for the Greenbelts generally reserving land for agriculture, open space or recreation uses.

6.5 Fermoy Electoral Area LAP 2011

6.5.1 Green Belts Around Towns

The LAP reiterates the provisions of the County Development Plan 2009 with regard to these Greenbelts.

6.5.2 **Objective GB 1-1 Green Belts Around the Ring and County towns**

This policy restates objective RCI 8-11 of the County Development Plan 2009. With regard to the Green Belt around Fermoy, section 1.9.12 of the LAP notes that an important and attractive characteristic of the town is the complex topography and landscape character of its setting. The plan seeks to protect this through the retention of the Greenbelt around the town.

6.5.3 Section 1.9.14 of the LAP states as follows:

To the north and south, on exiting the M8 Motorway, the town is approached via the R639 which is also deemed unsuitable for development, as it would have a negative impact on the visual setting of the town.

7.0 **GROUNDS OF APPEAL**

7.1 This is a multiple third party appeal against the decision of Cork County Council to grant planning permission for the proposed development.

7.2 Sean McCarthy, Consulting Engineers:

The following is a summary of issues raised in this appeal:

- Issues raised regarding the decision of Cork County Council to accept the unsolicited further information
- Notes planning history of the site, including An Bord Pleanala decision to refuse on the basis of its location in the Fermoy Greenbelt.
- The proposed development is not strategic or of an exceptional nature and therefore should not be allowed in the greenbelt.
- There is an existing off line facility within 1km of the proposed site.
- The development would set a precedent for similar type development at every junction on the motorway.
- The development will negatively impact on the commercial activity in Fermoy town

7.3 Ger Fahy Planning on behalf of Mr. John O’Leary, Cahir, Co. Tipperary:

This substantial submission details the proposed development site and its location, provides details of planning permission recently secured by the appellant for a similar type development at a site 33km from the subject appeal site and a planning history is presented. The submission also notes procedural concerns regarding the acceptance of the unsolicited further information. The ground of appeal area summarised as follows:

- This is a repeat application which has recently been refused permission by the Board. The circumstances have not changed to justify a reversal of this decision.
- The site is located on a greenfield site in the greenbelt and would be contrary to the Cork County Development Plan and the proper planning and development of the area.
- The development would be contrary to the policies and objective in respect of the protection of water supply and groundwater.
- The development poses an unacceptable risk to groundwater and would be contrary to S.I.9 of 2010 Regulations
- The development would be contrary to NRA policy
- Having regard to the permitted off line development at Cahir and its proximity to the site, the development would have a detrimental impact on the commercial viability of the permitted development.
- The development requires the pumping of wastewater a significant distance to the WWTP and would constitute an unsustainable use of resources which would be contrary to the proper planning and sustainable development of the area.

7.4 AOS Planning on behalf of Mr. David Ryan:

This substantial appeal is lodged on behalf of the operator of the Amber Oil Service Station on the Dublin Road, Fermoy. Grounds of appeal are summarised as follows:

- The development, if permitted will result in a proliferation of off-line service areas contrary to the NRA guidelines
- The development is neither strategic nor exceptional and therefore not a permissible use in a greenbelt zoning in accordance with the County and Local Development Plans. Planning history also noted

- The development will undermine the role of Fermoy Town Centre and junction capacity
- Will be visually intrusive in the greenbelt area
- Would constitute an unacceptable environmental threat to the area and its amenities.

7.5 Teagasc:

Teagasc has submitted an appeal with regard to the permitted development and the submission notes the proximity of the proposed development site to the Moorepark campus which hosts two research centres. The primary concern raised relates to the proposed roundabout associated with the proposed development. The concerns regarding the proposed development are summarised as follows:

- Increased traffic will have a negative impact on safety at the existing main entrance and will drive an increase in traffic volumes at the secondary sub-standard entrance beside the M8 roundabout.
- The proposed development will force Teagasc to revert to the previous proposal to enter the campus in Moorepark off the M8 roundabout. This should be a consideration should planning permission be granted.
- The campus is traditionally located in a rural environment which will change. Adequate screening in terms of visibility and noise, should be conditioned.
- Moving the roundabout to the proposed service station to a location further along the R639 in the direction of Mitchelstown would allow the maintaining of the existing vistas to the Teagasc premises. To ensure safety, the current Teagasc entrance would have to be relocated to this new location.

A second submission, prepared by Peter Thomson Planning Solutions on behalf of Teagasc was also presented in the appeal documents. This submission is summarised as follows:

- While a letter of consent was given to the applicants for the making of the application, this did / does not preclude Teagasc from making comments or objections.
- Concerns were raised in respect of the Masterplan being prepared by Teagasc for the future expansion of the Moorepark Campus and no

consideration of this was given in the assessment of the proposed development.

- The provision of motorway services should be development plan led. Given there are two competing proposals being considered concurrently, and a third under consideration by the Board at Junction 11 in Co. Tipperary, demonstrates the need for a development plan and inter county led policy approach.
- The future expansion of Teagasc at Moorepark should have been taken into account.
- Traffic considerations did not take account of the secondary Moorepark access. The co-operation of Teagasc will be central to the applicant implementing any permission involving a new roundabout at its main entrance. Teagasc considers the proposal to be premature.
- It is considered that the development will attract significant car borne traffic from Fermoy and elsewhere. It is requested that the drive-thru take away is removed by condition should the Board be minded to grant permission.
- Visual impacts associated with the development on the rural character of the area.

7.6 McGill Planning submitted an appeal on behalf of Applegreen Service Areas Ltd. The grounds of appeal are summarised as follows:

- The submitted documents provide a background history to both this subject site and that the subject of a concurrent appeal by Applegreen who are the 1st party appellants in that instance.
- The site poses a significant risk to groundwater quality, water supply, the Blackwater Catchment SAC and the future growth of Fermoy.
- The development is contrary to the development plan policies to protect the Fermoy Greenbelt.
- The proposal is not NRA compliant
- The proposal is contrary to the Spatial Planning & National Road Guidelines, 2012
- The subject site has potential archaeological risk.
- Procedural issues raised

7.7 Cunnane Stratton Reynolds, Land Planning & Design has submitted an appeal on behalf of Mr. Liam Fitzgerald. The grounds of appeal are summarised as follows:

- The application is invalid in that the proposal demands a new rising main for which no permission has been sought.
- The proposal is contrary to NRA policy
- The assessment of the proposal is flawed and the PA dismissed the views of the NRA
- The proposal is contrary to Development Plan policy
- The development has failed to address traffic issues associated with the existing Teagasc facility.
- An EIS is required under the provisions of the Roads Act 2007
- The development will impact on existing retail in the urban areas.
- Concern raised regarding the proposed provision of a drive thru facility.

8.0 OBSERVERS

There are 2 no observers noted in relation to this multiple third party appeal from Mr. James V Walsh and Coakley O'Neill on behalf of Topaz. The observations made are summarised as follows:

8.1 Mr. James V Walsh:

- Reference is made to the original submission to Cork County Council.
- A facility with direct access to the motorway would be a preferred option not catered for by this development.
- Concern is raised that the development, if permitted will bring legitimate catering business out of the centre of Fermoy, adversely affecting the fabric of society within the town.

8.2 Coakley O'Neill on behalf of Topaz:

This submission seeks to support the decision of the PA to grant planning permission for the proposed development. Topaz are identified as prospective operators of the facility. The observations made are summarised as follows:

- The reason for the previous refusal of the development on the site has been addressed.
- The proposed development accords with policy.

9.0 RESPONSES

9.1 Planning Authority:

The Planning Authority has responded to this appeal where the Senior Planner has provided a report. This report is summarised as follows:

- The Planning Authority is satisfied that the development accords with the CDP including RCI 8-10 and S2.8 of the DoECLG S28 document and relevant NRA documents.
- The Planning Authority is satisfied based on Water Services, Environment & Irish Water reports in relation to water quality impacts. The development is considered acceptable in relation to AA.
- The Planning Authority is satisfied in relation to access / roads and internal layout subject to condition.
- The proposal is acceptable in terms of visual impact.
- The development will not have an unduly negative impact on villages or Fermoy.
- The decision by Cork Co. Co to require notice of significant further information accords with the provisions of A35.
- The PA note the recent Board decision PL10.243782

9.2 First Party Response to Third Party Appeal by Sean McCarthy:

The first party has responded to a third party appeal as follows:

- There have been significant policy changes since the previous ABP decision.
- Article 35(1) of the P&D Regs 2001-2013 facilitate the submission of further information which simply provided clarification of matters already submitted and did not revise the scheme in any way.
- The development will not affect existing commercial activity in Fermoy.
- The Amber Oil Service station was not intended to be a motorway service station.
- Junction 13-14 is identified for a Type 1 Service Area.
- The provision of an MSA at Junction 14 will form a strategic part of the network of MSAs on the National Motorway Network, and is facilitated in the Greenbelt as both strategic and exceptional.

9.3 First Party Response to PAs response to Third Party Appeals:

- Fully supports the Councils position that the proposed MSA is in accordance with the 2014 CDP including objective RCI 8-10 and the NRAs Service Area Policy, 2014.
- Procedural issues addressed
- Infrastructure and service issues addressed
- AA is not required
- Visual impact considered acceptable
- The development will not have a negative impact on villages or Fermoy
- There are positive comparisons between the current proposal and the permitted MSA under PL10.243782.

9.4 Third Party Appellants responses to PAs response to third party appeals:

These responses consider the submission from the Senior Planner with Cork County Council in relation to the proposed development and are summarised as follows:

Sean McCarthy:

- The third party disagrees with the contention that the PA is satisfied that the development will not result in a proliferation of facilities. There is a facility within 2km of the site.
- The unsolicited information should not have been taken into account

Teagasc:

- Traffic hazard has not been addressed
- The development is premature pending the satisfactory resolution of the road safety issues.
- Teagasc would have no objection to An Bord Pleanala attaching an appropriately worded suspensive planning condition which ensures no works commence until a technical solution to the realignment of access to the Teagasc site is reached and implemented.
- The visual impact issues remain a concern.
- The previous ABP decision referred to, PL10.243782, considered that the development would provide additional services to the existing village in addition to serving the needs of motorway users. The current proposal should only be viewed as a proposal to serve the needs of motorway users and not as an out of town retail and commercial destination.

David Ryan:

- Sees no reason to make any amendments to original appeal.

McGill Planning on behalf of Applegreen:

- Teagasc access has not been properly assessed and if permitted, the development will negatively impact the current operations and any reasonable expansion in the future.
- Visual impact has not been properly assessed.
- Retail impacts
- Contrary to greenbelt strategic development
- Contrary to National Roads policy

Cunnane Stratten Reynolds, Land Planning & Design on behalf of Liam Fitzgerald:

- Issues in relation to RCI 8-10 have already been made clear.
- Roads and traffic issues not addressed
- Comments regarding the potential future development of the Teagasc site are clearly premature.
- Issues arise in relation to the proposed development which do not reflect those of the permitted MSA referred to.
- Notes no response from the Roads Department.

10.0 ASSESSMENT:

Having regard to the nature of this appeal, and having undertaken a site visit, as well as considering the information submitted, I suggest that it is appropriate to assess the proposed development under the following headings:

- Compliance with policy
- Concurrent proposal at Junction 13
- Landscape/visual impact
- Commercial Impacts
- Roads & Traffic
- Water Services & Infrastructure
- Other Issues

10.1 Compliance with policy

National Policy:

10.1.1 Planning permission is sought for the construction of an off-line Service Area whose primary intention is to service traffic on the motorway. The NRA Service Area Policy, 2014 acknowledges the requirement for such a facility on the M8 in the area of Mitchelstown – Fermoy – Junctions 13 – 14. Under the initial Service Area Programme in 2007, the NRA identified the intention to construct an on-line motorway service area north of Fermoy at Killworth and having considered the planning history associated with the subject proposed development, it would appear that the State has already acquired a site at Killworth of 26.42 acres specifically for the “provision of road services to the NRA”. Proposals for this facility have not progressed. The latest policy document, 2014 indicates that ‘service areas will be provided if the anticipated off-line developments have not emerged’.

10.1.2 The provision of motorway services has been supported in terms of national policy since 2006 when the National Roads Authority (NRA) announced that it would become directly involved in the provision of on line service areas on motorways and high quality dual carriageways. In October 2007, the Authority published its policy on the provision of service areas which included a map showing indicative locations for service areas based on a broad objective of having service areas at intervals of

approximately 50-60km. Following direction from the Minister for Transport in August 2009 to suspend the development of further service areas requiring exchequer funding, the NRA announced at that time that it was not taking further steps to advance provision of proposed service areas.

10.1.3 The most recent NRA Service Area Policy August 2014 provides that the policy preference is for on-line service areas, having regard for public convenience, control over the quality, extent and nature of services to be provided, and the ability of the Authority to respond to emerging law, such as the ITS Directive² and the TEN-T Regulations³. The Board will note my reference above to the previous intentions of the Authority to provide an on-line service area at Kilworth and the current situation which suggests that the on line service area along this section of the M8 will only be provided in the future should an off-line facility fail to be delivered. The policy document identifies locations where future off-line facilities could meet the criteria (an appropriate level of provision of parking for cars and heavy commercial vehicles (HCVs), be located within a few hundred metres of the dual carriageway, remain open for 24 hours, and permit commercial vehicles to park for longer periods including overnight thus allowing drivers to take break and rest period) includes Mitchelstown to Fermoy (Junction 13 to Junction 14). Furthermore it is stated that

“Any decision to advance these service areas is a matter for the developers, and any decision to approve them is a matter for the planning authorities. The Authority is not advocating or opposing their development, but to the extent that these service areas are developed and fulfil the criteria noted above, the Authority does not envisage providing on-line service areas in their vicinity, at least not in the short or medium term. If we take it that the provision of on-line service areas in their vicinity will be considered again in 2019, allowing for planning and construction it is unlikely that the Authority will open any service Area in their vicinity before 2022, at earliest.”

² Intelligent Transport Systems. Directive 2010/40/EU adopted 7th July 2010 to accelerate the deployment of innovative transport technologies across Europe.

³ The Trans-European Transport Networks (TEN-T) are a planned set of transport networks across Europe. The TEN-T regulation targets a gradual development of the transport network with the core network a priority (by 2030) followed by the remainder of the comprehensive network (by 2050). In Ireland, the core network currently consists of the route from Northern Ireland via Dublin to both Cork/Ringaskiddy and Limerick/Foynes.

10.1.4 The third party appellant's and observers argue that the proposed development is contrary to NRA Service Area Policy as this policy does not provide for a service area at this junction rather refers to a full service area between Junction 13-14. In this regard the Board will note that the submission from the NRA during the course of the PAs consideration of the proposed development did not advise an objection in principle to the development. I further note that as stated within the NRA policy document, except for the statutory consultee role, the National Roads Authority has no role in determining how off line development should be delivered. I consider that the NRA Policy Document is not a spatial planning document and therefore does not seek to identify locations for the provision of service areas rather has regard to planned locations.

10.1.5 The Spatial Planning and National Roads, Guidelines for Planning Authorities 2012 stresses the role of planning authorities in the preparation of their plans to consider policies for the provision for off line motorway service facilities with reference to the requirements and advices included in the most up to date NRA guidelines. The guidelines place the emphasis on the development plan as the mechanism for the identification and siting of off line service areas, with appropriate consultation with the NRA. This is necessary to avoid a proliferation of such facilities at national road junctions. The co-ordinated policy response is clearly necessary in relation to the development of these strategic facilities and to ensure that provision is in accordance with proper planning and sustainable development.

Local Policy:

Cork County Development Plan, 2014

10.1.6 As advised in section 6.4 of this report, the new Cork County Development Plan came into force before the decision relating to this proposed development issued from Cork County Council. In this regard, I propose to only consider these current policies. The Plan objective TM 3-1 (e) seeks to prevent the undermining of the strategic transport function of national roads and to protect the capacity of the interchanges in the County from locally generated traffic. Part (g) of the objective indicates the objective to cooperate with the NRA to identify the need for Service areas and / or rest areas and to assist in the implementation of suitable proposals for provision, subject to normal planning considerations.

10.1.7 Section 4.5 of the CDP deals with Greenbelts and one of the planning principles associated with same seeks prevent urban sprawl, to focus attention on lands within settlements which are zoned for development and to retain the land in agriculture, forestry or other uses which would otherwise be susceptible to inappropriate development.

Fermoy LAP 2011

10.1.8 Objective GB 1-1 seeks to protect the greenbelt around the town of Fermoy and Section 1.9.14 states “to the north and south, on existing M8 Motorway, the town is approached via the R639 which is also deemed unsuitable for development, as it would have a negative impact on the visual setting of the town.

10.1.9 In considering the local policies of Cork County Council, it is clear that the council supports the provision of service / rest areas on the motorway network.

Compliance with Policy

10.1.10 Having considered the relevant policy documents associated with the proposed development, it is clear that National policy seeks to support the provision of motorway service facilities at some location within junction 13-14 of the M8. I also note the current situation regarding the state providing such facilities and notwithstanding the fact that the Kilworth site appears to have been purchased to provide said on-line facilities, I am satisfied that national policy supports in principle, the development as currently proposed subject to normal proper planning and sustainable development considerations. I will discuss the issues associated with the concurrent proposed development at junction 13 below. I consider that in terms of National Policy the principle of development at this location is in accordance with national roads policy

10.1.11 In terms of the subject sites location within the Greenbelt area of Fermoy, it must be considered if the proposed development constitutes a development which will retain the identity of towns, prevent sprawl and ensure a distinction in character between built up areas and the open countryside. It is clear that the nature of the proposed development does

not constitute permissible development in greenbelts which include agriculture, open space or recreation uses. It might reasonably be considered that the development constitutes a strategic development which will be associated with the motorway and the existing interchange which would override the restrictive development policies of the greenbelt. The matter is further discussed in terms of the concurrent proposed development at J13 below.

10.1.12 As regards other national and local policies including retail and economic policy which supports the consolidation of urban areas, towns and villages and settlement policy which seeks to restrict development in open countryside, I consider that having regard to the potential strategic and exceptional nature of the proposed development and subject to operation as a service area for M8 traffic and not as a destination in its own right the principle of development at this location can be considered as acceptable. Infrastructural issues and other planning issues are discussed further below.

10.2 Concurrent proposal at Junction 13

10.2.1 The Board will note the concurrent proposed development at Junction 13 of the M8 which also seeks permission to construct a motorway service area. I would also acknowledge that both proposals have arisen due to the lack of progress in relation to the NRA proposed on-line facility at Kilworth. The most recent NRA policy would clearly suggest that the on-line facility at Kilworth will only be considered at a later date should an off-line facility between junctions 13 and 14 not be brought forward in the near future. All three possible service areas are located within an approximate 9km stretch of the M8 and in line with Spatial Planning & National Roads Guidelines, clearly this is a scenario which is to be avoided. The Guidelines place the emphasis on the development plan as the mechanism for the identification and siting of off-line service areas, with appropriate consultation with the NRA. This is necessary to avoid a proliferation of such facilities at national road junctions. Submissions from the NRA have not raised specific objections to this, or other concurrent applications, however, they have drawn particular attention to Section 2.8 of the Guidelines.

10.2.2 I note that the County Development Plan has been updated, and it seems unfortunate that the Planning Authority failed to provide clearer direction with regard to the provision of Motorway Service Areas particularly in this location of the M8. However, I do accept that to specify a specific site as part of the Development Plan Process might be seen as possibly pre-determining a grant of planning permission, but as with all zoned land, site servicing is required to be considered as part of any planning application. In any case, I also acknowledge that the NRA has no real role in site identification for the provision of such facilities. I do note however, that only one facility should be considered along this stretch of the M8. I also suggest that the NRA on-line facility should also be considered as part of this joint assessment. The Board will note that the PA has refused planning permission for the proposal at Junction 13.

10.2.3 There is an existing small facility located at Cahir, Co. Tipperary at Junction 11⁴, at approximately 33km to the north of the Junction 14 proposal and 40km to the north of the J13 proposal. In addition, the Board will note that there are Service Areas at Junctions 8, Cashel at 54km and 45km from Js 14 and 13, and Junction 3, Oldglass, Grantstown, Ballacolla, Co. Laois, a further 50km to the north along the M8. Submissions from the NRA have not raised specific objections to this, or other concurrent applications, however, they have drawn particular attention to Section 2.8 of the Guidelines. I note the NRA Policy which states that:

Any decision to advance these service areas (including Mitchelstown to Fermoy (Junction 13 to Junction 14) on the M8) (my emphasis) is a matter for the developers, and any decision to approve them is a matter for the planning authorities. The Authority is not advocating or opposing their development, but to the extent that these service areas are developed and fulfil the criteria noted above, the Authority does not envisage providing on-line service areas in their vicinity, at least not in the short or medium term. If we take it that the provision of on-line service areas in their vicinity will be considered again in 2019, allowing for planning and construction

⁴ This report is updated on the 13th May, 2015 to advise and confirm that the proposed expansion and development of the Junction 11 facilities of the M8 has been refused by An Bord Pleanala for 4 reasons, including non-compliance with national and local policy amongst others.

it is unlikely that the Authority will open any Service Area in their vicinity before 2022, at earliest.

The Authority is aware that there are many other facilities for roads users available close to the dual carriageway network. These facilities are a welcome provision of services to road users, but do not fulfil the criteria above.

The Authority will provide on-line service areas at the remaining locations identified on the existing dual carriageway network. While that doesn't preclude future developments off-line at these locations, subject to approval by the planning authorities, such off-line facilities will not be considered as an alternative to the Authority's on-line service areas.

10.2.4 With regard to the identified NRA standard separation distance of 100km between the provision of on-line facilities, the Board will note that the permitted service areas are located at approximately 50km to the north of the J14 site and 45km of the J13 site. That said, National Policy suggests that there is a need for an additional service area along this section of the M8. The two current off-line service area applicants are located just 9km apart. One only is required as a grant of permission in both cases would result in a proliferation of motorway facilities beyond the needs of the motorway network and contrary to national policy. While it may be considered unfortunate that a strategic policy has not been prepared to address this issue in this case, I acknowledge that the Senior Planning Officer with Cork County Council has made a logical and considered assessment of both proposals and the issues arising in relation to both sites. In this regard, I suggest that it would be inappropriate to consider each proposal without due consideration of the other. They should not be considered in isolation given the similarities of both sites. Both sites are located within Greenbelts and in proximity to motorway interchanges. Ultimately, it is the consideration of site specifics that will determine if either site is suitable for the proposed development.

10.3 Landscape/visual impact

10.3.1 The subject appeal site is currently well screened along the south western side, along the R639, by a high stone wall and mature trees. In this regard, the site is not visible along the regional road. To the north of the site, views into the site are available from the over-bridge at the motorway interchange but these are intermittent and limited. The levels on the site dictate that the site falls towards the north eastern area and the plans and particulars provided indicate that the existing ground levels across the site will be reduced to level the site. The first party submits that these measures will reduce the visibility potential of the site from the surrounding area. The primary views towards the site will be from the northern banks of the River Funshion.

10.3.2 The first party submitted a visual impact assessment as part of the planning application documents and this assessment concludes that the greatest visibility will be limited to receptors to the north and adjacent to the proposed site entrance. Impacts are identified as slight negative for views south from the M8, while they are otherwise identified as neutral or imperceptible. In principle, I would generally have no issue with these conclusions.

10.3.4 The immediate visual impacts will occur locally and certainly a grant of planning permission will impact and change the existing rural character of this area. While I may have concerns regarding the erosion of the Greenbelt, I acknowledge the strategic nature of the proposed development and accept that that the landscape and visual impacts arising can be considered insignificant and acceptable. Subject to the treatment of boundaries, I am further satisfied that the development will not significantly impact on the character of the R639 as a scenic route.

10.3.5 In addition to the potential impacts of the built elements of the proposed development, concern has been raised regarding the provision of signage and the potential impacts of same. I consider that this matter could be reasonably addressed by way of appropriate conditions should the Board be minded to grant planning permission in this instance. In addition, clear

direction on the issues of lighting should be provided by way of condition as part of any decision to grant planning permission.

10.4 Commercial Impacts

10.4.1 The proposed development site is located within 3km Fermoy town centre to the north of the town. The Board will note that the Amber Oil petrol filling station has recently been upgraded and extended to accommodate a dining area and parking for 60 cars and 17 trucks and is located approximately 1.6km from the proposed development site. The current proposed development site proposes a shop and restaurant building (with a drive through and take-away facility), forecourt with canopy and fuel facilities for heavy commercial vehicles (HCVs), car wash, picnic & external seating/amenity areas and parking areas.

10.4.2 Overall, the nature and size of the proposed development accords with other existing and proposed motorway service areas in other areas of the Irish motorway network. In terms of the offer proposed, I would note that while it is not the role of the planning system to inhibit competition, it is concerned with the protection of the vitality and vibrancy of existing town centres. National Policy, including The Strategic Planning and National Road Guidelines, also note that in formulating development plan policy in this regard, consideration should be given to similar type existing or planned privately promoted service facilities within existing towns/settlements and located in the general environs of the relevant road corridor. In this regard, all guidance clearly provide that off-line facilities which would generate local trips inconsistent with the role of the motorway network, or that would become a destination in their own right, are inappropriate.

10.4.3 The matter of the potential impact of this proposed development on the Amber filling station has been discussed and considered under the previous planning application and appeal on the subject site. The Board will note that under PL04.241495 (Amber Site), the developer indicated that the extension to that facility was sought based on existing demand and not intended to attract motorway traffic, was not a motorway service area, although it was and is used by motorway traffic. It has been argued

that the Amber site is not attractive for motorway traffic which will not divert so far off route for the services provided. As such, it has been pre-determined that there remains a requirement for an appropriately located motorway facility for motorway traffic and that the current proposed development should not be considered as being in direct competition with the existing facility.

10.4.4 The Board will note that proposed developments which seek to service motorway traffic are not considered in the Retail Planning Guidelines. The restricted level of convenience shopping proposed can be considered limited in its scale and having regard to the distance from Fermoy town centre, I accept that the development is unlikely to give rise to significant impacts on the viability and vitality of the town centre as the primary retail destination. I have had regard to the food elements proposed as part of the proposed development and in particular I note the arguments relating to the proposed provision of a drive-thru. In my opinion, I do not consider that a drive-thru facility is necessary for a motorway service area. While the site is located 3km from Fermoy, it is not so far as to preclude a short trip for local people with regard to the fast food provision. This would, in my opinion, encourage the use of the proposed motorway service area as a destination in its own right, contrary to guidelines and potentially impacting on similar existing businesses in the town. I note that the Planning Authority has no such concerns, and should the Board be minded to grant planning permission in this instance, this matter would require to be fully considered.

10.5 Roads & Traffic

10.5.1 The first party, included as part of the application documents, a Transport Impact Assessment and a Stage 1 Road Safety Audit. Both reports were prepared by Barry & Partners, Consulting Engineers and concludes that the traffic generated by the proposed development will not have a significant negative impact on the existing road users and that there will be ample spare capacity at all junctions within the study area to accommodate the proposed development.

10.5.2 Analysis of the capacity of the two roundabouts at Junction 14 indicates that they currently operate well within design capacity. The report notes that the proposed new roundabout at the entrance to the site has been designed in accordance with the NRA DMRB and a vehicle sweep analysis was carried out to ensure that it can geometrically cater for all vehicles. The roundabout is to be located within a 60km/ph zone and is provided with adequate forward visibility and capacity to cater for the proposed development. The TIA indicates that the development will not give rise to any new trips on the national road network, but will give rise to movements on and off the M8 as well as additional traffic on the R639 from Fermoy to Kilworth. The Board will note that the TIA was prepared as part of the original application for this site, in February, 2013 and the findings of the assessment conclude that all junctions within the surrounding road network will operate efficiently and within capacity in the 2029 Design Year.

10.5.3 In terms of parking, it is indicated that 104 car parking spaces will be provided including 93 customer spaces of which 4 will be designated for disabled use and 11 staff spaces, of which 1 will be designated for disabled use. In addition, provision is made for 4 motorcycle parking spaces. The development also proposes to provide 2 coach spaces and 14 HGV spaces, which will be accessed via a dedicated HGV route. Additional HGV parking can be added should there be demand and a further planning application will be lodged should this demand arise. The Board will note that the development provides a shortfall in parking requirements in relation to HGVs, -1, coaches, -3 and motorcycles -3. The Board will note that the TIA refers to a Type 2 Service Area as it was prepared under the previous policy documents. The proposed development reflects a Type 1 service area in accordance with the NRA 2014 policy document which is described as follows:

A Type 1 Service Area (full service area) will be
a large scale service area providing an amenity building (including a convenience shop, restaurant, washrooms and tourist information), fuel facilities, parking and picnic area

Overall, I am satisfied that should planning permission be granted in this instance, adequate parking is provided.

10.5.4 The proposed development is dependent upon the construction of a new 4-arm roundabout at the location of the existing Teagasc Morrepark Campus access. The Board will note that a letter of consent for the making of the planning application was provided by Teagasc to the first party. The Board will further note that Teagasc is a third party objector to the proposed development. The grounds of objection are presented in section 7.5 of this report above, pg 29 and primarily relate to the potential impact of the development on the future expansion plans of the Moorepark Campus.

10.5.5 I have had regard to all reports and comments provided in relation to roads and traffic and I note that there is no objection to the proposed development from the planning authority. I also note that the issue Teagasc raises in relation to the expansion of the Moorepark Campus and future alternative access, have been addressed by the Senior Planner in his report. I also accept that no development works can be undertaken without the consent and cooperation of Teagasc. I am satisfied, subject to this issue being appropriately addressed, that the development would not negatively impact on the safety or convenience of road users and can be considered as being acceptable in principle at this location. A condition in terms of a further safety audit and final determination of the roundabout details should be included as part of any grant of planning permission, details of which will require to be addressed prior to the commencement of any development on the site.

10.6 Water Services & Infrastructure

Water supply

10.6.1 The proposed development was originally to be served by the public water main which runs along the northern side of the R639. The Services / Infrastructure Report, dated October, 2014 identifies the needs of the proposed development and notes that the existing water supply has no reservoir and therefore intends to provide 2-day water storage on site. The report also acknowledges issues with the pipe diameter size towards Acres / Castlehyde and as such, has proposed that the car wash element of the proposed development be omitted at this point. A separate planning application will be lodged for same in the future with regard to water supply.

10.6.2 The proposed development site is located within 600m of the Downings Bridge Bored Well, which initially appears to have been the intended source of water supply for the development. The site is located within the Inner Source Protection Area of this Downings Bridge bored well and it comprises one of two public water supply sources which currently serves the village of Kilworth. The Board will also note the identification of a number of private wells in the vicinity of the site which are supplied via the underlying aquifer. The Fermoy Electoral Area LAP 2011 notes that this supply has no reservoir and operates on a pressure pumping system. The LAP also notes that the provision of a new water supply scheme is being identified that will serve Glanworth, Kilworth and Glenahulla. It identifies that remedying infrastructural deficiencies needs to be given a higher priority.

10.6.3 The submitted proposed development considered the proposed development in terms of the risk to groundwater and submits that the development will required excavations to a depth of approximately 4.5m in order to facilitate underground storage tanks etc. It is submitted that groundwater in the vicinity of the site is likely to have been lowered by the large cutting for the adjacent M8. Previous drilling in the surrounding area encountered groundwater at depths of between 51m and 141m. It is therefore concluded that no significant dewatering will be required for excavations on the site and that impacts on ground water levels are not likely.

10.6.4 The Risk Assessment for use of the site as a petrol filling station describes it as a class A site given that it is located in a groundwater protection zone. In this regard, the potential impacts to groundwater quality due to spillages of hydrocarbons would be severe should such an event occur. The applicant submits that the likelihood of a leak occurring is low as fuel will be stored in double walled underground tanks with Class 1 leak detection and containment system. Subject to best practice in design, construction and operation, the report concludes that in the event of a spillage it will be possible to ensure that there will be no impact on the Kilworth bore well at Downings Bridge.

10.6.5 In order to address the above concerns, the applicant has proposed to provide a new water main for a distance of approximately 1120m to connect the Downings Bridge supply to the Fermoy public water supply. It is submitted that such a proposal will mean that the Downings Bridge borehole can be bypassed as a public water supply source should a contamination event occur. The Board will note that Irish Water have accepted that there is adequate capacity in the Fermoy supply to accommodate this proposal. I note that the proposals were initially a concern for Irish Water and note that discussions appear to have taken place between the first party and Irish Water late in the PAs assessment of the proposed development. I have serious concerns regarding the proposed development and the potential risk to the underlying aquifer, and not only the public water supply of Downings Bridge borehole as well as a number of private wells in the vicinity of the site.

10.6.6 The proposed development site lies over a regionally important karst aquifer and is within 600m of the borehole abstraction point for the Downings Bridge Public Water Supply. This supply currently yields approximately 900,000 litres of water per day and is the drinking water supply for a population of 1,400 people. The vulnerability of the site is classed as 'High to Extreme'. The Groundwater Protection Guidelines, GSI, classify the level of response to development in such extreme high risk areas as, 'Not Acceptable'. A fuel spill has the potential to result in serious contamination of the source. I have a real concern that the level of information presented in terms of the alternative proposals for the public water supply has not adequately considered the statistics presented in the Fermoy Electoral Area LAP 2011.

10.6.7 The Plan notes, at Section 1.2.23 'the public water supply system has adequate source capacity to cater for projected demand to 2020. In some areas the pipework will need to be extended to service zoned lands.' Table 1.1 of the LAP provides information in terms of Population and Households 2002-2020 and notes that 2020 population targets is 7,442, which is a population growth of 1,569. In light of the above, together with the population served by the Downings Bridge Public Water Supply, I would question whether the proposal as presented can adequately be considered as being in the interests of proper planning and sustainable development in this regard. I have serious reservations regarding the

protection of the water supply catchment and consider that inadequate information is provided in relation to the overall proposals for water supply.

Wastewater supply.

10.6.8 It is proposed that the development will connect to the Fermoy public sewerage scheme by means of a new rising main which will be laid along the public road for a distance of 2.2km. The Services / Infrastructure Report, October 2014, at section 4.12, identifies that 'certain technical requirements for the pump-station will arise'. I am unclear as to the specifics in this regard but note that the Planning Authority has raised no objections to this proposal. I also note that the Fermoy Electoral Area LAP indicates that there is adequate capacity in the public wastewater system to accommodate the proposed development. In this regard, I consider it reasonable that the proposal is acceptable, subject to conditions.

Surface Water

10.6.9 Surface water run-off from the proposed development will be collected by a new network of surface water sewer pipes, attenuated in a below ground attenuation storage area, passed through a hydrocarbon interceptor unit and ultimately discharged to the Funshion River. The attenuation area will be sized for a 100-year flood event. Limited outflows will be restricted to greenfield rates and will ensure that hydrocarbon spills on the forecourt and parking areas are separated before discharge to the river. I note no objection from the Planning Authority in relation to surface water disposal proposals.

10.7 Other Issues:

10.7.1 Procedural Issues:

I note the issues raised by third parties regarding the processing of the planning application by the planning application. The application was lodged to Cork County Council on 10th October, 2014 and the due date for decision was the 4th December, 2014. On the 25th of November, 2014 unsolicited further information was submitted by the agent of the First Party. This submission sought to address issues raised by both a third party objector, Applegreen, and the NRA. On receipt of the unsolicited further information, the Planning Authority sought the re-advertising of the proposed development, on the 3rd of December, 2014, advising that

further information had been lodged with the Planning Authority. This was done on the 5th of December, 2014. The new due date for a decision on the application was the 12th January, 2015.

It is submitted by third parties that the PA acted *ultra vires* in accepting the unsolicited further information. In this regard, I note the provisions of Article 35 of the Planning & Development Regs which states as follow:

Where a planning authority receives further information or evidence following a request under article 33, or revised plans, drawings or particulars following a request under article 34, or otherwise receives further information, evidence, revised plans, drawings or particulars in relation to the application, and it considers that the information, evidence, revised plans, drawings or particulars received, as appropriate, contain significant additional data, including information in relation to effects on the environment, the authority shall-

(a) require the applicant, within a specified period, to publish a notice in an approved newspaper, containing as a heading the name of the planning authority, marked "Further Information" or "Revised Plans", as appropriate, and stating - (my emphasis)

In light of the above, I accept that the Planning Authority have adequately dealt with the matter of the unsolicited further information issue. In any case, the appeal before the Board relates to that decision and it is not the role of the Board to review the procedures of the planning authority.

10.7.2 Cultural Heritage Impacts:

The Board will note the comments of the County Archaeologist in relation to the proposed development and the archaeological findings associated with the construction of the M8. I note that there are no identified recorded features on the appeal site. Should the Board be minded to grant planning permission in this instance, I would consider it appropriate that archaeological monitoring conditions should be included in such a decision.

10.7.3 Requirement for EIS:

The development is below the threshold for submission of a mandatory EIS, as set out in Schedule 6 of the planning and development regulations. The criteria set out in Schedule 7 in respect of sub-threshold development has been considered. Having considered the nature of the proposed development and the stated Schedule 7 criteria, I do not consider that the submission of an EIS is required in this instance. I acknowledge the submissions made in third party appeals in this regard. I also note the references to a requirement under the Roads Act for preparation of an EIS in respect of the proposed development. The Board will note however, the requirements of S.10 of the 2007 Roads Act amending S.50 of the 1993 Act, relate to development proposed by the Roads Authority or the NRA. The proposed development is proposed by a private party and therefore does not comprise such a category of development.

11.0 APPROPRIATE ASSESSMENT:

11.1 The obligation to undertake appropriate assessment derives from Article 6(3) and 6(4) of the Habitats Directive. Essentially it involves a case by case examination for Natura 2000 site and its conservation objectives. Appropriate Assessment involves consideration of whether the plan or project alone or in combination with other projects or plans will adversely affect the integrity of a European site in view of the site's conservation objectives and includes consideration of any mitigation measures to avoid reduce or offset negative effects. This determination must be carried out before a decision is made or consent given for the proposed plan or project. Consent can only be given after having determined that the proposed development would not adversely affect the integrity of a European Site in view of its conservation objectives.

11.2 The appeal site is not located within or immediately adjacent to any Natura site. The closest Natura 2000 site is the Blackwater River (Cork / Waterford) SAC (Site Code 002170), approx. 1.6km south east of the site at its closest point. The development proposes the discharge of surface waters to the Funshion River, a tributary of the River Blackwater, at a point approx. 400m north of the appeal site. The development proposes that surface-water run-off will be captured, settled and attenuated prior to discharge via hydrocarbon interceptor, to an open swale draining to the

Funshion River. The discharge point is approx. 3km upstream of the SAC boundary and a further 700m from the Blackwater River itself. An Appropriate Assessment Screening Statement was presented to the planning authority as part of the planning documents. This AA identifies the conservation objectives of the SAC and assesses likely impacts of the development thereon.

- 11.3 The site the subject of this appeal itself can be considered a greenfield rural site. Given that there are Natura 2000 sites located within 15km of the site, the Board will be required to consider the potential effects of the proposed development on the identified SPAs and SACs. The site must be subject to AA regarding its implications for the Natura 2000 site in view of the site's conservation objectives *"if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects"* (EC, 2006). In other words, where doubt exists about the risk of a significant effect, an Appropriate Assessment must be carried out.
- 11.4 Having considered a number of potential significance indicators which have regard to any potential or likely effects of the proposed development on the on-site habitats, together with the habitats so protected under the designated SACs within 15km of the subject site, it is clear that the potential impact associated with the proposed development relates to the deterioration of water quality, which could have an indirect effect on the species and habitats that occur within the SAC. That said, I consider that, given the scale of the proposed development, together with the distance between the site and the SACs and the mitigation measures proposed as part of the planning application, the proposed development is unlikely to have an impact on the Natura 2000 sites within the 15km of the site. I am of the opinion therefore, that the development, if permitted, is likely to have little or no impact on the proximate Natura 2000 site. Invoking Article 28 and seeking the comments of the NPWS, is unnecessary in my opinion.
- 11.5 The AA screening report submitted determined that a full AA was not required, as the subject site is located at a distance from any designated sites and that no significant impact on designated habitats is expected to

occur. The Planning Authority have considered and agreed with this conclusion.

- 11.6 The safeguards set out in Article 6(3) and (4) of the Habitats Directive are triggered not by certainty but by the possibility of significant effects. Thus, in line with the precautionary principle, it is unacceptable to fail to undertake an appropriate assessment on the basis that it is not certain that there are significant effects. Having regard to information provided, and in terms of screening for AA, I conclude that the proposed development would not be likely to have a significant effect on any Natura site and that there is therefore no requirement for stage 2 Appropriate Assessment.

12.0 CONCLUSION & RECOMMENDATION

12.1 Conclusion:

12.1.1 I have had regard to the information submitted in support of the application together with all reports and third party submissions, and the requirements of National Policy as it relates to the provision of off-line motorway service areas, national guidance and Local Policy in the forms of the Cork County Development Plan 2014 as it relates to the National Road Network and Greenbelts and the Fermoy Electoral Area Local Area Plan 2011. It is clear that there is a requirement for a motorway service area to be provided at some point between junctions 13 and 14 of the M8 motorway as described in the NRA Service Area Policy, NRA 2014. In this regard, I am satisfied that, subject to the normal planning criteria identified, in principle, it can be considered that the subject proposed site is suitable for the proposed development, and as such, a grant of planning permission would not, in principle, constitute a material contravention of the Development Plan.

12.2 Further to the above, the Board will accept that the subject site is located within a greenbelt and as such, the development must be considered to be strategic to the functioning of the motorway network. Consideration must also be paid to the concurrent appeal currently before the Board for a similar type development at Junction 13 of the M8, at a distance of 9km from the current site. Having determined the need for a motorway service area, national policy, in my opinion, clearly provides that only one facility is

required in this area. To grant planning permission for the two proposals would result in a proliferation of facilities beyond the established needs. In addition, such an approach would significantly and negatively impact on the greenbelts of Fermoy and Mitchelstown contrary to local policy and the proper planning and sustainable development of the area.

12.3 In addition to the above I suggest that it is reasonable to consider the plans of the NRA to provide an on-line service area at Kilworth, together with the investment already made by the state to acquire lands to facilitate same. It is notable that the latest NRA policy, 2014, while supporting the provision of private developer led off-line service areas, still indicates the intention to consider the provision of on-line service area in 2019 should this not happen. The time frame for delivery in this instance is indicated by 2022. In this regard, and while two proposals are before the Board for consideration, I do not consider that it is necessary to accept that either one is acceptable if site conditions and environmental considerations cannot be adequately addressed.

12.4 Notwithstanding the planning history pertaining to this proposed development or indeed, the apparent preference of the Planning Authority for this proposed Motorway Service Area over the proposed Junction 13 (Mitchelstown) proposal, I have serious concerns regarding the location of the proposed development in a source protection zone and the potential impact of same on the vulnerable underlying aquifer. I am not convinced that adequate details or consideration has been given to this issue and as such, consider that a grant of planning permission would be contrary to the proper planning and sustainable development of the area.

12.5 In light of the above, and the serious environmental concerns as described, I consider that the site is not suitable for the proposed development and as such, the proposal would be contrary to the policies of the LAP regarding the protection of the Fermoy Greenbelt.

14.2 Recommendation:

Having considered the contents of the application including the all specialist reports contained therein, the decision of the planning authority,

National Policy, NRA Service Area Policy, 2014, the provisions of the Cork County Development Plan 2014, the Fermoy Electoral Area Local Area Plan, 2011, the provisions of the Spatial Planning & National Roads Guidelines (DOECLG 2012) the grounds of appeal and the responses thereto, the observations made to the Board, planning history, my site inspection and my assessment of the planning issues, I recommend that permission be refused for the reasons set out hereunder:

REASONS AND CONSIDERATIONS

1. The proposed development is located within the source protection zone of the Downings Bridge Public Water Supply Scheme. Having regard to the nature of the uses proposed on the site, and notwithstanding the proposals to provide a new back-up connection to the Fermoy Public Water Supply Scheme which have not been adequately detailed, the Board is not satisfied that this location is suitable or appropriate for such development or that it would not give rise to an increased risk of contamination of this important public water supply source as well as impacting on a number of private wells in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development is located within the Fermoy Greenbelt Area, wherein it is the policy of the current development plan for the area and the Fermoy Electoral Area Local Area Plan that development will only be allowed where it is of a strategic and exceptional nature. Having regard to the finding that the subject site is not suitable for development of the type proposed given the vulnerability of the underlying aquifer, the proposed development would be contrary to the policies of the development plan with regard to development within the Greenbelt and to the provisions of the national guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine
Inspectorate
28/04/2015

A. Considine
Inspectorate
13/05/2015